

A
Complete Collection
O F
STATE-TRIALS,
A N D
PROCEEDINGS
F O R
HIGH-TREASON,
A N D O T H E R
CRIMES and MISDEMEANOURS;
THE FOURTH EDITION;
COMMENCING WITH
The Eleventh Year of the Reign of KING RICHARD II.
A N D E N D I N G W I T H
The Sixteenth Year of the Reign of KING GEORGE III.
W I T H
TWO ALPHABETICAL TABLES TO THE WHOLE.
TO WHICH IS PREFIXED,
A N E W P R E F A C E,
By FRANCIS HARGRAVE, Esquire.

VOLUME THE NINTH.

L O N D O N :

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MDCCLXXVIII.

Complete Collection

STANDARD

PROCEEDINGS

FOR

CRIMES and MISDEMEANOURS

THE FOURTH EDITION

COMMENTARY WITH



The Eleventh Year of the reign of King RICHARD II.

The Sixteenth Year of the reign of King GEORGE IV.

WITH

TWO ALPHABETICAL INDEXES TO THE WORK

TO WHICH IS PREFIXED

A NEW SYSTEM OF

THE CRIMINAL LAW

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T H E
P R E F A C E.

THE Public may be surprized at finding a Ninth and Tenth Volume of STATE TRIALS publish'd, after so voluminous a Collection already set forth; yet, if they consider, it is above thirty Years since the Seventh and Eighth Volumes were printed, and the great Number of Trials for *Treason, Murder, Perjury, Forgery, &c.* which have happened since that time, likewise a Rebellion within that Period (always productive of many Trials) their Admiration must cease.

Besides, Gentlemen must have observed, in the Course of their Reading, a great many Trials have happened for different Crimes and Offences, which have never yet appeared in Print, but have been locked up in the Studies of those who either took them, or had them taken in Short hand: Those falling into other Hands, by Deaths or otherways, have either been purchased, procured, or generously sent in towards compleating this useful Work;—such as *Matthew's* Trial for High Treason, in printing *Vox Populi, Vox Dei*, in 1719, which has lain dormant near fifty Years;—*Hales and Kinnerley's* Trials in 1728, for forging promissory Notes, in the Names of *Robert Gibson* and *Samuel Edwards*, Esquires (both Members of Parliament), and publishing them as true ones, for large Sums of Money, wrote on frank'd Covers given them to send into the Country;—*Huggins* and *Bambridge's* Trials, who were Wardens of the Fleet, with *Corbett* the Tipstaff, and *Aston* the Keeper of the Marshalsea Prison, who were all prosecuted in 1729, for Murder, by Order of his Majesty, on an Address from the House of Commons for that Purpose;—*Mr. Franklin's* Trial, in 1730, for printing and publishing a Libel entitled, *A Letter from the Hague*; with several other Trials which were taken at large, with the Speeches of the Court and Counsel, are now first printed from Manuscripts, and inserted in this Collection.

All the printed Trials, at full length, that we could hear of (and we have frequently advertised to procure them) published since the Seventh and Eighth Volumes, are brought into this Work, with great Additions to most of them, either by *Arguments on the special Verdicts, Counsel's Opinion on some of the Cases, or Accounts of the Prisoners Behaviour and dying Speeches, &c.* and though several small Trials, or Parts of Trials and Proceedings, have been printed or procured in Manuscript, and were too minute to be inserted in the Body of it; yet, in order to preserve even them from being buried in Oblivion, we have given them a Place in the Appendix; for these scarce Pieces are of Value, and not to be collected but with great Difficulty and Expence; and it is hoped some Gentlemen of the Law, on reading them, will furnish some Speeches or Arguments towards compleating them, in case this Work comes to another Edition.—In this Appendix are likewise inserted two Trials in Corporation Causes, now first printed from Manuscript, viz. *New-Romney* and the Port of *Hastings*, which were argued by some of the most eminent Counsel then at the Bar; the first before the Lord Chief-Justice *Eyre*, and the latter before Lord *Hardwicke*; which were not procured time enough to be inserted in the Body of the Work.

Some Trials in this Collection cannot (properly speaking) be called *State Trials*, yet may be deemed good Precedents, and determine many Points of Law; therefore have their Use, and were thought too material to be omitted; and it would be confining the Collection in too narrow a Compass, to insert only STATE TRIALS. But as the former Collection, in Six Volumes, published by *Solomon Emlyn*, Esq. (who wrote that admirable Preface prefixed to the first Volume, and published *Hale's Pleas of the Crown* in Folio) met with general Approbation, we have endeavoured to follow his Steps, and take in such Trials, for *Murder, Perjury, Forgery, &c.* as have been published at large; for all Trials (even in these Cases) are Helps to History, setting forth the true State of the Case on both Sides, and are useful to the Gentlemen of the Law as well as Historians, as they give the Opinions of the greatest Lawyers on the different Points brought before them.

This Work will receive considerable Addition from that upright Judge Mr. Justice *Foster*, who, in his *Cases on the Crown Law*, has given the Public several Resolutions and Determinations of the Court on some of the Trials of the Rebels, which are added after each of their Trials; but the greatest Use made of that judicious Author, is his Speech on pronouncing the Judgment of the Court, in the Case of the King and *Macdaniel*, and his Gang of Thief-takers (which is inserted after the Arguments of Mr. *Hume* and others on their special Verdict, which Arguments were never before printed); and also on the Question put to the Judges, by the House of Lords in *Earl Ferrers's* Case,

“ 1. Whether a Peer, indicted of Felony and Murder, and tried and convicted thereof before the Lords in Parliament, ought to receive Judgment for the same, according to the Provisions of the Act of Parliament of the Twenty-fifth Year of his Majesty's Reign, intituled, *An Act for better preventing the horrid Crime of Murder?* ”

“ 2. Supposing a Peer, so indicted and convicted, ought by Law to receive such Judgment as aforesaid, and the Day appointed by the Judgment for Execution should lapse before such Execution done, whether a new Time may be appointed for the Execution, and by whom? ”

As the Affair of Mr. *Annesley* and Lord *Anglesea* made a great Noise, some Years ago, and occasioned four Trials, carried on at a vast Expence, we have inserted them here. First, Mr. *Annesley's* for the Murder of Mr. *Egglestone* at *Staines* in *Middlesex*; Second, that of Lord *Anglesea*, and others, tried in *Ireland*, for an Assault on Mr. *Annesley*, Mr. *Mac Kercher*, and others; Third, so much of the Trial in Ejectment, in *Ireland*, between Mr. *Annesley* and Lord *Anglesea* (which Trial at large is in almost every Hand) as will make the Reader entire Master of the whole Affair; with the Speeches and Opinions of the Lord Chief Baron *Bowes*, and the other Judges, at full Length, in that remarkable Cause; which will serve for an Introduction to the Trial of Mrs. *Mary Heath* (Lady *Altham's* Woman) who was tried for Perjury, for the Evidence she gave on that Trial in Ejectment. The Acquittal of this Woman seems to have put a stop to the further Proceedings at that time; and since Mr. *Annesley's* Death, we do not hear they are as yet revived.—The Trial of *Elizabeth Canning*, for Perjury, is here printed, though in a much fuller and larger Manner than it ever appeared in before this Publication.

As *Scotland* is Part of the united Kingdoms, and their Trials are conducted in a very sensible Manner, though their Method of Proceedings are different from ours, (in not bringing their Witnesses into Court to be examined, only reading their Depositions taken in Writing on Oath) yet we shall insert three or four of the most principal of them, to shew their Method of proceeding, and the Reasoning and Learning of their Advocates.

Some People may wonder we have not obtained some of the modern Trials, as Dr. *Henzie* for High Treason; the *Cock-Lane* Ghost, &c. Our Answer is, we should have been very glad to have obtained them; they would have been a great Addition to the Work, from the great Learning of the Judge that tried them; but we never could hear they were ever printed or taken in Short-hand; and as to the former, he made no Defence or called any Evidences; so it could not be a Trial of any Consequence; but if any one has a mind to peruse the Law Proceedings against him, in the Court of King's Bench, he may find them in Mr. *Burrow's* Reports, Vol. I. part iv. p. 642.

We hope the candid Reader will excuse such Errors as he may find in this Work occasioned by the Editor's Distance from the Press, and judge favourably of this Collection (made more for Amusement than Profit), which, in all Probability, had never seen the Light, if the Editor had not, at great Trouble and Expence, undertaken it.

S. N.

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are right.

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A COMPLETE

A COMPLETE
COLLECTION
OF
TRIALS, &c.

I.

The Trial of RICHARD NOBLE*, Gent. for the Murder of JOHN SAYER†, Esq. and of Mrs. MARY SAYER, for Petty Treason, and Mrs. MARY SALISBURY, for aiding and abetting the said Murder; at the Assizes held at Kingston upon Thames, in Surry, before the Right Hon. the Lord Chief Justice Parker, March 12, 13, 1712-13.

ON Thursday Evening, March 12, Richard Noble, Mary Sayer, and Mary Salisbury, were arraigned for the Murder of John Sayer, Esq. upon their several Indictments; and pleaded Not Guilty; and were told by the Court, to prepare for their Trials next Morning at six o'Clock.

On Friday Morning at Six, the Court sat, and the Prisoners were set to the Bar; when Mr. Noble moved to put off their Trials, for that Mr. Bull, a very material Evidence for them, was not come down.

Court. That must be proved by the Oath of somebody, and that he was served with a Subpœna to attend here. Upon which Mr. Lindsey, one of the Attornies, concerned for the Prisoners (for they had many) deposed, That he filled up a Subpœna for serving Mr. Bull, but did not serve it himself; that a Messenger was sent at twelve o'Clock, Yesterday, to London, to serve it, but was not returned. Mr. Noble also alledged, That Mr. Page, the Counsel, another material Witness, was not come, and that he was served with a Subpœna, and they looked for him every Hour; and called Mr. Lindsey to prove this.

Mr. Lindsey deposed, He served Mr. Page with a Subpœna last Sunday, and that he thought he would have been down at the Trial.

The Court told Lindsey he should have taken care to have had his Witnesses ready, and that there was no Affidavit made of their being material Witnesses; and reprimanded Lindsey for his Neglect, and ordered the Trial to go on.

The Queen's Counsel, Mr. Serj. Commyns, with Mr. Nott, set forth how heinous the Crimes of the Prisoners would appear to be, but what aggravated their Crimes, was their endeavouring to procure Witnesses to perjure themselves; and called ‡

Daniel Reeves, who being sworn, proved, That one James Hannon, an Irishman, (who stands committed for this Offence) on Thursday before the Trial, came to him, and shewed him Copies of the Examinations taken before the Coroner, of Samuel Derham, Thomas Gardner, and John Cox, three of the most material Witnesses, to prove the Murder. Hannon then gave him Half-a-Crown, and desired him to procure, or hire two other Men to swear with him, against those Examinations, and promised him two Guineas for himself; and the other two Men were to have what Reeves could agree with them for, and that Mr. Noble would give Reeves a larger Satisfaction than what he thought he would, or could expect.

Friday Evening following, Hannon came to him again, and gave him another Half Crown, to spend upon Derham, Gardner, and Cox, and ordered him to make what Agreement he could with them, to stifle and buy off their Evidence; and the next Day, Saturday, Hannon came to Reeves again, to know what Progress he had made, and invited him to Dinner on Monday, and to bring the other two Men he was to hire with him; Hannon gave him a Note, of his own Hand-writing, where he lived, which was at Number 10. in College-street, Westminster. On Monday Morning Hannon came to Reeves again, and gave him a Writing in the Nature of an Affidavit, drawn up on Stamp Paper (by the Prisoners he said), which he, and the two Men he pretended he had hired, were to swear before a Judge, and gave him nine Shillings more in Money; whilst Hannon was thus tampering with this Witness (Reeves), he intimates it to the Prosecutor's Attorney, and after having got this Affidavit from Hannon, he shuffles off from dining with him, but promises to meet him in the Afternoon; and carries the Affidavit to the Prosecutor's Attorney; when it was settled between them, that when Hannon came again, Reeves should appear steady and zealous in the Affair, and a Warrant should be procured to apprehend him. Accordingly Hannon came, and

a Warrant having been procured from Justice Hartley, instead of the two Persons, Reeves was to procure to forswear themselves, two Constables appeared; and Reeves said to Hannon, These are my two Friends. Hannon embraced them very civilly. When a third Constable entered, Reeves seized Hannon's Sword, and asked the other Constables, if they charged him with Hannon? They replying, Yes, he was seized, and carried directly before Justice Lade in Southwark; where, upon his Examination, he denied the Fact, and prevaricated greatly; was kept in Custody that Night, and next Morning committed to the Marshalsea for want of Bail.

The Words of the pretended Affidavit were as followeth

"George Smith and Samuel Shipman, both of the Parish of St. Buttolphs, House-keepers, and Daniel Reeves, of the Parish of St. George's, Southwark, maketh Oath, That on or about the 29th Day of January last, these Deponents saw Mr. Cox, and Mr. Hill, the Constables, with several other Persons in Company with Mr. Sayer, the deceased, to go from Mr. Sherlock's House in the Mint, a Brandy-Shop, to one Mr. Twyford's House, wherein they entered; and on their being asked, What their Business was? Refused to tell; and these Deponents heard the deceased Mr. Sayer, as he went into the said Twyford's House, threaten, or say, that he would be revenged on that Villain Noble, and on his Wife, and that he would kill them, or be killed; and these Deponents saw the Deceased go up Stairs, and come down again, leaving both the Constables above Stairs; and on his coming to the Parlour-Door, where Mr. Noble was, drew his Sword partly out, and said, Damn you, you Villain, now I ave found you out; and instantly pulled at the Door, and broke off the Bolt that was withinside the Door, and thereupon the deceased after his Sword was almost wholly drawn out, stepped backwards, and, in about a Minute, went to go down the two Steps into the Parlour, and seemed to be pushed down; and then some said, he was in a Fit, fetch him some Water; but these Deponents say, that they stood very near the Deceased, yet could not see, nor could they believe, that any other Person, considering the Situation of the Place, and the little Door being but part open, could see who gave the said Wound: And these Deponents farther say, they know Mr. Derham to be a poor, necessitous Taylor in the Mint, of a most infamous Character, and are certain he was not in the House till after the Deceased was wounded; and the Sword which James Terry, the Deceased's Footman, and others there, said gave the said Wound, was taken up in the Kitchen; and further say, That before the Deceased broke open the said Door, they saw the said Terry, with a Cane in one Hand, and a Brass-hilted Sword, undrawn, in the other Hand.

"And lastly, These Deponents heard the said James Terry abuse the said Mrs. Sayer, giving her very bad Words; he also told her, That rather than fail, he would offer his Service to the Sheriff to hang her, and that he would soon see the End of her; and she answered, Sirrah! It is hard to be abused by the Master and the Man too; and these Deponents being in the Room when the Deceased fell down, heard Mrs. Sayer say no other Words; but believe they should, if she had said any."

Jeremiah Barnard deposed, That he was summoned to Kingston Assizes, on the Jury on Life and Death; and that one Luke Jones, a Waterman, carrying Mr. Stagg, an Attorney, by Water, on Friday the 6th of March, and telling him, Jerry Barnard was summoned on the Jury; Mr. Stagg ordered him to tell Barnard, if he was not got off the Jury, Stagg could help him to 20l. Jones asked Stagg on what Account? Stagg answered, If he would bring in the Gentleman who killed the Man in the Mint, Not Guilty; all which Jones told this Witness by Stagg's Order; Stagg farther said,

* This Mr. Noble was the Son of Mr. Noble, who kept a well-frequented Coffee-House at Bath, and had an Estate of about 60l. per Ann. gave his Son a liberal Education, and put him Clerk to an Attorney at the Devises, in Wilts; when Noble was out of his Clerkship, he took Chambers in New-Inn, London, and there practised as an Attorney; he was introduced by a Gentleman of Honour, to transact Mr. and Mrs. Sayer's Affairs, (for they had various Disputes) the Gentleman little thinking he would have made so ill an Use of his Recommendation: But Mr. Noble was a gay, amorous, young Fellow, about twenty-eight Years of Age, and what any Woman would have liked, and he soon found out Mrs. Sayer's Disposition, went off with her, and lived with her in various Lodgings in a scandalous Way.

† This John Sayer, Esq. was Lord of the Manor of Biddlefen, in Bucks, a Gentleman of about 1000l. per Ann. Married in 1699 Mary, Daughter and Co-heir to Admiral Nevil, (whose Relict married Col. Salisbury) and had 3000l. to her Fortune. Mr. Sayer, on the Receipt of 1000l. was to settle 50l. per Ann. Pin-Money, and for every 1000l. was to settle 100l. per Ann. in Trustees. She was a very agreeable, sensible Woman, had some Wit, but too much Spirit; they had not been married long, before she quarrelled with him, and parted Beds; then by Intercession of Friends came together, and parted again. In short, she carried on a Criminal Conversation with two or three others, before she came acquainted with Mr. Noble.—Though Mrs. Sayer will appear so vicious and wicked in the ensuing Trial, yet some few Years after the Murder of her Husband, and the Execution of her Gallant, she married again an eminent Physician in London.

‡ This Trial is printed from what was published at that Time, (1713) and though not so perfect as it would have been, if it had been taken in Short-hand, yet it will receive considerable Additions from the Case of Mr. Noble, By a Barrister at Law, and Mr. Noble's Speeches; printed afterwards.

they having a £1000 and upwards, and would spend it all on the Jury to save his Life; for it lay in the Breast of the Jury only; because they had been with the Queen to get a Pardon, and they could not get one. This Evidence was objected to by Noble, as being only hear-say Evidence.

Luke Jones being sworn, proved Mr. Stagg's talking to him, as above, and his telling Bernard what Stagg offered him, &c. Upon this the Tipstaff was sent for Mr. Stagg, but he was not to be found, so a Summons was ordered to be taken out against him, to attend the Lord Chief-Justice, at his Chambers in London.

These bad Practices being discovered, the Court ordered the Jury, summoned on this Trial, to be all set aside; and a Jury sent for from the *Nisi prius* Bar; when each Person called over was sworn, and asked, Whether they had been wrote to, or in any manner applied to, on behalf of the Prisoners at the Bar, or either of them? When they all declared in the Negative; and on calling over the Jury, the Prisoners challenged peremptorily to the Number of Seventy-five, *viz.* Mr. Noble, 20; Mrs. Salisbury, 20; and Mrs. Sayer, 35. Mr. Noble, and the other Prisoners, declared they knew nothing of Hannon, and that he was not employed by them; and that they detested such vile Practices, and hoped it would make no Impression on the Court to their Prejudice.

The Jury being sworn, were

James Comber, Esq.	Jonathan Wiltshire,	Philip Becham,
Edward Chalkhill,	Edward Exall,	John Hind,
Henry Wakford,	Thomas Fox,	Robert Wood,
Edward Parkhurst,	John Bandford,	John Potterton.

Mr. Noble moved the Court, that he might be tried separately and apart from the Ladies, for that his Crime, and theirs, were distinct Things; but the same was over-ruled. Then their Indictments were read, *Richard Noble, Gent. Mary Salisbury, and Mary Sayer, Widow*, were indicted; He, for the Murder of *John Sayer, Esq.* on the Twentieth Day of January, Anno 12, *Annae*; *Mary Salisbury* as present, aiding, assisting, and abetting the same; and *Mary Sayer, Widow* of the Deceased, for Petty Treason, as being present, aiding, assisting, and abetting the Murder of her said Husband; and the said *Richard Noble* was also indicted on the Coroner's Inquest for the said Murder of *John Sayer, Esq.* and also on the Statute of Stabbing; and being severally arraigned, pleaded Not Guilty, and the Jury charged with them all jointly. — Then the Witnesses were called.

John Farrington swore, That he was an Officer to the Sheriff of *Middlesex*, and had a Warrant delivered to him at the Suit of the Deceased, against the Prisoner at the Bar; that he arrested Mr. Noble, at his Chambers in *New-Inn*, and when he was arrested, Noble declared, and said, God damn him, if he had Mr. Sayer the Plaintiff there, he would stick his Sword through his Body; and he would do so, whenever he saw him again. When he arrested the Prisoner, he was ill, and the Deceased (the Plaintiff) ordered him not to take him out of his Chambers, but to treat him civilly; that whilst he had him under Arrest, Noble said, He would send Sayer out of the World the first Opportunity; and the Witness could not help saying, You have had much of his Goods, and lain with his Wife, and why would you do so? And Noble answered, Damn him, he would.

Mr. Noble objected to *Farrington's* Evidence, for that he swore against him out of Malice; because when he had him under Arrest, he extorted Ten Guineas from him, under pretence of Civility-Money, for which the next Term after, he moved the Court of King's-Bench against him, who made him refund the Money.

The Court said, It must be left to the Jury, what Credit they would give to his Evidence.

Justice *Peters* swore, that in 1709, a Duel was stirred up by the Contrivance of Mrs. Salisbury and Mrs. Sayer, between their two Husbands, the Deceased and Colonel Salisbury, and the Challenge wrote by Mrs. Sayer (though sent by Mr. Sayer). But when they met, the Colonel told his Son-in-Law (Sayer), as they were going in a Coach behind *Montague House* to fight, *Jack Sayer, I should get no Honour by killing of you; but thou shouldst know, what all the World knows; Thy Wife and my Wife are two damn'd Whores, and they want to get rid of us both.* The Colonel, being a good Swordsman, might kill Sayer, and afterwards be hanged for it: This Colonel Salisbury told me soon after. Mr. Noble objected to this Evidence, as being only Hear-say, and therefore could not affect either of them.

Joanna Manly (Servant to Mr. Sayer), That in August 1709, after Mr. Noble's Acquaintance with Mrs. Sayer, the Deceased went to Holland, and returned about Lady-day, during which time, Mrs. Sayer was big with Child, and her Mother, and her Sister Mrs. Nevil, were privy to it; and during Mr. Sayer's Absence; that Mrs. Sayer carried off her Master's Effects and Money, to a great Value, and that this Witness, several times saw the two Prisoners, Mr. Noble and Mrs. Sayer, in Bed together; and after her Master's Return, her Mistress, Mrs. Sayer, desired her to give her Master some Poison, and said, that if this Witness would not get it, she would get it herself.

Penelope Howell, another Servant, swore, That she was sent, by the Prisoners, for Two-penny worth of *Laudanum*, to make the Deceased sleep, and bringing word, that the Apothecary said, that Quantity was enough to make any body sleep their last Sleep, the Prisoners bid her hold her Tongue, a Slut, and give it as directed.

Anne Scoffin, the Midwife, swore, That on the 5th of March 1711-12, Mrs. Sayer was delivered of a Male Child by Dr. Douglass; that she passed for a Widow, and that Noble and she were Brother and Sister: This Child was nursed at *Hoxton*, died and was buried there. Mrs. Sayer was delivered in a Court in *Brooke street, Holborn*; that there was great Familiarity between Mr. Noble and Mrs. Sayer, and that the Child was like Mr. Noble, and she believed him to be the Father of it.

Mr. Martin swore, That he knew the Prisoners Mr. Noble and Mrs. Sayer; Mr. Noble desired him to take a convenient Lodging for her to lie in at; which he did, and she was delivered of a Male Child, about the 5th of March 1711-12, by Dr. Douglass, in the Presence of Mrs. Scoffin the Midwife, at a House in a Court in *Brooke street Holborn*.

Francis Cox, That he is one of the Constables of the Parish of *St. George the Martyr*, in the Borough of *Southwark*; that on the 29th of January last, the Deceased, *John Sayer, Esq.* with two other Gentlemen, came to his House with a Warrant from Sir Charles Cox, for taking into Custody the Body of *Mary Sayer* his Wife, who, Mr. Sayer said, was gone from him without his Consent, and lived in a loose, scandalous Manner. That

as he went to execute the Warrant, he called on *Thomas Hill*, another Constable, to assist him, after which they both went into the *Mint*; and this Witness being informed by Mr. Sayer, that he believed his Wife was at *Twyford's House*, in *George street*, in the *Mint*; this Witness, having found out *Twyford's House*, he knocked at the Door, and *Twyford* refused opening the Door at first, till he said, he was a Constable, and had a Warrant to search for a suspected Person in his House, and that he would not hurt a Hair of his Head; then *Twyford* opened the Door to the Constables, and they beckoned to their Assistants, and all went in, Mr. Sayer running in after the two Constables; when Mr. Sayer went up Stairs, and there the Deceased said, he saw some of his Wife's Cloaths, and that he believed she was in the House; and whilst this Witness went into another little Room, Mr. Sayer, and the other Constable and Assistants went down Stairs; and before this Witness got down, he heard a great Noise and Screaming out, in a Room below, whereupon he made great Haste down, when the other Constable and others, cried out to him, Mr. Sayer is dead, and the Gentleman that killed him was breaking out backwards to make his Escape; whereupon this Witness went round the House into the Garden to secure him, where he found a naked Sword in the Hand of Mr. Sayer's Footman, eight or nine Inches bloody, and Mr. Noble, Mrs. Sayer, and Mrs. Salisbury, being in the Room together, he apprehended them all, and carried them before *Ralph Hartley, Esq.* Justice of the Peace, who committed them to the *Marshalsea*.

Thomas Hill, the other Constable, swore much to the same Purpose. That he went with Cox the other Constable, with a Warrant to *Twyford's House*; that Mr. Sayer went up Stairs first, and then came down, and he followed him; and at the Foot of the Stairs, there being a Door leading into the Back-Room, Mr. Sayer laid hold of the Door, and pulled it open, and immediately the Deceased fell a little back, and laid his Hand on his own Sword, but did not draw it above a Foot, for want of Strength. This Witness then pushing into the Room before Mr. Sayer, Mrs. Salisbury fastened on his Collar, and endeavoured with all her Might, to keep him out of the Room; and as soon as he got in, Mr. Sayer endeavoured to follow him immediately, but could not, fell down, and never spoke more. There was only Mr. Noble, Mrs. Sayer, and Mrs. Salisbury in the Room; and Noble was breaking open the Glass-Door to make his Escape: The Deceased being on the Ground, this Witness at first thought him in a Fit only, and Mrs. Sayer said, It was only a Sham, and he was not hurt; but he presently saw the Wound on Mr. Sayer's Left-side, whereof he immediately died, and believes Noble gave the Wound with his own Sword, which was bloody, and no other Sword drawn at that Time; that Mrs. Sayer desired him to be civil to Mr. Noble, whom he had then apprehended; but she took no Care of her Husband.

James Terry (Servant to the Deceased about eight Years) swore, That staying below in the Kitchen, he saw Mr. Sayer come down first, and laid his Hands on the Top of the Door at the Stairs-Foot, going into the ParLOUR, and endeavoured to pull it open; but as soon as it was a little Way open, he saw a naked Sword come through against his Master's Body, and he ran to his Master, and his Master fell back into this Witness's Arms, and clapping his Hand on this Left-side, said, I am dead, or killed, or such like Words. The Sword was left in his Master's Body, and fell out on the Ground, and verily believes his Master received a Wound on the Left-side of his Body from Mr. Noble, at the Time his Master opened the Door a little Way, of which he instantly died. This Witness took up the Sword, which had a mourning H it; and seeing *Twyford* go round the House into the Garden, followed him, when he heard the Glass Windows break, and saw the back Door open, Mrs. Sayer in the Garden, Mrs. Salisbury standing on the Door Step, and his Master lying on the Ground; he then said to his Mistress, Lord Madam, What have you done to my Master? He's dead; and you have killed him. His Mistress said, O you Rogue, I'll be reveng'd on you too. Afterwards, he saw the Wound on his Master's Left Pap, which he saw probed, and was four or five Inches deep. This Witness farther deposed, That his Master had no Sword drawn, at the Time he received the Wound, nor afterwards; and that no Words passed between him and the Party who gave the Wound.

Thomas Gardner, the Constable's Assistant, swore, That there being a Door at the Foot of the Stairs in *Twyford's House*, he saw Mr. Sayer lay his Hand on the Door, and endeavour to pull it open; and as the Door was a little open, he saw Mr. Noble in grey Cloaths within the Room, and with a naked Sword in his Hand thrust at the Deceased, through the Part of the Door that was open, and gave him a Wound on the Left-side of his Body; and that Mr. Sayer had no Sword drawn, neither did any Words pass between the Deceased and Mr. Noble, that gave the Wound; but the Deceased afterwards endeavoured to draw his own Sword, then by his Side in the Scabbard, but could not pull it above half Way out, for want of Strength, and immediately fell down; and as he was falling, the Witness heard Mrs. Sayer say, that the Deceased had a great many sham Fits, and that this was one of them, or such like Words; and when the Constables were taking the Prisoners away, Mrs. Sayer asked Noble, My Dear, have you got my Watch? He answered, My Dear, I have it in my Pocket.

Thomas Derham deposed much to the same Purpose; and several other Witnesses swore to the same Effect, particularly Captain *Altorn*, and Mr. *Anthony Sherlock*; who likewise swore, that *Twyford* should tell them, that he told the Prisoner, the Constables were come either for him (Noble) or himself; and that he told Noble, he might go away if he pleased.

The Coroner appeared, and produced the bloody Sword, which was stained with Blood about five Inches, and appeared to be Mr. Noble's Sword, with which he killed the Deceased. A Surgeon also swore, that the Wound was the Occasion of his Death, and gave a Description of it to the Jury; and the Coroner's Inquest found it Wilful Murder against all three.

The Evidence for the Crown being all examined, the Prisoners were called upon to make their Defence.

Mrs. Sayer said, She was parted from her Husband, on account of his Ill-usage of her; that he gave her the foul Disease, and that they parted by mutual Consent, and she had a separate Allowance, and Articles of Separation were drawn and signed by each of them; that she knew nothing of any Constables coming to *Twyford's House*, or that there was any Warrant against her; that Mr. Noble being there was merely accidental, and that he came to her about her own private Business, being her Attorney; and that the Wound giving the Deceased, was done in an Instant, and the

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knew nothing of it, till Mr. Sayer fell down; that several of the People had sworn against her out of Malice and Spite; but utterly denied her telling the Maid to get Poison to give to her Husband; and so far from aiding or abetting Mr. Noble, if she had seen his Sword drawn, or known his Intentions, she would have done her utmost to have prevented his killing Mr. Sayer.

Mrs. Salisbury said, She attended her Daughter, in the Mint, which she thought a private Place, from the Repentment of Mr. Sayer, who threatened her Daughter's Life; That she had no Malice or Ill-will against Mr. Sayer, and wished they would have lived happily together; but he used her excessive ill, and gave her the foul Disease, which obliged her Daughter to go from him; that she knew nothing of any Constables being in the House, or any Warrant out against her Daughter; that Mr. Noble came there that Day to dine with them, and to endeavour a Reconciliation between Mr. Sayer and his Wife; that she knew nothing of the Wound being given, she being at the Window; that it was done in an Instant, and she did not know it, till she heard Mr. Sayer fall.

Mr. Noble declared, He had no Ill-will or Malice against the Deceased; that Mr. Sayer had used his Wife barbarously, had beat her, and gave her the foul Disease; and aggravated the Deceased's Carriage towards his Wife. He set forth the Deed of Separation, and the Marriage Articles, arguing, That upon that Deed, he did not question Mrs. Sayer would be thought a Person sole and apart from her Husband at the time of his Death; that Mr. Sayer could not, with any Justice, pretend his Wife had robbed him, or run away with his Jewels, &c. she having a Right to them, they being reserved to her by the Marriage Articles, and that the Deceased could have no Pretence to retake either them, or his Wife; as to her, she was forced to go from him, on account of his Ill-usage of her, and was lawfully separated from him; he justified his being in Mrs. Sayer's Company, as being her Attorney, and Trustee; that he was with her at the Time of the fatal Accident in private, about Business with her and Mrs. Salisbury; that he then heard an extraordinary Noise in the House, and there seemed a Confusion, and Crowd of People assembled together in the House, but he could not tell for what; he owned, he knew Mr. Sayer was in the House, for he heard his Voice before the Door was broke open; the Deceased breaking open the Door by pulling off the Bolt, and one Hinge, surprized him, and the Prisoners; that they all retired to the Back-Door thinking to escape, but were not able to get it open; and hearing such a Clamour and Noise without, he was flung into a Terror and Confusion, arising from such a desperate Place as the Mint; that he then drew his Sword, and stabbed the Deceased as he was entering the Door of the Room; where he, Mrs. Sayer, and Mrs. Salisbury were; that he did not doubt justifying what he had done, notwithstanding the aggravating Circumstances alleged by the Counsel, for that the Deceased came with an illegal and ill-grounded Warrant, and that Twyford the Landlord never told him Constables were at the Door; that he knew the Deceased sought his Life, he having before drawn his sword on him, and once brought a Pistol to his Chambers, on purpose to shoot him. He set forth, That he was recommended to do Mrs. Sayer's Business by a Gentleman of Honour, and that he had often endeavoured and solicited an Accommodation between Mr. Sayer and his Wife; that the Articles of Separation were drawn and executed before he was employed as Mrs. Sayer's Attorney; and that Mrs. Salisbury had engaged him to come over that very Day, to solicit a Reconciliation; and that he never declared, he would stick Mr. Sayer whenever he saw him; and that Farrington, the Officer, swore out of Malice against him.

The Prisoners then called some Witnesses, proving the Marriage Articles, and Deed of Separation.

Then Mr. Noble called a Witness, who deposed, That the Deceased, some time ago, broke open the Door upon the Prisoner, Mrs. Sayer, to kill her with his Penknife; that this Witness was well acquainted with Mrs. Sayer, during Noble's Conversation and Acquaintance with her, and never knew her to be with Child, or that she was bigger than usual; that the Prisoner, Mrs. Sayer, before her Acquaintance with Mr. Noble, was endeavouring for a Divorce, in *Dockers-Commons*; and that the Deceased several times beat his Wife, and some time since went to Mr. Noble's Chambers, with a Pistol in his Hand, to kill him; and that this Witness met the Deceased upon the Stairs, going up to Mr. Noble's Chambers, which Passage he had told to several others; and he proved Noble's wresting the Deceased's naked Sword from him, when he offered to stab him, or run him through the Back; and that the Deceased was cured of the foul Disease.

* As to the Legality of the Warrant, or whether proper Notice was given by the Constables, seems determined in *Curtis's Case*, taken from Mr. Justice Foster's Reports, Page 135, which is cited at large, as being applicable (in part) to this Case of Noble's.

The Case of Richard Curtis.

HE was indicted at the Summer Assizes 1756, for the Town and County of Newcastle upon Tyne, for the Murder of William Atkinson. Upon the Trial the Case appeared to be, that a Process in the Nature of a *Capias ad Satisfaciendum* issued against one Charles Cowling out of the Town Court, directed to Joseph Dixon, a Serjeant at Mace belonging to the Court; who got John Suretees, another Serjeant at Mace, to go and execute it for him. Suretees accordingly went to Cowling's Work-shop adjoining to his House, and taking hold of him told him that he had an Execution against him. Cowling demanded a sight of the Process; which being refused, Cowling, with the assistance of the Prisoner, by force and violence rescued himself.

Suretees immediately acquainted Dixon with what had happened; and thereupon Dixon prevailed upon the Mayor's Officer to insert the Name of Suretees in the Process; and Suretees then went before a Justice of the Peace for the Town and County, and made Information on Oath, that he did by virtue of the said Process to him and Joseph Dixon directed, apprehend the said Cowling, who by Wrestling and Strokes got out of his Hands and made his Escape.

The Justice thereupon granted a Warrant, directed to all Serjeants at Mace, Constables, and other Officers within the said Town and County, reciting the Process already mentioned; that Suretees had that Day arrested Cowling by virtue thereof, and that Cowling had by Wrestling and Strokes rescued himself, and commanding all Officers, &c. to apprehend the said Cowling, and to bring him before the Justice who granted the Warrant, or any other Justice of the Peace of the Town and County, to be dealt with in the Primitives as the Law directeth.

Upon the receipt of this Warrant, Dixon and Suretees (who were both Serjeants at Mace) went back to Cowling's Work-shop, taking with them the Deceased and one Coulson as their Assistants. They found the Shop Doors shut; and calling to Cowling, who was there with the Prisoner, informed him that they had an Escape Warrant against him, and required him to surrender; otherwise they said they would break open the Door.

Cowling refused to surrender; and the Prisoner looking out at the Window with an Ax in his Hand, swore that the first Man that entered should be a dead Man. Dixon, however, with Coulson and the Deceased, broke open the Shop Door; and the Deceased, being foremost in entering the Shop, the Prisoner at one Blow with the Ax, on the left side of the Head, killed him on the Spot.

Upon this Evidence the Prisoner was found Guilty of Wilful Murder. But some Gentlemen of the Profession, expressing their Doubts to the Judge who tried him, he respited Execution till the Opinion of the other Judges could be had on the Case.

In Trinity Term 1757, Eleven of the Judges had a Conference on the Case, and Nine of them, with whom Justice Wilmot, who was absent, concurred, were clearly of Opinion that the Defendant is Guilty of Murder. Two of the Judges held it to be Manslaughter. All the Judges present at the Conference agreed that the Justice's Warrant, though obtained by very unwarrantable Practice on the part of Dixon, and by Perjury on the part of Suretees, was a legal Warrant for the Arresting Cowling for a Breach of the Peace. For in Cases wherein the Justice of the Peace hath Jurisdiction, and in this he undoubtedly had, the Legality of his Warrant will never depend on the Truth of the Information whereon it is grounded.

They likewise agreed, that Peace-Officers, having a legal Warrant to arrest for a Breach of the Peace, may break open Doors after having demanded Admittance, and given due Notice of their Warrant.

The Point on which they divided was, Whether in this Case such due Notice had been given?

The Nine Judges were of Opinion, that no precise Form of Words is required in a Case of this kind. It is sufficient that the Party hath Notice that the Officer cometh not as a mere Trespasser, but claiming to act under a proper Authority. And if after this notice, he be resisted, and he or any of his Assistants killed in consequence of such Resistance, it will be Murder; provided it cometh out in Evidence that the Officer had a Legal Warrant.

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Eliz. Saunders, Servant at the Red-Lyon, in George Street, in the Mint, swore, she was in the Backside of her Master's House a-washing, when the two Constables came to Twyford's House; that they knocked at the Door, and refused to tell their Business, or whom or what they wanted; that she went in with the Constables, and Mr. Sayer, to Mr. Twyford's House, and nobody else with them; that the Deceased came into the House, with his Sword drawn about three Inches out, went up Stairs with the Constable, and came down again by himself, had his Sword then drawn, swore he would make an end of the Prisoner, Mr. Noble, broke open the Door and went into the Room, and fell down dead; all which she saw, she being in the Kitchen; but did not know how he died.

Two Men swore, That Mr. Sayer ran into the House, with his Sword drawn about four Inches; swearing he would kill the Prisoner, Noble; and in other Points, agreeing with those Particulars mentioned in the Affidavit which Mr. James Hannon endeavoured to suborn Reeves to swear to.

Others were called to invalidate the Evidence given by Farrington, of the Prisoner Noble's swearing to stick the Deceased whenever he met him.

Others swore, they were frequently in Company with the Prisoner Noble, and Mrs. Sayer, and never knew any disorderly, or unbecoming Behaviour between them, but thought the Prisoner Noble attended her only as her Attorney.

Several were called to the Character of Mr. Noble, and gave him a very good one; and that they never heard any Ill of him.

Others were called to the Characters of Mrs. Salisbury, and Mrs. Sayer, who said, they never knew any Ill of them, particularly a Lady, a Neighbour to Mrs. Sayer, in Lisle-street; who said, she thought her a decent, well-behaved Woman.

The Evidence on both Sides being gone thro', Mr. Noble, the Prisoner at the Bar, desired he might have Counsel as to a Point of Law; Whether the Warrant to apprehend Mrs. Sayer was not illegal; and whether by that Warrant, they could enter and break open the Door upon the Prisoners in another's House; and whether what he did was not in his own Defence? Counsel being granted him, they insisted, "That this Warrant was illegal, though from a Justice of the Peace; that it was ill-grounded, and made without legal Authority; that without any legal Authority, a Multitude came into the House; that the Prisoners had no Notice they were Constables, or had any legal Warrant to apprehend Mrs. Sayer; that the Deceased broke open the Door upon the Prisoners, which was an Assault upon them; and the Prisoner, Noble, hearing such a Tumult and Noise, and Numbers breaking in upon him, he drew his Sword in his own Defence, and unfortunately stabbed the Deceased."

Therefore hoped his Lordship would direct the Jury to find a *Special Verdict*.

There were some Debates between the Counsel, whether the Prisoners knew the Constables were at Twyford's House? Upon which the Queen's Counsel called up again other Witnesses, some of which were examined before; one proved that Twyford, the Man of the House where the Prisoners were, told him some Days after the Murder, That immediately upon the coming in of the Constables, he ran through his Garden round the House to the Back-Door, and told Mr. Noble, the Constables were come, and wanted either him, or himself; that he opened the Back-Door to the Prisoners, Noble, and said to him, Sir, you may go your way if you please.

Upon this, Twyford's Examination taken before John Lade Esq. a Justice of the Peace, was read; "That he told Mr. Noble the Constables were at the Door, and wanted either him (Mr. Noble) or himself; and that he opened the back Door to him, and said, (loud enough for him to hear) 'Sir, you may go out, or go your way, if you please, or Words to that Effect.'"

Others swore, they heard Twyford say the same thing, when he was before the Justice.

John Janeway, of Suffolk-Place in the Mint, Thomas Austen, Francis Cox, and John Wadsworth, all of St. George's Parish, all swore, they heard Twyford say the same, before the Coroner.

The Evidence being finished, the Court said, that the Warrant being ill-grounded was not material, illegal it could not be; for it was granted by a Justice of the Peace, on the Oath of a Person, that Mr. Sayer had been robbed of Goods, &c. to a considerable Value, and Mr. Sayer could justify searching for and taking his Goods; and apprehending his Wife, wherever he could find them; that it is plain by the Evidence, that the Landlord, Twyford, told the Prisoner, Noble, the Constables * were come either for him (Noble) or himself, and told

told him he might go away if he pleased; therefore he might pretty well tell what they came about, considering how scandalously he had lived for some Time past with the Deceased's Wife.—If he had been there innocently, or with a good Intention, as he pretends, why did not he voluntarily surrender himself to the Constables; but the many Declarations the Prisoner had made against the Deceased, seemed to carry Rancour and Malice against him; that it was certain the Prisoner, Noble, knew Sayer was in the House; for he has owned he heard his Voice before the Door was broke open; therefore it seemed a determined Thing in him to destroy Mr. Sayer, who was killed, and if you believe the Evidence, by the Prisoner, Noble's own Hand.

The Chief-Justice summed up the Evidence with great Clearness and Impartiality, and seemed to direct the Jury to find Noble Guilty; and there being not sufficient Evidence to convict the other Prisoners, for the Shortness of Time would not allow of any consulting or confederating together to destroy the Deceased, directed them to be acquitted. The Judge behaved with great Patience and Temper during this whole Trial, which lasted from six o'Clock in the Morning, until one next Morning; when the Jury were admitted to have some Refreshment at the Bar, while the Court was sitting; then an Officer was sworn to keep the Jury, who went out between One and Two on Saturday Morning, but did not agree on their Verdict till the same Morning about Ten o'Clock; which was, that Richard Noble was Guilty on all three Indictments; Mary Sayer, and Mary Salisbury, Not Guilty.

On the Acquittal of the two Ladies, they behaved so overjoyed, as to be taken Notice of by the Court, who reprimanded them for their indecent Behaviour.

Counsel then moved that Mrs. Salisbury and Mrs. Sayer might not be discharged, without giving sufficient Bail to appear at any Time within Twelve Months, to answer to any other Indictment, or an Appeal. The Court ordered they should give sufficient Bail for their Appearance, themselves in £1000 a-piece, and their Sureties in £500 each, who were Mr. Stephen Hodges, Mr. Joseph Stocker, Mr. Thomas Arne, and Mr. John Hodges. Upon their being discharged, the two Ladies returned to London in a Coach, taking with them the Turnkey, to prevent any Insult from the Mob, which was pretty numerous. Whilst in the Coach, the Ladies seemed overjoyed at their Deliverance, and told the Turnkey, That the Affair turned out just as they would have had it.

Monday, March 16th, the Prisoner Noble was brought to the Bar, and asked what he had to say why Judgment should not be given, and Execution awarded? On which he moved in Arrest of Judgment,

My Lord, I humbly move in Arrest of Judgment, for that I apprehend I have had a Mis-trial, and that my Trial has been contrary to the Law of England, in that we were severd in our Challenges, and yet were tried together by the same Jury; and said, that in Charnock, King, and Keys's Trial, [Vide State Trials, Vol. IV.] Lord Chief-Justice Holt said, 'You may challenge Thirty-five peremptorily, without Cause; but if you do not all agree in the same Challenge, ye cannot be tried together by the same Jury, but the Court must separate you, and try you every one singly.' And quoted other Parts of the Trial, and desired that his Counsel might speak to it.

But the Court over-ruled the Motion, alledging, that the Lord Chief-Justice Holt's Reason, in the Case of Charnock, King, and Keys, was, that in case each of them severally challenged Thirty-five, three Times thirty-five would amount to One Hundred and Five, and then they must be obliged to sever them, (as the Court were near obliged to have done in the present Case) for default of Jurors.

Then Mr. Noble made the following Speech to the Court.

My Lord,

I AM soon to appear, and render an Account of my Sins to God Almighty; If your Lordship should think me guilty of those Crimes I have been accused, and convicted by my Jury, I am sure, then, your Lordship will think that I stand in need of such a Preparation, such a Humiliation for my great Offences, such an Abhorrence of my past Life, to give me Hopes of a future one; that I am not without Hopes that it will be a Motive to your Lordship's Goodness, that after you have judged and sentenced my Body to Execution, you will charitably assist me with a little Time for the Preservation of my Soul.

If I had nothing to answer for, but killing Mr. Sayer with precedent Malice, I should have no Need to address myself to your Lordship in this Manner. It is now too late to take Advantage by denying it to your Lordship, and too near my End to dissemble it before God. I know, my Lord, the Danger, the Hell, that I should plunge myself headlong into; I know I shall soon answer for the Truth I am now about to say, before a higher Tribunal, and a more discerning Judge than your Lordship, which is only in Heaven; that I did not take that Advantage to kill Mr. Sayer, by a Thought or Apprehension, that I could do it under Umbrage of the Law, or with Impunity; and nothing was more distant from my Thoughts, than to remove him out of the World to enjoy his Wife (as was suggested) without Molestation: Nor could any one have greater Reluctance, or Remorse, from the Time of the Fact to the Hour of my Trial, than I have had, though the Prosecutors reported to the contrary; for which I heartily forgive them.

The Person making such Resistance after such Notice, doth it at his own Peril. He acteth avowedly and deliberately in Defiance of the ordinary Course of Justice. And therefore it will be no Excuse on his Part to say, that he did not know or believe that the Officer came armed with a proper Authority. This Rule is founded on the Policy of the Law, and upon every Principle of Government.

The Judges who differed thought that the Officers ought to have declared in an explicit Manner what Sort of Warrant they had.

They said that an Escape doth not *ex Vi termini*, nor in the Notion of Law, imply any Degree of Force or Breach of the Peace; and consequently the Prisoner had not due Notice that they came under the Authority of a Warrant grounded on a Breach of the Peace. And for Want of this due Notice the Officers are not to be considered as acting in Discharge of their Duty, but as mere Trespassors.

On this Question alone the Case turned.

But a few of the Judges who conceived the Fact to be Murder, were of Opinion that it would have been so, even admitting that the Officers could not have justified the breaking open the Door. Here was no Arrest actually made; the Officers, even admitting that due Notice had not been given, had committed a bare Trespass in the House of *Cowling*, where the Prisoner happened to be; no Trespass done to the Property of the Prisoner, no Attempt on his Person.

But admitting that a Trespass in the House with an Intent to make an unjustifiable Arrest on the Owner, could be considered as some Provocation to a Stander-by; yet surely the knocking a Man's Brains out, or cleaving him down with an Ax on so slight a Provocation, savoureth rather of brutal Rage, or, to speak more properly, of Diabolical Mischief, than of Human Frailty. And it ought always to be remembered, that, in all Cases of Homicide and sudden Provocation, the Law indulgeth to Human Frailty, and to that alone.

Besides the Circumstance of the Prisoner's standing with the Axe in his Hand, declaring before any Attempt to enter the Shop, "That the first Man that did enter should be a dead Man," sheweth it to be an Act of Deliberation as well as Cruelty.

And where the Circumstances of Deliberation and Cruelty concur, as they do in this Case, the Fact is undoubtedly Murder; as flowing from a wicked Heart, and Mind grievously depraved, and acting from Motives highly Criminal. Which is the genuine Notion of Malice in our Law.

My Counsel obliged me to say on my Trial, That I heard Mr. Sayer's Voice before he broke open the Door; I told them, as I now tell your Lordship, That I did not know it was him, 'till he was breaking in at the Door, and then, and not before, was my Sword drawn, and the Wound given, which Wound, as Dr. Garth informed me, was so very slight, that it was a thousand to one he died of it.

When I gave the Wound, I insensibly quitted the Sword; by which Means I left myself open for him to have done what was proved, and was so likely for him to have effected, *viz.* to have stabbed me, which are Circumstances that manifest the Greatness of my Surprise.

When I heard the Company run up Stairs, I was alarmed, and in fear; the Landlord telling me, instantly thereupon, that the House was beset either for me or himself, added to my Confusion: I then never thought or intended to do mischief; but first bolted the Fore-Door, and then bolted and padlocked the Back-Door, (which was half glazed) and began to fasten the Shutters belonging to it, designing only to screen myself from the Violence of the Tumult. When he broke open the Door, and not till then, I perceived and knew he was present: And his former Threats and Attempts, which I so fully proved on my Trial (and could have proved much fuller, had not Madam Salisbury's Evidence been taken from me), made my Fear so great, and the Apprehension of my Danger so near, that what I did was the natural Motion of Self-Defence, and was too sudden to be the Result of precedent Malice; and I solemnly declare, that I did not hear or know from Twissford the Landlord, or otherwise, that any Constable was attending the Deceased, till after the Misfortune happened.

It was my Misfortune, that what I said, as to hearing the Deceased's Voice, was turned to my Disadvantage by the Counsel against me; and that I was not intitled to any Assistance of Counsel to enforce the Evidence given for me, or to remark upon the Evidence given against me, which, I do not doubt, would have fully satisfied your Lordship and the Jury, that what happened was more my Misfortune than my Design or Intention.

If I had been able, under that Concern, to remark upon the Evidence against me, that Mr. Sayer was but the tenth Part of a Minute in breaking open the Door, it could not then be well supposed by the Jury, that I was preparing myself, or putting myself in Order to do Mischief, which are Acts of Fore-thought and Consideration, which require much more Time than is pretended I could have had, from the Time I discovered Mr. Sayer; for even from his Entry into the House, to the Time of the Accident, did not amount, as I am informed, to more than the Space of three Minutes. But I did not discover him before the Door gave Way.

I wish it had been my good Fortune, that the Jury had applied that to me, which your Lordship remarked in Favour of the Ladies, That the Matter was so very sudden, so very accidental, and unexpected, that it was impossible to be a Contrivance and Confederacy, and unlikely that they could come to a Resolution in so short a Time: I do not remember your Lordship distinguished my Case, as to that Particular, to be different from theirs, nor was there Room left for it; for it is impossible for your Lordship to believe, that I dreamt of Mr. Sayer's coming thereat that Time; but, on the contrary, I fully proved to your Lordship, that I went there upon another Occasion, that was lawful and beneficial for the Deceased; and I had no more Time to think or contrive, than the Ladies had to agree, or consent.

If any Thing could be construed favourably on the Behalf of such an unfortunate Wretch as myself, I think the Design I had some Time before begun, and was about finishing that Day, might have taken away all Suspicion of Malice against Mr. Sayer.

Must it be thought, my Lord, that I only am such a Sinner that I cannot repent, and make Reparation to the Persons I have injured? It was not denied, but I strongly solicited a Reconciliation between Mr. Sayer and his Lady; and if this had tended to procure me an easier Access to Mrs. Sayer, it would have been such a Matter of Aggravation against me, that it could not have escaped the Remark of the Counsel against me, nor the Sharpness of the Prosecutors present in Court; with both I transacted, and to both I appealed, particularly to Mr. Nott, to whom, but the Day before the Accident, I manifested my Desire of having them live together again: And therefore, my Lord, it should be presumed I laboured to be reconciled, and not to revenge myself on Mr. Sayer.

Your Lordship, I hope, will observe so much in my Favour, that it was so far from being a clear Fact in the Opinion of the Jury, that they fate up all Night, and, believing there was no Malice at that Time, told your Lordship, they intended, and were inclinable to find it *Man-slaughter*; and doubting the Legality of the Warrant to find it *Special*.

I hope this will touch your Lordship's Heart so far, as not to think me so ill a Man, as to deserve what the best of Christians are taught to pray against, a sudden Death.

I confess I am unprepared; the Hopes of my being able to make a legal Defence, and my Endeavours therein, having taken up my Time, which I wish I had better employed, I beg Leave to assure your Lordship, upon the Words of a dying Man, that as none of the indirect Practices to get or suppress Evidence were proved upon me, so they never sprang from me; and I can safely say, that my Blood, in a great measure,

will lie at their Door that did it; because it drew me under an ill Imputation of defending myself by Subornation of Perjury.

I would be willing to do my Duty towards my Neighbours, as well as God, before I die.

I have many Papers and Concerns (by reason of my Profession) of my Clients in my Hands, who will suffer if they are not put into some Order. And nothing but these two Considerations could make Life desirable under this heavy Load of Irons, and restless Remorse of Conscience for my Sins.

A short Reprieve for these Purposes, I hope will be agreeable to your Lordship's Humanity and Christian Virtue; whereupon your Lordship's Name shall be blessed with my last Breath, for giving me an Opportunity to make Peace with my Conscience and God Almighty.

Then the Court passed Sentence on him, and told him he should be allowed a reasonable Time for the Purposes he mentioned, which they hoped he would make a good use of; and ordered his Execution for Saturday, March 28. When the Gaoler came (with a Barbarity natural to those Fellows) to load Mr. Noble with Irons, he was very much confounded; for though he had given, he said, near 200*l.* to all the Crew about him to have some Favour, they loaded him with the heaviest Irons, and cursed him as they were putting them on. Thus the Ladies left the dear Partner of their Pleasures and Perils bound with harder Chains than those of Love, his Hands manacled, his Legs fetter'd, his Friends abandoning him, his very Counsel and Solicitors declaring, they would not have been concerned for him had they known of the Adultery; yet all this he bore with uncommon Patience, but shewed great Concern for being so basely deserted by the very Women, who brought upon him all his Misfortunes.

He behaved very decently, whilst under Sentence of Death; and would often say, he did not think his Crime Murder in the Eye of the Law, and continually exclaimed against Farrington, the Bailiff's Evidence. One Thing was very particular, Mrs. Sayer came to Kingston, the Day before he was executed, in the Disguise of a Servant-Maid, and sent a Letter to him, giving him Notice she was come, and so disguised, that if he would see her, she could come easily to him, notwithstanding the Orders the Gaoler had not to admit her. Noble, on reading the Letter, did not seem averse to seeing her; but the Divines who attended him, persuaded him from it; and he sent her word, *That he was a Man still, and liable to Passions; she had Time, and might repent; but he had but a very short Time, and that must be employed about the Concerns of his Soul.* It is certain, he saw neither of the Women after his Conviction, though they were soliciting a Reprieve for him all the Time.

Accordingly, Saturday, March 28, 1713, he was executed at Gallows-Hill, near Kingston; when he delivered the following Account to the three Clergymen that attended him.

The true Copy of the original Paper signed by Mr. Richard Noble, which he designed for his Last Speech, delivered, to Mr. Cooke, Curate of Kingston, and Ordinary of Surrey; another to Mr. Broughton, Vicar of Kingston; and a third to the Rev. Mr. L'Herondell: With a particular Account of his Behaviour some Days before his Execution, by all the aforesaid Clergymen.

An Account writ by Richard Noble, the Afternoon before his Execution.

I HAVE, since my Confinement (under Sentence of Death) to this very Hour, been under the greatest Expectation of a short Reprieve; especially, for that I was credibly assured the Lord Chief Justice Parker had promised to grant it for my Clients Sake, in case they would make Affidavit before him, of their having Papers and Writings in my Hands; which Condition (I am told) was perform'd on their Part.

If such Promise was made, I heartily forgive him in not performing it.

This Disappointment I assign as the true Reason of my being very brief in the Account, which otherwise might have been incumbent on, or at least have been expected from me to have enlarged upon.

I have been often told, that it hath been reported I have acted criminal Indecencies with Mrs. Salisbury and Mrs. Elizabeth Nevil (the Mother and Sister of Mrs. Mary Sayer), and that both or one of them were, or was privy to, or countenancing of such unlawful Acts of mine with the said Mrs. Sayer. I think it my Duty to declare, as I do, that such Report is false.

As to the murdering Mr. Sayer, I do declare, that Mrs. Salisbury, or Mrs. Sayer, did not draw the Sword with which I unfortunately killed him: Nor was either of them aiding, directing, or advising of such Murder: Nor did either of them open the Door whereat I killed him; tho' the contrary hath been suggested to me by one of the Sisters of the Deceased.

I am told, that it is reported I was married to Mrs. Sayer whilst we were in the *Marshalsea*, and that she hath been with me since my Condemnation. I do declare, that such Reports are false, and that I never was married to the said Mrs. Sayer.

As to what relates chiefly to myself, Time will not permit my saying so much as I intended. I hope that my Dying Words may make a deep and sensible Impression on the Minds of such Persons as may read this Paper, that such as are going on in a Course of Sin, may be awakened from their Lethargy, and deterred from the Continuance in, or Commission of any known Sin against the Living God; but more especially those who have been Partners with me in my Sins.

I would not extenuate or palliate the Crime of Murder which I committed: Therefore must say, that though the Fact was committed under the greatest Surprise, and without any premeditated Malice, or Design, by removing him out of the World to have the freer Access to his Wife, (which gave me reasonable Hopes of my escaping the Justice of human Laws); yet I must own, that the Judgment of God, in bringing me to this deserved and shameful Death is very just; and I do declare, that I never had, nor ever knew that Mrs. Salisbury, Mrs. Sayer, and Mrs. Nevil, or any of them, had any Design to kill Mr. Sayer by Poison, or otherwise.

I have secretly and wilfully committed many great and most heinous

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Sins against God, besides that for which I am now to die. God suffered me to act those Sins for several Years, without punishing me himself, or suffering me to fall under the Hand of human Laws. I had frequent Checks of Conscience to recal and restrain me from committing further Sins; but I stifled or diverted those good Thoughts, and continued the Practice of my beloved Sins with Pleasure.

I indeed have made many Resolutions to God of Repentance and Conversion, but soon broke through them, which is a great Aggravation of my Offences; and those Sins, and those Aggravations undoubtedly justly provoked God to suffer me to act that horrid Crime, for which I am now to die.

I heartily beg Pardon of the Relations of the Deceased, for the Injury done them by the Murder of Mr. Sayer.

I heartily beg Pardon of all others that I have injured by any secret or open Means.

I heartily forgive every Person that has done me any Injury; especially those who strained their Consciences to affect me on my Trial. I pray God give them Grace to repent of those and all other Sins; lest by such and other Provocations against God, they destroy both their Bodies and Souls.

I have had very good Help and Instructions from some worthy Divines, and other good Christians that have attended me since my Condemnation; who have (I believe) done my Soul much Good, for which I am very thankful; and may God have the Glory by it, and they their due Reward.

I have (since my Condemnation) occasionally been under the utmost Disorder and Perplexity, for having so many and such great Sins to repent of in so short a time; but as my Endeavours for a longer Time have proved ineffectual, so I hope that God Almighty will accept, in his great Mercy, that small Space which he, in his wise Providence, hath thought fit to allow me.

And whereas I have been told, that I was thought to be one of the Sect of the *Free-Thinkers*, I do utterly deny the same, and that I ever so much as read any Book published by the *Free-Thinkers*.

Perhaps it may be observed, that this my Dying Speech is not so paradoxical as that which I spoke when I received Sentence of Death. Then I was in hopes of preserving my Life; but now, being satisfied to the contrary, my Thoughts are turned another way (to wit) to make my Peace with my Conscience and my God.

But as to the Truth of this my Dying Speech, I call God Almighty to witness, that I know not of the least Falsity therein, as I hope for eternal Salvation.

March 27.

RICHARD NOBLE.

BEING under the Obligations usual on those, that receive Papers from Dying Persons to be published, and having faithfully discharged our Trust therein, we have found some other Reasons to subjoin to it a further brief Relation of Mr. Noble's Behaviour and Conduct during the last Week of his Life, wherein we all frequently visited him.

So far as any or all of us could possibly discern, or collect from his many Answers and Declarations from his whole Discourse, and the Tenor of his constant Devotion, he repented from the Bottom of his Heart of the manifold and heinous Sins of his Life; that Crying Sin especially for which he died.

He professed an unshaken Belief of the Truth and Importance of the Christian Religion, and a steadfast Faith in, and Reliance on the only atoning Merits of his Redeemer.

He was desirous, and resolute to die in the Communion of the Church of England, and in perfect Charity with all the World; he appeared under a calm Resignation to the Sovereign Will of God, and not without increasing Hopes of Pardon, as his Death approached nearer; to the very Article of which his Disposition was such as himself had often prayed for.

We pray to God, that these last Sentiments of his (who is cut off by the just Judgment both of God and Man, in the 28th Year of his Age) may have that happy and peculiar Effect, which (next to his own Salvation) he constantly had in view; the reclaiming those in particular (we mean) who have at any time, or in any manner, been Partners or Associates with him in Wickedness. We find this briefly hinted in his Paper; but we know, he thought on it frequently, and laboured much about it. We could produce Instances and Proofs of all we say: But we hope this general Account will suffice to answer the Importunity of some; and perhaps to silence the importunate Clamours of others, who have added very false, as well as needless Aggravations to his Guilt.

March 30, 1713.

Thomas Cooke, Ordinary of Surrey and Curate of Kingston.

John Broughton, M. A. Vicar of Kingston.

F. Alex. L'Herondell, Chaplain to one of Her Majesty's Regiments.

The following Case being reckoned curious, and a proper Addition to Mr. Noble's Motion in Arrest of Judgment, is here inserted.

The Case of Mr. Richard Noble impartially considered: Abstractly from the Man, or Crime, but merely as to the Law, in relation to the Motion by him made, on Monday the 16th Day of March, 1712, at Kingston Assizes, in Arrest of Judgment: And the Reason given for over-ruling the same confused. By a Student of the Inner-Temple.

RICHARD NOBLE, Gentleman, Mary Salisbury, and Mary Sayer, Widow, were indicted; he, for the Murder of John Sayer, Esq. on the 29th Day of January, Anno 11^o Annæ Reginae; Salisbury, as present, aiding, assisting, and abetting the same; and Mary Sayer, Widow of the Deceased, for Petty-Treason, as being present, aiding, assisting, and abetting the Murder of her said Husband; and the said Noble, on the Coroner's Inquest for the Murder of the said John Sayer, and for Manslaughter on the Statute of Stabbing: And on Thursday the 12th Day of March, 1712, were severally

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verally arraigned, and severally pleaded *Not Guilty*, and put themselves on Trial, to which they were brought the next Morning; and on their Trial they severally challenged of those returned to serve upon the Jury, viz. *Richard Noble* 20, *Mary Salisbury* 20, and *Mary Sayer* 35, peremptorily; after which a Jury was sworn, and charged with them all jointly; and on a long Hearing found *Richard Noble* Guilty of the Facts in the Indictments, and also on the Coroner's Inquest; and found *Mary Salisbury* and *Mary Sayer* Not Guilty.

Whereupon, on Monday following, the 19th of March, *Richard Noble* was set to the Bar, and demanded what he could say, why Judgment should not be given, and Execution awarded? Upon which he moved in Arrest of Judgment in these or the like Words:

My Lord, I humbly move in Arrest of Judgment, for that I apprehend I have had a Mis-Trial, and that my Trial has been contrary to the Law of England, in that we severed in our Challenges, and yet were tried together by the same Jury: And, to warrant this Opinion, I have in my Hand the Trial of *Mr. Charnock, King, and Keys*. There were, my Lord, then upon the Bench, the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, Mr. Justice *Nevill*, Mr. Justice *Powell*, and Mr. Justice *Rokeby*; and there the Lord Chief Justice *Holt*, directing himself to the Prisoners, said thus: "Look ye, you that are the Prisoners, every one of you has the Liberty to challenge Thirty-five of those that are returned to serve upon the Jury that is to try you, without shewing any Cause: Now, if you will all join in the same Challenge, then we can try you all together as you are altogether jointly in the same Indictment, and save the Time and Trouble that will otherwise be unavoidable; but if you will not join in the same Challenge, but every Man challenge for himself, as by Law he has Liberty to do, we must be forced to try you single; and therefore we would know of you, whether you design to join in your Challenges or not." *State Trials*, Vol. IV. p. 566.

And in the same Page, "I tell you, what the Law is in such Cases; you may, every Man of you, challenge Thirty-five peremptorily, without Cause; but if you do not all agree in the same Challenges, ye cannot be tried together by the same Jury, but the Court must separate you, and try you every one single."

And again, "Do you understand what is said to you, Mr. King and Mr. Keys? Every one of you may, without shewing any Cause, except against Thirty-five of those that are returned of the Jury, which are to try you, if you have no mind that those should be sworn; but then, if each of you do severally challenge Thirty-five, ye cannot be tried by the same Jury."

And there is a Case to the same purpose in one of the Year-Books, I think it is in 9 E. IV. fol. 27, but desire that my Counsel may speak to it. This is the Substance of what Mr. Noble then said; upon which, being asked who were his Counsel? He answered, Mr. Darnall and Mr. Bonwick, who were by the Court readily assigned to be his Counsel; but (for what reason I cannot well apprehend) could neither of them be prevailed on to speak to it.

So that although it was agreed and allowed, that the Words were as full and clear as they could be penned, the Court soon over-ruled the Motion, alledging, That the Lord Chief Justice *Holt's* Reason in the Case of *Charnock, King, and Keys*, was, that in case each of them severally challenged Thirty-five, three times Thirty-five would amount to One Hundred and Five, and then they must have been obliged to sever them (as the Court were near obliged to have done in the present Case) for Default of Jurors; And Mr. Noble, after a Speech by him, tending to obtain a short Reprieve, had Judgment given against him.

I have, as carefully as I could, fairly and indifferently stated the Case, and shall now proceed to consider it as briefly as possible.

Challenge of a Juror is an undoubted Right of the Subject, and was at the Common Law; and therefore, it is to be presumed, to have been as ancient as Trial by Juror, and was unquestionably at first allowed in favorem Vitæ, and to give the Prisoner an Opportunity, as it were, to chuse his Jury, so as he exceed not the Number prescribed by the Law: And, consequently, I take it, at the Common Law, every Man, of right, might and still may, the same having been altered by no Statute that I can find, as to a Commoner, demand to be tried single, although jointly indicted in the same Indictment with others; and that for these Reasons, among others:

First, For that in case an innocent Person should unhappily be indicted with a Criminal, it might be a means to prevent the Jury, from the Evidence given against the Criminal, to be inveigled or drawn aside, to give too hard a Verdict on the Guiltless.

Secondly, For that when a Pannel is returned, the Prisoner (who, as was said before, may in a manner chuse his Jury) will otherwise be deprived of that Right: As if two or three are indicted, and the first perceive that in the Beginning of the Pannel there are such returned, as he has great reason to suspect are partial, but by challenging has a Prospect to bring himself to those in the Pannel, which he has reason to apprehend are indifferent; if, when he has challenged the Number the Law allows him, and his Hands, as it were, tied up, the other indicted with him shall come in and take off all those indifferent Men, and so leave him over to those he had as much (or more) reason to suspect as those he had before challenged; which is a Mischief, and that the Law abhors, for the Juror returned may have Malice to one, and be indifferent as to the other; and so is the 9 E. IV. fol. 27. and the Plaintiff or Prosecutor no ways prejudiced, for he might have sued several *ven. fac.* and thereby have been aided. And so is the Book expressly.

Thirdly, For that the Court cannot accept of a joint Plea, nor receive a joint Verdict; but the Plea of *Not Guilty*, although it be the General Issue, yet in its Nature and Effect is Several.

And so in Trespas against Several; they may every one come and plead several Pleas by several Attornies, and have several Trials: And reasonable, for otherwise a Plaintiff might join one in the Action, who could oblige all the others to stand or fall by his Confession, Defence, or Plea. And as in Trespas they may sever in their Pleas, so in Treason or Felony *Not Guilty* is a several Plea, nay, and amounts to a Special Plea; and the Prisoners, or any of them, shall have the same Advantages, as if he or they had pleaded specially to all Intents and Purposes whatsoever. *Dr. & St. cap. 48. fol. 150, 151, 152.*

From whence I argue, That it is the Right of every Subject to demand and have a separate Trial, in criminal Cases, if so he be minded. For,

If Three are indicted of Felony, one challenges whole Number Twenty, and those Twenty are to be drawn, that is, set aside and not suffered to pass upon the other; and the second challenge Twenty, those are to be drawn or set aside in like manner; and the third challenge likewise Twenty, who must by the same Rule be likewise drawn or set aside, as to all; this will amount to Sixty challenged by the first; and as the first and second Prisoners have the Benefit of the Challenges of the third, so has the third the Benefit of theirs. This tantamounts to a Challenge of Sixty by each, and thereby endangers their being pressed or hanged for challenging above the Number prescribed by the Law; which the Court is by no means to suffer.

An Appeal against *Beauchamp*, and several others, who plead *Not Guilty*, and one *ven. fac.* for all issued return, &c. at which Day one of the Defendants challenge a Juror peremptorily, and the other Defendants say nothing, the Juror shall be sworn against them, and the Reason there given is, for that otherwise they might be delayed of their Acquittal for ever; a Mischief, Inconvenience, and Wrong: And therefore the Book goes on, and says, If Covin be between me and two others, that I bring an Appeal against them and another, to the end the other shall be detained in Prison, &c. in that Case, if I have a joint *ven. fac.* &c. and one challenge peremptorily; and if he remain for default of Jurors, then at another Day may the other do in the same manner; and then, when they have taken their peremptory Challenges, still one of them may challenge with Cause, and I will commit this Challenge, &c. and so the Three shall remain in Prison for ever. If the Challenge of one shall be for all, &c. And the Doubt there was, Whether the Court could sever them, it being in an Appeal, and the *ven. fac.* joint? And by all the Justices of the one Bench, and the other, it was held, That because the *ven. fac.* was joint, the Challenge of the one is for all, for that he could not be drawn as to one, and taken against the other; and the Plaintiff ought to have had several *ven. fac.*

And afterwards the Plaintiff challenged the Array, which was quashed; and the Plaintiff prayed several *ven. fac.* against every one of them to the Coroners; which, by Justice *Jenny*, he could not have in that Case, for this reason only, because the Plaintiff had elected to have a joint *ven. fac.* The Plaintiff notwithstanding prayed to have several *ven. fac.* at their Peril. Which plainly shews, that the Law was against them as to the other. 9 E. IV. fol. 27.

And it was there said, That at a Gaol-Delivery, if an Inquest be demanded to pass upon two or three Men, and one challenge peremptorily, then the Clerk ought to sever the Felons, every one by himself. And there seemed to be a Difference (and so is the Book) where there are several Plaintiffs, &c. because if a Man be found favourable to one, he is favourable to both, for that their Title is joint: But otherwise it is of Defendants, where a Man may have Favour or Malice to one, or not; or be indifferent to the other. 9 E. IV. fol. 27.

Appeal against the Principal and Accessary, who plead *Not Guilty*, and the Accessary challenge the Array, and the Principal said nothing; and because the Array was quashed on his Challenge, *Hankford* would not take the Inquest against the other; and the Reason was, because the *ven. fac.* was joint, and the Plaintiff might have had several *ven. fac.* 4 H. IV. 58.

And in *Banco Reg. Thimelby* and *Gray* were arraigned on an Indictment of Robbery, as Principals, who severally pleaded *Not Guilty*, and severally put themselves upon their Country; upon which a *ven. fac.* was returned this Term, and the Jury appeared, and Three of the Jury were sworn against both, and *Thimelby* challenged the four next without Cause, or without saying peremptorily; and *Gray* would not challenge them, for which *Thimelby* was withdrawn from the Bar; and the Four who were challenged by *Thimelby* were sworn against *Gray*, and so many more, till Twelve were charged on him, who found him Guilty: And *Saunders* moved, Whether this was a right Trial or not? For that there was but one *ven. fac.* awarded, nor but one Pannel returned; and one Juror cannot be drawn out of the Pannel, and in the same Pannel be allowed: But by the Opinion of all the Justices of both Benches, the Trial was good, for that no Judgment was given, that the Jurors that were challenged by the one should be drawn, but, that they should stand aside for a time; and were not clearly discharged by the Court; and for that the *ven. fac.* for the King differ from *ven. fac.* in an Appeal. *Dyer, fol. 152, pl. 8.*

And although in 1 H. V. 10. it is ruled by the Opinion of the Court, that a Juror on Indictment may be challenged by one of the Defendants, and stand against the other, &c. that is, it is no Principal Cause of Challenge in one Defendant to say the other Defendant had before challenged him. And so is the Book to be taken, and the Law is agreeable thereto, and the Reason there given fully explains it so to be intended, viz. for that they are several Pannels and Inquests in Law; and therefore, if one Defendant had appeared on an Indictment, and the other Defendant had made Default, yet the Court would have proceeded against him who appeared, although it may be otherwise in an Appeal.

Which plainly proves the Court ought to sever the Prisoners on Indictment, where they will not join in their Challenges.

And in the Trial of the Regicides; *Harrison, Scroop, Jones, Clements* and *Scot* were set to the Bar to be tried, and Sir *Thomas Allen* was called and sworn; then Sir *Joshua Aib* was called, and Mr. *Scroop* excepted against him: then Sir *Jeremy Whicheot* was called, and Mr. *Harrison* excepted against him; *James Halley*, Esq. being next to be sworn, Mr. *Scot* excepted against him: Whereupon the Court (speaking to the Prisoners) said, "If you will not agree in your Challenges, we must be forced to try you severally." And *Henry Mildmay*, Esq. being called next, Mr. *Scroop* excepted against him: Whereupon the Court said, "We must needs try them severally, therefore set them all aside but *Harrison*." Which was done, and the several Persons which before had been called and excepted against, were again called, and excepted against by Mr. *Harrison*. Trial of the Regicides, *State Trials*, Vol. II. p. 313. And so in Mr. *Scroop's* Trial.

Jones, Scroop, Scot, Gregory, Clements, and *Carew* being set to the Bar, Sir *Thomas Allen* was called, and his Hand being on the Book, *Scroop* challenged him; and thereupon the Lord Chief Baron spoke thus to the Prisoners: "That you may not mistake, if you challenge in this manner, and do not join in your Challenges, we must try you severally, one after another: I must tell you the Course of the Law; if one Challenge one, and another challenge another, we must sever, and go to Trial one by one. Call the next." The Clerk called Sir *Henry*

Henry Worth, and Scroop challenged him; upon which the Lord Chief-Baron replied, "Then we must go on severally, set all aside but Mr. Scroop." And directing himself to Mr. Scroop, said farther, "Mr. Scroop, you may challenge particularly whom you will, till you come to Thirty-five; if you go beyond that Number, you will lose the Benefit of the Law."

And in that of *Carrow, Scot, Jones, and Clements*: They being at the Bar, the Lord Chief-Baron demanded of the Prisoners, Whether they were all agreed as to their Challenges? Who answered, No. "Then" (said the Lord Chief-Baron) we must do as before, sever you, and go to Trial severally." And directed, that the Three should be taken away, and that Mr. Carrow should be let stand at the Bar.

And indeed, through the whole Course of the Proceedings on the Trial of the Regicides, the Court took great Care of the several Prisoners, that none of them might be any ways prejudiced, either by challenging too many (*viz.* more than the Law allows) of the Jury, or any other Forms of Law, as a Matter perfectly incumbent on the Court to observe, take care of, and prevent.

And now I beg Leave to observe, that the Reason the Court gave in *Noble's* Case, was not that the Lord Chief-Justice Holt grounded his Opinion on; for that in *Fol. 1. of Charnock's Trial*, it appears that above eight-score were by the Sheriff returned to serve on that Jury, consisting of Baronets, Knights, Esquires, and Gentlemen; so that it plainly appears (they having been called over, sitting the Court) that in case each of the Prisoners had challenged Thirty-five, amounting to One Hundred and Five in all; yet would there have been a sufficient Number of Jurors, to wit, above Fifty-five, left to have passed upon, and tried the Prisoners.

And the Words of the Lord Chief-Justice Holt in Mr. Charnock's Trial, "We can try you all together, as ye are all together jointly in the same Indictment, and save the Time and Trouble, that will otherwise be unavoidable; but if you will not join in the same Challenges, but every Man challenge for himself, as by Law he has Liberty to do, we must be forced to try you single, and therefore, &c." can bear no other Construction, for the Word *unavoidable* is, what *must happen or come to pass*, notwithstanding any Accident or intervening Circumstances or Conjunction whatsoever: And, in that Sense, I make no Question, his Lordship spoke them; for otherwise, several other Expressions, no Doubt, would have occurred, and been used by his Lordship, as it might be necessary, and the like.

The often Repetition of the same Thing, has also a great Weight to enforce this Observation.

And this Reason clearly to me appears, to be the Foundation of the Case in the Commentaries, that though the Pannel be joint on Indictment, and *Tales* awarded, yet the Court (who are ever to be of Counsel for the Prisoners, to give them Law and Justice, 2 *Inst.* 178, and not permit any Inconvenience to happen to them in Forms of Law, *Trial of Charnock & al.* 7. *Dr. & St. c.* 48. p. 150, 1, 2.) may and (as I humbly apprehend) ought, in case the Prisoners sever in their challenges, to sever the Pannel, and prevent not only the Inconvenience in that Case mentioned, but many other. *Plow. Com.* 100, 101. *H. P. C. fol.* 256. *Octavo Edition.*

And this is the more to be relied on, for that in an Appeal against one *Woodlark*, the Defendant took so many Challenges, that the Jury remained against the Defendant, by Default of Jurors, and resolved, that in an Appeal of Murder, Rape, or Felony, there may be had a larger Number than the principal Pannel returned immediate, *viz.* what Number the Justices please to award, in regard the Defendants may challenge peremptorily; and therefore the Justices award a *Tales* of 40. 14 *H. VII. fol.* 716. *tit. Appeal.* And so of an Indictment. *Hale's Pleas of the Crown*, 257, 8vo. — *Finch's Law*, c. 36. *fo.* 415. and that the Stat. *W. II. c.* 38. does not extend to Criminal Cases or Indictments. *Vane's Case*, *Kelyng* 7. 16.

And the Practice has constantly been, and was so resolved at the Restoration, by a great Number of Justices, upon mature Deliberation, That if several Prisoners be put upon one Jury, and they challenge peremptorily, and sever in their Challenges, that then he who is challenged by one is to be drawn against all, because the Pannel being joint, one

Juror cannot be drawn against one, and serve for another; but in such Case the Pannel might be severed, and that the same Jury may be returned between the King and every one of the Prisoners, and then they are to be tried severally, and there the Challenge of one Prisoner is no Challenge to disable the Juror so challenged against another. And the Case of *Dr. Ellis's Servant*, *Plow. Com.* 100, 101. was agreed to be good Law, as to the severing the Pannels in that Case. And accordingly, in the Trial of *Harrison, Scroop, Carrow*, and other the Regicides, who challenged peremptorily, and severed in their Challenges, the Pannels were severed, and they were tried severally. *Kelyng's Reports*, *fo.* 9, 10. *State Trials of the Regicides*, Vol. II. p. 308, &c.

And throughout all the Books there appears to be no Dispute, but that where the Prisoners on Indictment challenge severally, the Court ought to sever them in their Trials. But it plainly appears, the only Question was, How, or in what Manner that was to be done, the *ven. fac.* and Pannel being joint? But that Objection being once removed, the Law is plain, That the Trials in all such Cases are to be severed, or the Prisoners cannot legally be tried at all.

And therefore I humbly submit it to the Judgment of the Learned in the Law, whether, in the principal Case, (not as to the Fact, which I pretend no ways to meddle with) although Judgment has passed on the Prisoner *Noble*, yet he having before Sentence moved this Matter in Arrest of Judgment, and likewise, as I have been credibly informed, (my coming into Court being just after that was over-ruled) having desired and earnestly pressed to be tried separately and apart from the other two, there be not Room to respite Execution till the Point be settled, and Consideration had what may be necessary farther to be done therein. And the rather, for that in the Case of *Hopkin Hugget*, on a special Verdict found at a Gaol-Delivery at *Newgate*, 25 April, 1666, 18 *Car. II.* on an Indictment of Murder, to this Effect: That *John Berry*, and two others with him the Day and Place, &c. had *de facto*, but without Warrant (for aught appeared) impressed a Man, unknown, to serve in the Wars against the Dutch Nation; that thereupon, after the unknown Man was impressed, he, with the said *John Berry*, went together quietly into *Cloth-Fair*; and the said *Hopkin Hugget* and three others walking together in the Rounds in *Smithfield*, and seeing the said *Berry* and two others, with the Man impressed, going into *Cloth-Fair*; instantly pursued after them, and overtaking *Berry* and the impressed Man, and the two other Men, required to see their Warrant, and *Berry* shewed them a Paper, which *Hopkin Hugget* and the three others said was no Warrant; and immediately the said *Hopkin Hugget* and the three others drew their Swords, to rescue the said Man impressed, and did thrust at the said *John Berry*, and thereupon the said *John Berry*, and the two others with him, did draw their Swords and fight together, whereupon the said *Hopkin Hugget* did give the Wound, &c. to the said *John Berry*, whereof he instantly died: And if upon the whole Matter the said *Hopkin Hugget* be guilty of Murder, they find so; if of Manslaughter, they find so, &c. And afterwards the Opinion of all the Judges of England, met at *Serjeants-Inn*, in *Fleet-Street*, being desired in the Case, (having had Copies of this Special Verdict sent to them) whether they held it Murder or Manslaughter? And there being a Difference in their Opinions, *viz.* the Lord Chief-Justice *Bridgman*, Lord Chief-Baron *Hales*, Mr. Justice *Atkins*, *Tyrell*, *Turner*, *Brown*, *Archer*, and *Rainsford*, were of Opinion as then advised, but not to be bound by it, that it was no Murder, but only Manslaughter; and gave some Reasons to support their Opinions: But the Lord Chief-Justice *Kelyng*, Mr. Justice *Twissden*, *Wyndham*, and *Morton*, were of another Opinion, and held it to be Murder, and gave their Reasons for it: After which Difference the Lord Chief-Justice *Kelyng* granted a *Certiorari*, to remove the Cause into the then King's-Bench, to be argued there, and to receive a final and legal Determination. And although all the Judges of the Court were clearly of Opinion it was Murder, yet it being in a Case of Life, they did not think it prudent to give Judgment of Death upon him, but admitted him to his Clergy. *Kelyng's Reports*, *fo.* 59, 60, 1, 2.

So very tender were the Judges in the Case of Life, not only well to be advised, but even against their own Opinions, and that when they were very clear in it, to give Judgment in Favour of Life, although in a Case of Murder.

II. The Trial of Major JOHN ONEBY, at the Sessions-House in the Old-Bailey, before the Right Honourable Sir FRANCIS FORBES, Knt. Lord-Mayor of London, Mr. Baron HALE, Sir WILLIAM THOMPSON, Knt. Recorder of London, and others his Majesty's Justices, March 1725-6, for the Murder of WILLIAM GOWER, Esq.

JOHN Oneby, of *St. Martin's in the Fields*, Gent. was indicted, for that he, on the 2d Day of February, 12 Geo. at the said Parish, feloniously, voluntarily, and of his Malice fore-thought, made an Assault upon one William Gower, Esq. and that he the said John Oneby, with a Sword which he then and there held drawn in his Right Hand, the said William Gower in and upon the left Part of his Belly, near the Navel, feloniously, voluntarily, and of his Malice fore-thought, did strike and thrust, giving the said William Gower, then and there, with the said drawn Sword, in and upon his said left Part of his Belly, near the Navel, a mortal Wound of the Length of one Inch and a half, and of the Depth of ten Inches; of which mortal Wound the said William Gower lived in a languishing Condition, from the 2d Day of February to the 3d Day of the said February; on which 3d Day of February, the said William Gower, at the Parish aforesaid, of the said mortal Wound did die; and that the said John Oneby, the said William Gower feloniously, voluntarily, and of his Malice fore-thought, did kill and murder."

He was a second Time indicted, on the Coroner's Inquisition, for the said Murder.

Thomas Hawkins. On the 2d of February, between Nine and Ten at Night, Mr. Blunt, the Deceased, the Prisoner and myself, went from *Will's Coffee-House* to the *Castle-Tavern* in *Drury-Lane*, where, in about

half an Hour, Mr. Rich came to us. After the fourth Bottle, the Prisoner called for a Box and Dice; the Drawer said, they had none in the House, Why then, says the Prisoner, bring the Pepper-Box. The Drawer brought it, and Dice were laid upon the Table: but I don't know by whom. We played low, nobody setting above half a Guinea, and yet I had no great Inclination to game, and especially to set the Prisoner; and therefore, after a trifling Loss I declined the Play. The Prisoner appeared disgusted at it, and asked me, why I refused? I told him I should use my own Pleasure, whether it was agreeable to his Humour or not. The Rest continued playing. The Deceased lost 30s. Mr. Rich said, Who will set me three Half-Crowns? Upon which the Deceased took something out of his Pocket, and laid it on the Table, but concealed it with his Hand, and said, I'll set ye three Pieces; and then taking his Hand away, we saw three Half-pence. This was not offered to the Prisoner; but he appeared to be much affronted. He said, That is very impertinent to set three Half-pence. The Deceased said, What do you mean by impertinent? And the Prisoner replied, You are an impertinent Puppy; and presently snatched up a Bottle, and threw it at the Deceased's Head, and it beat some Powder out of his Wig, but did him no Hurt. He in Return, tossed a Glass or a Candlestick, I can't tell which, at the Prisoner; but it did not reach him. They both rose up together, and went to their Swords, which hung up in the Room. The Deceased being quickest got his Sword first, and drew it, and stood still in a Posture of Defence, at a good Distance from the

the Prisoner, who was advancing, and was drawing his Sword to meet him; but Mr. Rich stepped in between, and prevented him. Then the Deceased threw away his Sword, and they all sat down again, and drank for about half an Hour; when the Deceased offering his Hand to the Prisoner, said, *We have had Words, Major, and you was the Aggressor; but let us agree.* The Prisoner answered, *No, damn ye! I'll have your Blood!* And then turning to me, he said, *Hawkins, you was the Occasion of this. Why then, says I, if ye have done with him, and have any thing to say to me, I am your Man, and I'll see you out.* No, says he, *I have another Chap first.* In about half an Hour after this, which was near Three in the Morning, the Company broke up. I went out of the Room first, and Mr. Blunt, and Mr. Rich were next after me. When I came into the Street it rained, and I run under a Penthouse, where I stood a little while; but not having a Chair ready, and seeing none of the Company come out, I returned to the Room, where I found the Deceased wounded, and leaning on a Chair in a languishing Condition. He died the next Morning. I knew him intimately, and I don't believe that there was a sweeter temper'd Man in the World.

John Rich. I, the Prisoner, the Deceased, and some others, went together to see the new Tragedy of *Hecuba*; we sat in the Pit. The Deceased and the Prisoner appeared to be good Friends all the Time of the Play; and as soon as it was done I left them; but met them again at the *Castle Tavern* in about half an Hour. The Prisoner and I called for a Box and Dice; which not being to be had, he called for a Pepper-Box, and it was brought; I saw Dice lying upon the Table, but don't know how they came there. I said, *Let us play low.* Some Words past between the Prisoner and Mr. *Hawkins.* I laid down three Half-Crowns. The Major set me. I threw *Seven* was the Main, and *Six* the Chance. The Deceased put down three Half-pence against me, and said, *Here, I'll set ye three Pieces.* The Prisoner damned him, and called him an impertinent Puppy. *Sir,* said the Deceased, *I am not afraid of ye, and he that calls me a Puppy is a Scoundrel.* At these Words, the Prisoner threw a Bottle at him. It brushed his Wig as it passed, and he in return tossed a Glass. They both got up together; but the Deceased being nimblest, jumped on the Table, and reached his Sword first; and then stepping down, he drew, and stood ready to defend himself, but made no Offer to push. In the mean time, the Prisoner took down his Sword and Cane, which hung together; and there being the Table and a Chair between them, he came round the Table, and was going to engage with the Deceased; but I stepped between them, told the Prisoner, who was drawing his Sword, if he made a *Longe*, it must be through my Body, which, as I was unarmed, would be wilful Murder. The Deceased then threw away his Sword, and they both sat down again. The Deceased put his Hand forward, and said, *Come, Major, let us be reconciled, Words in Heat may be forgot and forgiven.* The Prisoner answered, *God damn you, you lie—I'll have your Blood, by God!* And then, turning to Mr. *Hawkins*, he said, *This is all along of you.* Mr. *Hawkins* answered, *Then I am your Man;* and the Prisoner replied, *No, I have another Chap to deal with first.* When we all got up to go, the Prisoner hung his great Rug-Coat upon his Shoulders, and I think buttoned it in one or two Places. Mr. *Hawkins* went out first, Mr. *Blunt* next, the Deceased followed him; I, the Deceased, and the Prisoner came last: but he was hardly out of the Room, when he called to the Deceased, *Hark ye, young Gentleman, a Word wif ye.* The Deceased turned back, they both re-entered the Room. The Door was immediately shut fast. I heard a Clashing of Swords, and a loud Stamp on the Floor, which I guessed was made by the Prisoner, he being a very heavy Man. Mr. *Blunt* and I stepped back, and endeavoured to get in; we could not readily open the Door; but the Drawer coming to our Assistance, we made an Entrance, Mr. *Blunt* first, and I close behind him. The Prisoner was then next to the Door, and standing with his Sword drawn in his Right Hand, the Point of it being towards the Deceased, whom he held by the Shoulder with his Left Hand. I think the Deceased had then no Sword in his Hand, at least I saw none; and I soon afterwards found it close to the Wainscot, behind the Folding of the great oval Table. It was bloody and greasy four or five Inches from the Point. The Deceased closed with the Prisoner; but in such a manner, as if he rather fell towards him through Weakness, than otherwise, which makes me think the Wound was given him before we came in. We put him into a Chair, and sent for a Surgeon. As I held up my Hand to part them, I felt a little Prick through my Coat, by the Prisoner's Sword; but I believe it was done accidentally. Mr. *Blunt* at the same time clapt his Hand on his Belly, and said he was dangerously wounded; but I am ignorant by what Means. I told the Prisoner, when we came out of the Room, that I was afraid he had killed the Deceased, *No, says he, I might have done it, if I would; but I have only frightened him. But suppose I had killed him, I know what I do in those Affairs; for if I had killed him To-night, in the Heat of Passion, I should have had the Law on my Side; but if I had done it at any other Time, it would have looked like a set Meeting, and not a Rencounter.* I advised him however to make off, for fear of the worst.—I asked the Deceased on his Death-Bed, if he received the Wound fairly? He answered faintly, I think I did—but—I don't know—what might have happened—if you—had not—come in.

Michael Blunt. From the Play we went to *Will's*, and thence to the *Castle*, where we were very merry and friendly, till the Dice were called for. We played low, but Mr. *Hawkins* soon declined; upon which the Prisoner said to him, *Why do you come into Company, when you won't do as others do?* Mr. *Hawkins* answered, *Don't trouble yourself about me, I'll do as I please.*—The Deceased set three Half-pence: the Prisoner said it was damned impertinent; and some other Words passing, he flung a Flask at the Deceased, who in return tossed a Glass or a Candlestick. They took their Swords, but were prevented from engaging, and so they sat down again; the Deceased offered his Hand to be reconciled, upon which the Prisoner gave him very ill Language, and swore he would have his Blood. As this made me apprehensive that their Quarrel would break out again the next Day, I invited the Company to dine with me, in hopes to bring on a Reconciliation, and prevent future Mischief. The Prisoner answered my Offer with, *No, G---d damn ye, I'll dine with none of ye. Are ye angry, Sir, says I, Have ye any thing to say to me?—Or me? says Mr. Hawkins.—Or me? says Mr. Rich.—No, he had nothing to say to any of us.—This was about Two or Three in the Morning. And after we were all come out of*

the Room, I heard the Prisoner call the Deceased back; and they were no sooner got into the Room again, but the Door was flung to, with great Violence, and I heard the Clashing of Swords. When I got in, which was with much Difficulty, I did not see that the Deceased had any Sword in his Hand, but he was sinking forward; and I, by going to assist him, received a Wound in my Belly, which I was afraid was mortal; but I cannot tell how, or by whom it was given, though I think it could not be by the Deceased, because he had no Sword; and besides, was not in a Condition to do it.—A Surgeon being in the House, gave me his immediate assistance.

Mr. Shaw, the Surgeon. I found the Deceased languishing in a Chair. His Intestines appeared at the Wound, and by being exposed to the Air began to mortify. When I had dressed him I sent him Home; but the next Day I found a second Rupture of the Intestines. He died soon after; and that Wound was the Cause of his Death.

Prisoner. A Wager was laid betwixt Mr. *Rich* and Mr. *Blunt*, concerning Mr. *Mills's* acting the Part of *Cæsar* in the Play of *Julius Cæsar*, and it was lost by Mr. *Blunt*. After this a Box and Dice were called for, but not by me; the Drawer said he had Dice, but no Box; upon which, somebody called for a Pepper-Box. I flung a Main at 12d. and passed it about. Mr. *Hawkins* refusing, I said, I thought there was as good Fellowship in a little Play, as in altogether Drinking: Then we played for Half-a-Crown or three Shillings; and when the Box came round again, the rest likewise refused to play; at last, the Deceased offered to set three Half-pence, which I said was very impertinent. He called me *Rascal*; *You impertinent Puppy,* says I, *what do you mean by that?* Upon which, he threw a Glass at my Head, and drew upon me. I told him, he acted basely in drawing upon me, when it was he that gave the Affront. After this I put on my Great Coat, and was going out. Mr. *Hawkins* had slipped away, and the rest being gone out of the Room, the Deceased pushed the Door to, and drew upon me, and wounded me in the Knee, and cut my Fingers. I parried and closed with him; he endeavoured to stab me in the Back; at which Time Mr. *Blunt* came in, and received a Wound in his Belly, which must have been by the Deceased's Sword.

John Barnes, the Drawer. I threw the Prisoner's Great Coat over his Shoulders, as he was going out. Mr. *Hawkins* came out first, and asked if his Chair was at the Door? I said, Yes. Mr. *Blunt* followed, and I went down to unbar the Door; the rest of the Company not coming, I went back and met Mr. *Rich*; he bid me open the Door; I thought he meant the Street-Door, and was turning that Way again; but he swore at me, and told me the other Door: I opened it, and went in first, and the Deceased and the Prisoner were both with their Swords in their Hands, pointing towards each other. The Deceased closed with the Prisoner in a manner as if he was rather falling than pushing; and the Prisoner with his Left Hand had hold of the Deceased, who, as soon as we parted them, was so weak that he could not stand. I did not see him bleeding when I came into the Room, though I cried out to the Prisoner, *For God's Sake what are ye doing?*

Prisoner. Did not you see the Deceased offer to stab me in the Back? *Barnes.* No.

Mr. Burdet, a Surgeon. The next Day in the Evening, the Prisoner sent a Coach to my House with a Letter for me, informing me that he had been wounded in a Rencounter, and desiring me to come to him. I went, and found him in Bed at the House of Mrs. *Gardiner* in *Dean-Street*, near *Red-Lion-Square*, where he had concealed himself. He had one Wound below his Knee an Inch and half long, another on his Buttock, two of his Fingers were cut in the first Joint, and he shewed me three or four Holes in his Breeches; but none of his Wounds were above a Quarter of an Inch deep, and that in his Leg had but just raised the Skin.

Mrs. Gardiner. The Prisoner came to my House about Two o'Clock in the Morning: He was bloody, and upon searching him, I found a Wound in his Buttock as deep as my Finger, and I dressed it for him.

Court. The Evidence is plain, that the Prisoner gave the first Provocation; and it is not denied, that he afterwards killed the Deceased. The Question is, Whether from the Time the Prisoner threw the Bottle, to the Time the Deceased received the Wound, there was any Reconciliation? If there was not, I think it can be no less than Murder.

The Jury found there was no Reconciliation; but not being satisfied as to the Murder, they agreed upon a Special Verdict.

The Counsel on both Sides attending, they stated the principal Points of the Evidence for the Consideration of the Judges.

What the Prisoner's Counsel drew up, was to this Effect:

"We find that the Prisoner, the Deceased, and Three more met at the Tavern, where they all appeared very friendly.—A Box and Dice were called for,—they played some Time together, till Mr. *Rich* said, *Who will set me three Half-Crowns?*—The Deceased put down three Half-pence, and said, *I'll set ye three Pieces.*—The Prisoner said, *That's impertinent.*—The Deceased answered, *He that says I am impertinent, is a Rascal.*—The Prisoner threw a Bottle, and the Deceased threw a Glass,—They both got up, and took their Swords; but one of the Company stepped in, and prevented their engaging.—They sat down again to drink,—staid about an Hour, and then the Company broke up.—The Prisoner put on his Great Coat—They all went out of the Room.—The Prisoner and the Deceased returned, the Door was shut, and the Clashing of Swords was heard."

The Counsel for the King stated the Evidence to the following Purpose:

"We find, that on the 2d of February the Prisoner, the Deceased, and Three others were in Company at the *Castle Tavern*, and continued in a peaceable manner for about two Hours.—The Prisoner then called for a Box and Dice; but none being to be had, he called for the Pepper-Box, which was brought.—Dice were found upon the Table;—they played at Hazard.—Mr. *Rich* asked, who would set him three Half-Crowns? The Deceased in a jocular manner laid down three Half-pence, and said, *There's three Pieces.*—The Prisoner called him an impertinent Puppy, and threw a Bottle at him, which missed him, but brushed his Wig.—The Deceased tossed a Glass or Candlestick at the Prisoner, which did not hit him.—They both rose up, and took their Swords; but were prevented from fighting.—They sat down again.—

The

"The Deceased offered to be Friends with the Prisoner; but the Prisoner answered, *No, God damn ye! I'll have your Blood, by God!*—In about an Hour after this, the Company all went out of the Room; but the Prisoner called to the Deceased, and said, *Young Gentleman, a Word with ye.*—They both returned into the Room,—the Door was shut with Violence, and the Clashing of Swords was heard.—We find that from the Time that the Bottle was flung, to the Time of the breaking up of the Company, there was no Reconciliation."

These two rough Draughts being compared, and some Alterations being made, a third was drawn up, which was agreed to and signed by the Jury, and was to this Tenor.

Special Verdict.

"That upon the 2d Day of February, 1725, the Prisoner and the Deceased were in Company, together with John Rich, Thomas Hawkins and Michael Blunt, in a Room at the Castle Tavern in Drury-Lane, in the County of Middlesex, in a friendly manner. That after they had continued thus for two Hours, Box and Dice were called for; the Drawer said, he had Dice but no Box; and thereupon the Prisoner bid the Drawer bring the Pepper-Box, which he immediately did: And then the Company began to play at Hazard; and after they had played some time, the said Rich asked, If any one would set him three Half-Crowns? Whereupon the Deceased in a jocular manner laid down three Half-penny Pieces, and then said to the said Rich, I have set you three Pieces, and the Prisoner at the same time set the said Rich three Half-Crowns, which the said Rich won: and immediately after the Prisoner, in an angry manner, turned about to the Deceased, and said, *It was an impertinent Thing to set Half-pence, and that the Deceased was an impertinent Puppy for so doing;* to which the Deceased answered, *Whoever called him so was a Rascal.* That thereupon the said John Oneby took up a Bottle, and with great Force threw it *erga prædictum Willielmum Gower;* which Bottle did not hit the said Gower, but brushed his Perriwig, as it passed by his Head, and beat out some of the Powder; whereupon the Deceased immediately after tossed a Candlestick or Bottle *erga Prædictum Johannem Oneby,* but did not hit him with the same: Upon which the Deceased and the Prisoner both rose up to fetch their Swords, which then hung up in the Room; and the Deceased drew his Sword, but the Prisoner was prevented from drawing his by the Company; and the Deceased thereupon threw away his Sword, and the Company interposing, they sat down again for the Space of an Hour. That at the Expiration of an Hour, the Deceased said to the Prisoner, *We have had hot Words, but you was the Aggressor; but I think we may pass it over;* and at the same time offered his Hand to the said John Oneby, to which the said John Oneby answered, *No, damn you, I will have your Blood.* They further find, that afterwards the Reckoning was paid by the Deceased, the Prisoner, Rich, Hawkins and Blunt; and all the Company, except the Prisoner, went out of the Room to go home; and the Prisoner remaining alone in the Room, called to the Deceased in these Words, *Young Man, come back, I have something to say to you;* whereupon the Deceased returned into the Room, and immediately the Door was flung to and shut, and thereby the rest of the Company were excluded; and then a Clashing of Swords was heard, and the Prisoner, with his Sword, gave the Deceased the mortal Wound mentioned in the Indictment, of which he died the next Day. They further find, that at the breaking up of the Company, the Prisoner had his Great Coat thrown over his Shoulders; and that he received three slight Wounds in the Engagement; and that the Deceased being asked, upon his Death-Bed, whether he received his Wound in a manner, amongst Swordsmen, called fair, answered, *I think I did.* That from the time of throwing the Bottle, there was no Reconciliation between the Prisoner and the Deceased. And whether this be Murder or Manslaughter, the Jury pray the Advice of the Court, and find accordingly."

The Prisoner being carried back to Newgate, remained very easy, for about a Twelve-month, having no Irons on, and lodged in a commodious Room; and as the Prosecutor had taken no Steps towards bringing on the Hearing of the Special Verdict, he grew pretty confident it would be determined *Manslaughter*, and sec'd Counsel to move the Court of King's-Bench for a *Concilium*, to be made for arguing the Special Verdict before the Court; which being ordered, a *Certiorari pro Rege* was brought (a); and the Prisoner being at the Bar, it was made a *Concilium*, the Court being of Opinion that it could not be made a *Concilium* in his Absence; and in *Hillary Term*, 13 Geo. I. it was argued by Serjeant Darnall for the King, and Serjeant Eyre for the Defendant.

Serjeant Darnall. In order to consider whether this be Murder or Manslaughter, I shall premise that which is not to be disputed, that every malicious Killing is Murder, and that Malice may be either express or implied: This is Malice implied in the Act itself, because there was no reasonable Provocation; there was nothing but Words passed between them, till the Prisoner threw the Bottle at the Deceased; and it has been often resolved, that, in point of Law, Words are no Provocation. But if Words were a sufficient Provocation; yet it appears, the Prisoner began with Words as well as Acts. The calling Mr. Gower an impertinent Puppy was previous to the saying or doing of any thing by Mr. Gower, that could give Offence to the Prisoner: If the setting of Half-pence was a Thing to be resented, the Affront was to Mr. Rich, and not to Mr. Oneby, whose Bet to Rich was not at all affected by what was done by Mr. Gower. And that it is Murder in this Defendant, I think cannot be disputed, after the Judgment of the Court in *Mawgridge's Case* (inserted at the End of the next Trial); there the Bottle thrown by Cope hit *Mawgridge*, and broke his Head; here, the Candlestick or Bottle tossed by Gower, did not hit the Prisoner at the Bar: That was a sudden Conflict; this a deliberate Act, after a Disposition to Peace manifested by Mr. Gower, and a Continuance of Malice in the Prisoner for above an Hour after the first Conflict. What was done here by Mr. Gower would have been justifiable in him, even if the Candlestick had hit the Prisoner: and so it was resolved in *Mawgridge's Case*; for there the Bottle returned by Mr. Cope did hit the Defendant, and broke his Head. And as the Act done by Mr. Gower was justifiable in him, it follows, that it can be no foundation to excuse or mitigate the subsequent Killing by Mr. Oneby. The Case put

in *Mawgridge's Case* of an Assault by A upon B. B draws his Sword, and pursues A to the Wall, where A in his own Defence kills B; this is held Murder in A, though it has many strong Circumstances in favour of A, which are not in this Case. But I apprehend, it is not necessary to rely barely on this Point, that there is Malice implied in the Act; since it plainly appears, upon the State of the Case, that here is express Malice. When the Deceased was desirous to end the Matter amicably, the Prisoner replies, *No, damn you, I will have your Blood:* This explains and goes through the whole Fact, and proves the subsequent Killing to be malicious.

I do therefore insist, that the taking it either way, either as a Killing out of Malice implied, or Malice express, it is Murder; and that this upon the Fact is a Killing of Malice implied, and upon the Prisoner's own Words coupled with the Fact, it is Malice express, and consequently Murder.

Serjeant Eyre, for the Defendant. The Question is, what degree of Homicide this is; and I apprehend it to be but Manslaughter: The Distinction is, that if the Killing be of Malice fore-thought, it is Murder; if on a sudden Occasion, it is but Manslaughter; and that I take to be this Case: In 3 *Instit.* 51. Malice premeditated is defined to be, when one compasseth to kill another, and doth it *sedato animo*: On the other hand, Manslaughter is the doing it without Premeditation, upon a sudden Brawl, Shuffling, or Contention. 3 *Instit.* 57.

The Law has ever been indulgent to the Passions of Men; *Ira furor brevis est*, and therefore as a Madman, the Party is excused for what he does in a sudden Transport of Passion. I do admit, that bare Words are no Provocation; but yet they will serve to explain the Nature of the Combat, and shew whether it was sudden or not. The calling the Prisoner a Rascal, was what no Man of Honour could put up; and as this was the Beginning of the Quarrel, the Fighting was as sudden as the reproachful Words. If the Prisoner had stabbed Mr. Gower, upon speaking the Words; and Gower had done nothing, I believe it would have been Murder; but here was a regular Fight, an Interchange of Blows, and so it comes up to the Case put in *Kelyng* 55. of a Combat between two of a sudden Heat; where if one kills the other, it is but Manslaughter.

The Law has fixed no certain Time, when it shall be presumed the Passions of Men are cooled. The Case in 12 Co. 87. must take up a longer time than this; for there the Boy ran three Quarters of a Mile to his Father, and told his Story, and after that the Father provided himself with a Cudgel, and had as far to go in pursuit of the other Boy; and there is this Difference between that Case and the Case at Bar; that there the Adversary was out of Sight, but here he continued in Presence, which must rather inflame than abate the Passion.

The Words made use of by Mr. Gower carry an Imputation on Mr. Oneby, which might provoke him afresh; the telling him, he was the Aggressor, was not likely to make an End of the Quarrel: And that is plain, from the Manner in which Mr. Oneby understood them, who would never have said so harsh a Thing to his Friend Mr. Gower, if he had been at that Time in any degree Master of himself.

It is not found by the Verdict who began, after Mr. Gower returned into the Room: It is not likely the Prisoner began, because he had his Great Coat thrown over his Shoulders; and as to the shutting the Door, it is stated to be done immediately on Mr. Gower's returning, and is likelier to be done by him that came into the Room, when the first Conflict happened. It appears Mr. Gower was the readiest to draw his Sword; it was actually drawn, and the Prisoner's was not; and since it is not stated, who drew first the second Time, I think it ought to be explained by the first.

To make it Murder in the first Instance, it must be done with a Weapon that would endanger Life. The Bottle in *Mawgridge's Case* was full of Wine, and it hit him (Cope) so violently that he never spoke more. But for any thing appearing upon the Verdict, this might be only a small Oil-Bottle, usually set upon Tables in Public-Houses; and might perhaps be empty before it was flung. The Case of Mr. Turner, which is taken notice of in *Comb* 407. was held Manslaughter upon this Reason, because the Clog was not such an Instrument, from a Blow with which it was likely Death should ensue. But supposing the Bottle to be as big and as full as *Mawgridge's* Bottle, yet no harm was done by it here, as there was in *Mawgridge's Case*. Here was no drawing the Sword *eo instante*, as *Mawgridge* did; which occasioned the Judges to lay the returning the Bottle by Mr. Cope out of the Case, and construe the immediate drawing the Sword, as an Intent to supply the Mischief, which the Bottle might fall short of; and even, in that Case, one great Man differed from the rest of his Brethren.—So that *Mawgridge's Case* is materially different from this. There the Intention from the first throwing the Bottle was to commit Murder, here it was otherwise. There the first Bottle hit, here it missed. There the Murderer's Intent was immediately carried into Execution, here was a long Interruption. The Deceased needed not have returned, if he had not been equally disposed to combat; and he himself said it was a fair Combat, which there was no Pretence to say in *Mawgridge's Case*.

Serjeant Darnall replied. The Words on both Sides must certainly be laid out of the Case; if not, *Puppy* was worse than *Rascal*, because it is the Name of a Beast. If Mr. Gower took *Oneby* to be the Aggressor, the Condescension was greater in him; it is no more than saying, I, who have been injured, am ready to pass it by. I do not find it was at all relied upon in *Mawgridge's Case*, that the Bottle was full; and as to the Case in *Comberbatch*, *Turner's* Servant there had committed a Fault; for which he was liable to be corrected: The Deceased's Declaration was only that he received the Wound by a fair Push.

The Court said nothing upon this Argument, but appointed another to be before all the Judges of England. And in *Easter Term* following (May 6), it was accordingly argued by Mr. Lee for the King, and Mr. Kettleby (Serjeant Baynes, who was retained, being ill) for the Prisoner, to the same Effect as the former Argument. *Str.* Vol. II. 770. The Prisoner not being present in *Serjeant-Inn* (*Chancery-Lane*), as he was in Court upon the first Argument; this last being only to have the Advice of the other Judges.

Trinity Term, 13 Geo. I. and 1 Geo. II. 1727.

Monday, June 12. Mr. Oneby being brought to the Bar from Newgate to hear the Resolution of the Court, the Chief Justice Raymond (b) delivered the Opinion of the Judges, in the following manner.

(a) Sir John Strange's Reports, Vol. II. p. 766, 767, 768.

(b) From Lord Raymond's Reports, Vol. II. p. 1435, and following Pages.

The King *vers.* John Onoby.

AT the General Sessions of the Peace, held at *Hicks-Hall*, for the County of *Middlesex*, 28th Day of *February*, in the 12th Year of his Majesty's Reign, *John Onoby*, of *St. Martin's in the Fields*, Gent. was indicted, for that he, the 2d Day of *February*, 12 Geo. at the said Parish, feloniously, voluntarily, and of his Malice afore-thought, made an Assault upon one *William Gower*, Esq. and that he the said *John Onoby*, with a Sword, which he then and there held drawn in his Right Hand, the said *William Gower*, in and upon the left Part of his Belly, near the Navel, feloniously, voluntarily, and of his Malice afore-thought, did strike and thrust, giving the said *William Gower*, then and there, with the said drawn Sword, in and upon his said left Part of his Belly, near the Navel, a mortal Wound; of which mortal Wound, the said *William Gower*, lived in a languishing Condition, from the said 2d Day of *February*, to the 31 Day of the said *February*; on which 3d Day of *February*, the said *William Gower*, at the Parish aforesaid, of the said mortal Wound, did die; and so the Jurors find, that the said *Onoby*, the said *William Gower* feloniously, voluntarily, and of his Malice afore-thought, did kill and murder. Which Indictment being delivered to the Justices of Gaol-Delivery for *Newgate*, the said *John Onoby* was arraigned thereupon, and pleaded Not Guilty. And upon the Trial, which was had before Mr. Baron *Hale*, and Sir *William Thompson*, Recorder of *London*, the Jury found the Special Verdict following, *viz.*

"That the said *John Onoby*, and the said *William Gower*, together with *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, were in Company together in a Room in the *Castle-Tavern*, in the Parish of *St. Martin's in the Fields*, in a friendly Manner; that after the said *John Onoby*, *William Gower*, *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, had continued together in the said Room, for the Space of two Hours, a Box and Dice were called for; whereupon the Drawer said, that he had Dice but no Box; and that thereupon the said *John Onoby* commanded the Drawer to bring a Pepper-Box, and accordingly a Pepper-Box and Dice were brought; that immediately after, the said *John Onoby*, *William Gower*, *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, began to play at Hazard; and after they had played half an Hour, the said *John Rich* asked, if any of the Company would set him three Pieces of Money, called Half-Crowns; that thereupon the said *William Gower*, in a jocular Manner, set three Pieces of Money, called Half-pence, and then said to the said *John Rich*, that he had set him three Pieces; that the said *John Onoby*, at the same Time, set the said *John Rich* three Half-Crowns, which the said *John Rich* won; and immediately the said *John Onoby*, in an angry Manner, turned to the said *William Gower*, and said to him, that it was an impertinent Thing to set Half-pence; and further said to the said *William Gower*, that he, the said *William Gower*, was an impertinent Puppy in so doing; to which the said *William Gower* then and there answered, that whosoever called him so was a Rascal; and thereupon the said *John Onoby* took up a Glass-Bottle, and with great Force threw it at the said *William Gower*; but the Glass-Bottle did not strike the said *William Gower*, but passing by near his Head brushed his Peruke, which he then had upon his Head, and beat out some of the Powder out of his Peruke; that thereupon the said *William Gower*, immediately after, tossed a Glass or Candlestick at the said *John Onoby*, but the Glass or Candlestick did not hit the said *John Onoby*, upon which, both the said *John Onoby* and *William Gower* presently rose from their Seats, to fetch their Swords, which then hung up in the Room; and the said *William Gower*, then drew his Sword out of the Scabbard, but the said *John Onoby* was hindered by others of the Company from drawing his Sword out of the Scabbard; whereupon the said *William Gower* threw away his Sword, and by the Interposition of the said *John Rich*, *Thomas Hawkins*, and *Michael Blunt*, the said *William Gower* and *John Onoby* sat down again, and being so set down, continued for the Space of an Hour, in Company with the said *John Rich*, *Thomas Hawkins*, and *Michael Blunt*; that after the Expiration of that Hour, the said *William Gower* said to the said *John Onoby*, *We have had hot Words, but you was the Aggressor, but I think, we may pass it over; and at the same Time the said William Gower offered his Hand to the said John Onoby; to which the said John Onoby then answered the said William Gower, No, damn you, I will have your Blood; that afterwards the Reckoning was paid by the said John Onoby, William Gower, John Rich, Thomas Hawkins, and Michael Blunt: And that the said William Gower, John Rich, Thomas Hawkins, and Michael Blunt, went out of the said Room, with an Intent to go home, leaving the said John Onoby in the Room; that the said John Onoby, so as aforesaid, remaining in the Room, called to the said William Gower, Young Man, come back, I have something to say to you; that thereupon the said William Gower returned into the said Room, and the Door of the Room was immediately flung to, and shut; by reason of which shutting of the Door, all of the said Company, besides the said William Gower and John Onoby were shut out of the Room, and that then after shutting of the Door, a Clashing of Swords was heard; then the Jury find, that the said John Onoby gave the said William Gower, with his Sword, the mortal Wound in the Indictment mentioned, of which he died; but they further find, that at the breaking up of the Company, the said John Onoby had his Great Coat thrown over his Shoulders, and that the said John Onoby received three small Wounds in the fighting with the said William Gower, and that the said William Gower being asked upon his Death-Bed, Whether he the said William Gower had received his Wound in a Manner among Swordsmen called fair? Answered, I think, I did: And they further find, that from the Time the said John Onoby threw the Glass-Bottle at the said William Gower, there was no Reconciliation between the said John Onoby and William Gower: And whether this is Murder or Manslaughter, the Jury pray the Advice of the Court: And if, &c."*

So that the Question upon the Special Verdict is, Whether *John Onoby*, the Prisoner at the Bar, is guilty of Murder or Manslaughter?

A great deal of Time was spent in drawing up this Special Verdict;

(a) Judge Foster's Reports, p. 138, 313, 315, *Hugget's Case*.

(b) This Case of *Mawgridge*, being so frequently quoted in this, and the next Trial; and as every Gentleman may not have *Kelynge's* Reports ready at Hand to turn to, we have inserted the whole Case from *Kelynge*, p. 117 to p. 136.

for although the Trial at the *Old-Bailey* was in the Beginning of last March was twelve Months, yet the Record was not removed into this Court, till *Henry Term* last, towards the End of which Term, it was argued by Counsel on both Sides; and another Argument being desired by the Counsel for the Prisoner, we thought it proper to desire the Opinion of all the rest of the Judges; and for that Purpose, it was argued before all the Judges, at *Serjeants-Inn-Hall* in *Chancery-Lane*, upon the 6th Day of *May* last, which was as soon as all the Judges could meet, by reason of the Intervention of the Circuits. And after mature Consideration had upon a Meeting of them, they *seriatim* gave their Opinions, and came to this Resolution unanimously, not one of them dissenting, and which I have Authority from them to declare, *viz.*

That *John Onoby*, the Prisoner at the Bar, upon the Facts found upon this Special Verdict, is guilty of Murder.

Without entering into a nice Examination of the several Definitions or Descriptions of Murder, as they are found in the old Law-Books, as *Bracton*, *Britton*, and *Fleta*, where the Wickedness of the Act is aggravated by the Circumstances of Secrecy or Treachery, Murder has been long since settled to be the voluntary killing a Person of Malice prepense; and that whether it was done secretly or publicly. *Staudf. Pl. Cor.* 18. b. 3 Inst. 54.

But then it must be considered, what the Word Malice in such Case imports. In common Acceptation, Malice is took to be a settled Anger (which require some Length of Time) in one Person against another, and a Desire of Revenge. But in the legal Acceptation, it imports Wickedness, which includes a Circumstance attending an Act that cuts off all Excuse. By 25 H. VIII. c. 3. for taking away Clergy, it is enacted, That every Person who shall be indicted of the Crimes therein-mentioned, and thereupon arraigned, and stand mute, of Malice or of Frowardness of Mind, shall lose the Benefit of his Clergy. Now in that Place, Malice can never be understood in the vulgar Sense; for the Party cannot be thought to stand mute, out of a settled Anger, or Desire of Revenge, but only to save himself: and therefore such standing Mute, and refusing to submit to the Course of Justice, is said to be done wickedly, *i. e.* without any Manner of Excuse, or out of Frowardness of Mind.

This Malice, an essential Ingredient to make the killing a Person Murder (to use the Expressions of Lord Chief-Justice *Coke*, and Lord Chief-Justice *Hale*, whose Authority hath established them), must be either implied or express; and says *Hale*, in his *Pleas of the Crown* 44. this implied Malice is collected either from the Manner of doing, or from the Person slain, or the Person killing. As to the two last, there is no Occasion, at present, to take them into Consideration.

I. As to the first, *viz.* from the Manner of doing, as *Hale* expresses it, or as *Holt*, Chief-Justice (*Vide Mawgridge's Case postea*) says, from the Nature of the Action: 1. Wilfully poisoning any Man implies Malice. 2. If a Man doth an Act, that apparently must do Harm, with an Intent to do Harm, and Death ensues, it will be Murder. As if *A* runs with a Horse, used to strike, amongst a Multitude of People, and the Horse kills a Man, it will be Murder; for the Law implies Malice from the Nature of the Act. 3. Killing a Man without a Provocation is Murder; as if *A* meets *B* in the Street, and immediately runs him through with a Sword, or knocks out his Brains with a Hammer or Bottle. And if angry Words had passed in that Case between *A* and *B*, yet it would have been Murder in *A*, because Words are not such a Provocation, as will prevent such a Homicide from being Murder; Lord *Morley's Case*, *Kelynge* 56. and *State Trials*, Vol. VII. 4. The Law will imply Malice from the Nature of the original Action, or first Assault, though Blows pass between the Parties, before the Stroke is given, which occasions the Death. As if upon angry Words or abusive Language between *A* and *B*, of a sudden *A*, without any Provocation (for angry Words or abusive Language in such a Case is looked on as none), draws his Sword immediately, and makes a Pass at *B*, or strikes at him with any dangerous Weapon, as a Pistol, Hammer, large Stone, &c. which in all Probability might kill *B*, or do him some great bodily Hurt, and then *B* draws his Sword, and mutual Passes are made, and *A* kills *B*, this will be Murder, for the Act was voluntary; and it appears from the Nature of it, that it was done with an Intent to do Mischief; and therefore since in all Probability it might have occasioned *B's* Death, or done him some great bodily Harm, the Law implies Malice prepense; and the Resistance or Passes that were made by *B*, were but in the Defence of his Person, which was violently and cruelly attacked. And this was the Resolution of *Kelynge*, Chief-Justice, *Twisden*, *Windham*, and *Morton*, Justices in *Hopkin Hugget's Case*, *Kelynge* 62 (a). And though in the principal Case, the eight other Judges differed in Opinion from the four Judges in the King's-Bench; yet, to this Opinion of the Four, the eight Judges did agree, as *Kelynge* took it. And this was the true Reason of *Mawgridge's Case*. The Judgment in which Case is a great Authority in this Case, that not being so strong a Case as the present Case. It was indeed objected by the Counsel for the Prisoner at the Bar, in their Arguments in the present Case, 1. That *Mawgridge's Case* was a single Case, that the Judgment in that Case had carried Murder further than it had ever been carried before. 2. That it was not determined with the unanimous Opinion of all the then Judges, for one very great Judge of the then Twelve, *viz.* Lord *Trevor* differed from the other Judges, and held it was only Manslaughter. But upon our meeting to consider of this present Case, all the Judges unanimously agreed, that *Mawgridge's Case* was undoubted Law (b), and that that Judgment was a right and just Judgment, so groundless was that Infination, which had been made (for such an Infination there was) in *Westminster-Hall*, that some of the present Judges were of Opinion, that the Judgment in *Mawgridge's Case* was not a legal Judgment.

And this is as much as is necessary, rather more than is necessary, to be said as to implied Malice, since there will be no Occasion in this Case to look out for Malice implied.

II. Malice express is a Design formed of taking away another Man's Life, or of doing some Mischief to another, in the Execution of which Design Death ensues. And this holds, where such Design is not formed

against

against any particular Person; as if *A* having no particular Malice against any particular Person, comes with a general Resolution against all Opposers; if the Act be unlawful, and Death ensue, it is Murder. As if it be to commit a Riot, to enter into a Park, Lord *Dacre's Case* *H. P. C.* 47. *Moore* 86. *Sav.* 67. So if *A* goes with a Resolution to kill the first Man he meets, and meeting *B*, kills him, it is Murder with express Malice: yet *A* had not declared any Malice against *B*, nor against any particular Person. Much more it will be express Malice, when the mischievous Design is formed against any particular Person, which may be made evident, as well by Circumstances as by the express Declarations of the Person killing. As that he would be revenged of *B*, or that he would have his Life, or have his Blood; and some time after he kills *B*. And that such Declarations spoken seriously, or deliberately, or after Time for Reflection, manifest an express Malice, no body can doubt.

Having thus briefly mentioned that known and settled Rule, that there must be either Malice express or implied, to make Murder, and also some Instances of what is one and what the other of them; I come to the present Case before us.

All the Twelve Judges were unanimous in Opinion, That as the Facts are found in this Special Verdict, it appears, that the Prisoner at the Bar had express Malice against Mr. Gower, when he gave him the mortal Wound, of which he died: 1. Mr. Gower did nothing that could reasonably raise a Passion in Mr. Oneby. He gave him no Provocation whatsoever; for when Mr. Gower set the three Half-pence, he set them against Mr. Rich, and that in a jocular manner; therefore that was no Affront to Mr. Oneby. 2. Upon that Mr. Oneby turned to Mr. Gower in an angry manner, and gave him abusive Language, and called him impertinent Puppy; the Answer of Gower was not improper, nor more than what might be expected, that whosoever called him so was a Rascal. 3. That as Oneby had before begun with Gower, by giving him abusive Language, so he then took up the Glass-Bottle, *et magna cum vi*, threw at Gower, and beat the Powder out of his Peruke; if it had killed Gower, it had certainly been Murder; upon which Gower tossed a Glass or Candlestick at Oneby. And the Difference of finding in the Special Verdict is observable: Oneby threw the Bottle at Gower, *magna cum vi*; Gower only tossed the Glass or Candlestick at Oneby. 4. When they fetched their Swords, Gower did it only to defend himself; for the Verdict finds, that though Gower drew his Sword first, yet the Prisoner at the Bar, being hindered by the Company from drawing his Sword, Gower thereupon threw his Sword away. 5. By the Interposition of the Company, the Prisoner at the Bar and Mr. Gower sat down again, and continued in Company for an Hour; after which Mr. Gower said, *We have had hot Words, but you was the Aggressor*, but I think *we may pass it over, and offered his Hand to the Prisoner*; that the Prisoner at the Bar was the Aggressor, is true, and that in a violent manner: This was sufficient to have appeased Mr. Oneby; but what is his Answer? *No, damn you, I will have your Blood*. There is an express Declaration of Malice, an express Declaration of a Design of taking away Mr. Gower's Life. These Words are incapable of any other Construction. These Words shew his malicious Intent, even in throwing the Bottle at first; they are spoken an Hour after the first Action, and are spoken with Deliberation. The next Fact the Jury find is; that afterwards (not particularly finding what Interval of Time passed between the speaking these Words, and what is found next) that Mr. Gower, Rich, Hawkins and Blunt went out of the Room with an Intent to go home, leaving the Prisoner at the Bar in the Room; that the Prisoner remaining in the Room, called to the said William Gower, saying, *Young Man, come back, I have something to say to you*. These Words also shew a plain Deliberation; and being attended with the Circumstances found before, and what follows immediately, import Contempt; *young Man* are insolent and imperious; *come back*, and import a Repentment he had conceived against Mr. Gower, about which he had something to say to him. For what Purpose did the Prisoner stay, after all the Company had left the Room to go home? It was to say something to Mr. Gower. What is that? Why, as soon as Mr. Gower is returned into the Room, the Door was immediately flung to and shut, and the rest of the Company shut out; and then after shutting the Door, a Clashing of Swords was heard, and the Prisoner gave Mr. Gower the mortal Wound, of which he died.

These immediate, subsequent Facts shew, what it was the Prisoner had to say to Mr. Gower; it was to carry the malicious Design, he had before declared he had against Mr. Gower, into Execution, *viz.* to have his Blood; and he had it, for he gave him the Wound of which he died.

To go further: If the Prisoner had Malice against Mr. Gower, though they fought after the Door was shut, the Interchange of Blows will make no Difference; for if *A* has Malice against *B*, and meets *B*, and strikes him, *B* draws, *A* flies to the Wall, *A* kills *B*, it is Murder. *H. P. C.* 42. *Kelynge* 58.

Nay, if the Case had been, that there had been mutual Malice between the Prisoner and Mr. Gower (*which does not appear to have been on the Part of the Deceased*) (a) and they had met and fought upon that Malice, the killing Mr. Gower by the Prisoner had been Murder. *H. P. C.* 47. *1 Bulstr.* 86, 87. *Hob.* 121. *Crompt.* 21.

The Judges were all of Opinion, upon the Facts found in this Verdict, there appeared to be express Malice in Oneby against Mr. Gower; and then Oneby killing Gower, having such express Malice against him, they were all unanimous, and clear of Opinion, that this was plainly Murder.

Having thus mentioned the Reasons, upon which we ground this present Resolution, I shall next consider, if any of the Objections made by the Counsel for the Prisoner are in answer to these Reasons, or take off the Force of them.

The Counsel for the Prisoner, Mr. Oneby, insisted, that upon the whole Verdict, the Case was no more than that from a slight Occasion; passionate Words arose, mutual Reproaches passed; the Quarrel was sudden, mutual Assaults were made; and on a sudden fighting, in Heat of Passion, the Prisoner killed the Deceased, which can be no more than Manslaughter.

That such Fact could amount to no more than Manslaughter; thy cited the known Case, that if *A* and *B* fall out upon a sudden, and they presently agree to fight, and each fetches his Weapon, and go into the Field and fight, and one of them kills the other; this is but Manslaughter, *H. P. C.* 48. *3 Inst.* 57. because the Passion was never cooled.

In this Case (said they) it is plain the Quarrel arose on a sudden; Mr. Oneby's Passion was raised, and that it is not found by the Jury to have ever been cooled; and therefore the Words, Mr. Oneby spoke, *No, damn you, I will have your Blood*, &c. were only Words of Heat, spoke under the Continuance of the first Passion. And they further insisted, that the Law had fixed no Time, in which the Passion must be took to be cool; but that depends upon Circumstances, of which the Jury are the proper Judges. In this Case, the whole Time that passed, between the Quarrel, and giving the mortal Wound, was but little more than an Hour; and it has been adjudged, that the Passion shall not be took to be cooled in very near that Time. *12 Co.* 87. *Cro. Jac.* 296. *H. P. C.* 48. *Rowley's Case*, where the Child of *A* beat the Child of *B*. *B's* Child, all bloody, ran home to his Father; *B*, the Father, ran Three-quarters of a Mile, and beat the Child of *A*; by means whereof he died: This was adjudged to be only Manslaughter; yet there must have been a considerable Time after *B* was provoked by the Usage of his Child before he killed *A's* Child, because he ran Three-quarters of a Mile; yet it being one continued Passion raised in *B*, upon the beating of his Child, it was held this was only Manslaughter. And in this present Case, to shew the Passion of Mr. Oneby, which was suddenly raised, was not cooled, the Counsel for Mr. Oneby observed, that the Jury had expressly found that there was no Reconciliation between Oneby, the Prisoner, and Mr. Gower, the Deceased, from the time Mr. Oneby first threw the Bottle.

This I take to be the chief Objection, upon which the Counsel for the Prisoner principally relied.

In answer to this Objection, I must first take notice, that where a Man is killed, the Law will not presume that it was upon a sudden Quarrel, unless it is proved so to be; and therefore in *Legg's Case*, *Kelynge* 27. it was agreed, upon Evidence, that if *A* kills *B*, and no sudden Quarrel appears, it is Murder; for it lies upon the Party indicted to prove the sudden Quarrel.

In the next place, from what I have said before, it appears, that though a Quarrel was sudden, and mutual Fighting before the mortal Wound given, it is by no means to be took as a general Rule, that the killing a Man will be only Manslaughter. It is true, if reproachful Language passes between *A* and *B*, and *A* bids *B* draw, and they both draw (it is not material which of them draws first), and they both fight, and mutual Passes are made, Death ensuing from thence will be only Manslaughter, because it was of a sudden, and each ran the hazard of his Life. But there is a wide Difference between that Case, and where upon Words *A* draws his Sword, and makes a Pass at *B*, or with some dangerous Weapon attacks him, and then *B* draws, and they fight, and *A* kills *B*; there, though there was a Quarrel upon abusive Language, and there was afterwards a mutual Fighting, yet since *A* attacked *B* with a Weapon or Instrument, which might have taken away *B's* Life, though they fought afterwards, that will be Murder. And this was agreed by all the Judges in the present Case.

But for the Argument's Sake, and it is only for Argument's Sake, and to give the Objection made by the Counsel for the Prisoner its full Force; if it should be looked on here, that what is found in the former Part of the Verdict was upon a sudden Quarrel, and only the Effect of Passion; yet, if it appears upon the Special Verdict, that there was a sufficient Time for this Passion to cool, and for Reason to get the better of the Transport of Passion, and the subsequent Acts were deliberate, before the mortal Wound given, the killing of the Deceased will be Murder.

And all the Judges were of Opinion, that, upon Consideration of the Facts found, it appeared, there had been sufficient Time for Mr. Oneby's Transport of Passion to cool, and that he had deliberated; and that the killing of Mr. Gower was a deliberate Act, and the Result of Malice Mr. Oneby had conceived against the Deceased.

But before I mention their Reasons, I must lay down this Proposition, which they all agreed, *viz.* that the Court are Judges of the Malice, and not the Jury; and that the Court are also Judges upon the Facts found by the Jury, whether if the Quarrel was sudden, there was Time for the Passion to cool, or whether the Act was deliberate or not.

Upon the Trial of the Indictment, the Judge directs the Jury thus: If you believe such and such Witnesses, who have sworn such and such Facts, the killing the Deceased was with Malice prepense express, or it was with Malice implied, and then you ought to find the Prisoner guilty of Murder; but if you do not believe those Witnesses, then you ought to find him guilty of Manslaughter only; and so according to the Nature of the Case, if you believe such and such Facts, the Act was deliberate, or not deliberate; and then you ought to find so and so. And the Jury may, if they think proper, give a General Verdict, either that the Prisoner is guilty of Murder, or of Manslaughter. But if they decline giving a general Verdict, and will find the Facts specially, the Court is to form their Judgment from the Facts found, whether there was Malice or not, or whether the Fact was done on a sudden Transport of Passion, or was an Act of Deliberation, or not.

Although there are many Special Verdicts in Indictments for Murder, there never was one, where the Jury find in express Terms that the Act was done with Malice, or was not done with Malice prepense; or that it was done upon a sudden Quarrel, and in Transport of Passion; or that the Passion was cooled or not cooled; or that the Act was deliberate, or not deliberate: But the Collection of those Things from the Facts found, is left to the Judgment of the Court. *Holloway's Case*, *Palm.* 545. *Cro. Car.* 131. *W. Jones* 198. So in the Case cited by the Counsel for the Prisoner, *Cro. Jac.* 296. *Rowley's Case*, the Jury find the Fact, but don't find in express Terms, that the Father, whose Child was beat, killed the other Child in a sudden Heat of Passion; but that was left to the Judgment of the Court, upon the particular Facts found.

But then it is objected, that the Law has fixed no Time, in which the Passion must be supposed to be cooled. 'Tis very true, it has not, nor could it, because Passions in some Persons are stronger, and their Judgments weaker, than in others; and by Consequence it will require a longer Time in some, for Reason to get the better of their Passions, than in others: but that must depend upon the Facts, which shew whether the Person has deliberated or not; for Acts of Deliberation will make it appear whether that violent Transport of Passion was cooled or no.

But thus far the Resolution of the Judges have already gone; and it has been adjudged, that if two fall out upon a sudden, and they appoint to fight

(a) The Verdict implies the contrary: For He offered him his Hand, &c.

next Day, that the Passion by that Time must be looked on to be cooled; and in such Case, if they meet next Day, and fight, and the one kills the other at that Meeting, it has been often held to be Murder. *Hale P.C. 48.*

To go a little further. If two Men fall out in the Morning, and meet and fight in the Afternoon, and one of them is slain, this is Murder; for there was Time to allay the Heat, and their Meeting is of Malice. So is *Legg's Case, Kelynge 27.*

At the Meeting of all the Judges, before Lord Morley's Trial by the Peers, for the Murder of one *Hastings*, they all agreed, that if upon Words two Men grow to Anger, and afterwards they suppress that Anger, and then fall into other Discourse, or have other Diversions, for such a reasonable Space of Time as in reasonable Intendment their Heat might be cooled; and some Time after they draw upon one another, and fight, and one of them is killed; this is Murder, because being attended with such Circumstances, it is reasonably supposed to be a deliberate Act, and a premeditated Revenge upon the first Quarrel. But the Circumstances of such an Act being Matter of Fact, the Jury are Judges of them, *Kelynge 56.* The Meaning of which last Words is, that the Jury are Judges of the Facts, from which those Circumstances are collected. But, as said I before, when those Facts are found, the Court is to judge from them, whether they do not shew the Act was deliberate or not.

Lord Morley upon his Trial by the Peers was acquitted; and after that, in *Easter Term, 18 Car. II. Broomwich*, who was indicted as a Principal, in being present, aiding, and abetting Lord Morley, in the Murder of *Hastings*, was tried at the King's-Bench Bar. The Quarrel was at a Tavern; but it was proved, when the Quarrel was at the Tavern, that Lord Morley said, If we fight at this Time, I shall have a Disadvantage, by reason of the Height of my Shoes; and presently after they went into the Fields, and fought; Lord Morley killed *Hastings*: But while they were fighting, *Broomwich* made a Thrust at *Hastings*, and Lord Morley closed in with *Hastings*, and killed him; and (says the Book) this was held as clear Evidence of their Intention to fight, when they went out of the Tavern; and the Quarrel being only about Words, and fighting in a little Time after, it was held Murder by all the Court. And there need not be a Night's Time between the Quarrel and the Fighting, to make it Murder, but such Time only, as it may appear not to be done on the first Passion; for Lord Morley considered the Disadvantage of his Shoes; and the Court directed the Jury that it was Murder in *Broomwich*, being present, and aiding; but the Jury acquitted him. *1 Sid. 277.* reports the same Case, and says, that the Court, in the Direction to the Jury, laid it down, that after the Provocation in the House, they say, this is no convenient Place (and so have Reason to judge of Convenience), and appoint another Place, though the Fight is to be presently; this is Murder, for the Circumstances shew their Temper.

In *H. P. C. 48.* if *A* and *B* fall out, *A* says he will not strike, but will give *B* a Pot of Ale to touch him, *B* strikes, *A* kills him; Murder.

Two quarrel; the one says, if you'll go into the Field, I will break your Head, and there one kills the other; Murder. *Crompt. 25. p. 49.*

Two fall out on a sudden in the Town, and they by Agreement go into the Field presently, and one kills the other; Murder. *Crompt. 23. fol. 31.*

From these Cases it appears, that though the Law of England is so far peculiarly favourable (I use the Word peculiarly, because I know no other Law that makes such a Distinction between Murder and Manslaughter), as to permit the Excess of Anger and Passion (which a Man ought to keep under, and govern) in some Instances to extenuate the greatest of private Injuries, as the taking away a Man's Life is; yet in those Cases, it must be such a Passion, as for the time deprives him of his reasoning Faculties; for if it appears Reason has resumed its Office; if it appears, he reflects, deliberates, and considers, before he gives the fatal Stroke, which cannot be, as long as the Fury of Passion continues; the Law will no longer, under that Pretence of Passion, exempt him from the Punishment, which from the Greatness of the Injury and Heinousness of the Crime he justly deserves, so as to lessen it from Murder to Manslaughter. Let us see, therefore, whether upon this Special Verdict it appears, that the fighting and killing Mr. Gower was only done in Heat of Passion, or was a deliberate Act. By what I observed before, it plainly appears it was a deliberate Act. But to recapitulate in short; after the Words had passed, and the Bottle was thrown by the Prisoner, and Swords drawn; by the Interposition of Friends they sat down, and continued in company for an Hour (a reasonable Time under those Circumstances for the Passion to cool); and after that Hour expired, the Deceased says, *We have had hot Words, but you was the Aggressor; but, I think, we may pass it over*; and at the same time offered his Hand to the Prisoner, which was enough to have appeased the Prisoner: To this Mr. Oneby answered, *No, damn you, I'll have your Blood*; Words expressing Malice, not Passion: Then, when the Company went out of the Room, the Prisoner stayed, and called the Deceased back; *Young Man, come back, I have something to say to you*: The Door immediately was shut, clashing of Swords was heard, and the Deceased received the mortal Wound from the Prisoner at the Bar. The Prisoner's Words shew, what was his Intention, viz. to take away Mr. Gower's Life; and the Killing him may properly be said to have been done upon Deliberation and Consideration.

The Counsel for the Prisoner in their Arguments insisted, that there were several Circumstances found in the special Verdict in favour of the Prisoner, which were a Foundation for the Court, to construe the other Expressions to be only Words of Heat; and that what he did was in the Heat of his first Passion, which was never cooled, and not out of Malice. As 1. It is found, that at the breaking up of the Company, Mr. Oneby had his Great Coat thrown over his Shoulders; from whence it would be a Strain, to think he then intended to fight with Mr. Gower. 2. It might be Mr. Gower, who shut the Door, who came back after he was out of the Room, the Jury not having found who shut the Door. 3. That it was found, there was no Reconciliation between them, from the throwing the Bottle at Mr. Gower. But as to the first of these Objections, considering the Words the Prisoner used after this, and after the Deceased was out of the Room, and what followed, since the Jury have found this Fact, without saying any more about it, the natural construction is, that this was only used by the Prisoner as a Blind to the Company, to conceal from them his real Intention, till they were gone out of the Room. As to the second;

it stands uncertain upon the Verdict; but it is an Uncertainty, which can have no Influence upon the present Determination; for if Mr. Gower had shut the Door; that would not alone have materially altered the Case. As to the third; since express Malice before appeared to be in the Prisoner, the finding that Fact does not import, that the first Heat of Passion continued only, but that the Malice continued.

The Counsel for Mr. Oneby farther objected, that it appeared there was a mutual Fighting after the Door was shut; for it is found that he received three slight Wounds; then it is not found, who drew first, or made the first Assault, after the Door was shut; and it was possible a new, sudden Quarrel might then rise, in which Mr. Gower might be the Aggressor, and therefore the Special Verdict was uncertain in a material Point. The Answer to which is, what is said in *Legg's Case, Kelynge 27.* cited before; that if *A* kills *B*, and no sudden Quarrel appears, it is Murder; for it lies on the Party indicted, to prove the sudden Quarrel; and therefore the Jury not having found any such Thing for the Prisoner's Benefit, it is to be took there was no such. This is said, supposing the latter Part of the Verdict could be considered, without regarding the former Part of it; and that when the Company went out of the Room, the Prisoner and Mr. Gower were reconciled: But however that might have been, here it appears there was no Reconciliation, and therefore there can be no Imagination of a new, original Quarrel in the Room after the Door was shut. And as to the slight Wounds the Prisoner received, that is immaterial; for he having Malice against Mr. Gower, though there was mutual Fighting, and the Prisoner was wounded, yet, when he killed Mr. Gower, it will be Murder.

The last Fact in the Special Verdict, which they relied on, was, when Mr. Gower was asked upon his Death-Bed, whether he had received his Wounds in a Manner among Swordsmen called *fair*? He answered, *I think I did*; whereby the Deceased shewed, he was satisfied the Act was fair. The Answer to which is plain; that if *A* have Malice against *B*, and they meet and fight, though the Fight is never so fair according to the Law of Arms, yet if *A* kills *B*, it will be Murder.

The Cases the Counsel for the Prisoner principally relied on, to make this Fact only Manslaughter, were *Rowley's Case, 12 Co. 87.* and *Turner's Case, Comberbatch 407, 8.*

As to *12 Co. 87.* the Case was, that two Boys fighting together, the one of them was scratched in the Face, and he bled a great deal at the Nose; and so he ran Three-quarters of a Mile to his Father, who, seeing him very bloody, took in his Hand a Cudgel, and went Three-quarters of a Mile to the other Boy, and struck him upon the Head, upon which he died; and it was held but Manslaughter, for the Passion of the Father continued. And there is no Time, that the Law can determine, that it was so settled, that it should be adjudged Malice prepense. (Note, *These are the Words of 12 Co. 87.*)

To which the Answer is plain, for the Reason given in *Gro. Jac. 296.* which is the same Case, that the Father having no Anger before, but being provoked upon the Complaint and Sight of his Son's Blood, and in that Anger beating him, of which he died, the Law adjudged it to be upon that sudden Passion. But that is, considering what has been said before, clearly distinguishable from the present Case; besides it may be added, it was but a little Cudgel he struck with, from which no such fatal Event could be reasonably expected.

Turner's Case was this; his Wife complained the Boy not cleaned her Clogs, upon which Mr. Turner took up a Clog, and struck him on the Head, and killed him; and though there was no other Provocation, it was held only Manslaughter. But the Reason of that was, because the Clog was so small, there could be no Design to do any great Harm to the Boy, much less to kill him; and a Master may correct a Servant in a reasonable manner for a Fault. And Lord Chief Justice Holt, in *Comberbatch 408.* says, that in that Case, it was an unlikely Thing, meaning that the Clog should kill the Boy. The Counsel for the Prisoner, being apprehensive of the Authority of *Mawgridge's Case*, besides the Observations they had made, mentioned before, to induce the Court to look upon that Judgment, as not warranted by Law, endeavoured to distinguish the present Case from it, supposing it to be Law. And 1st, They said, that, in *Mawgridge's Case*, the Bottle hit Mr. Cope, and stunned him; but here the Bottle did not hit Mr. Gower, but only brushed some Powder out of his Peruke. 2^{dly}, In *Mawgridge's Case*, the Bottle was full of Wine; here it is not found to have been so, and therefore must be took to have been empty; and the Size of the Bottle does not appear, it might be very small. 3^{dly}, *Mawgridge* drew his Sword immediately after throwing the Bottle, without Intermission; here Mr. Gower's Sword was first drawn. 4^{thly}, Mr. Cope never drew; here Mr. Gower not only drew the first, but Clashing of Swords were heard, so there must have been fighting.

It is very true (so far as these Facts will make a Difference) this present Case is distinguishable from *Mawgridge's Case*; for that Case was determined only upon an implied Malice (but, as I said before, was very rightly and justly determined, as we all agreed), for strictly and properly speaking, although the Word Express-Malice is mentioned in the Reasons given for that Resolution, yet it was but Malice implied. But still this way of distinguishing the present Case from *Mawgridge's*, will be of no Service to the Prisoner, because, though all the Judges held this Case was distinguishable from *Mawgridge's Case*; it was in respect that this was a much stronger Case as to the Murder, the Jury having found Facts which shew Mr. Oneby had an express Malice against Mr. Gower. Upon the whole Matter, this Court, with the concurrent Opinion of all the other Judges, is of Opinion, that the Prisoner at the Bar, *John Oneby*, by this Special Verdict, is found guilty of Murder.

Memorandum. As soon as I had delivered this Resolution, I desired my Brothers *Fortescue, Reynolds, and Probyn*, that if they disapproved any thing I had laid down, they would express their Disapprobation; but they publicly declared, they concurred in omnibus.

Major Oneby, observing that great Strefs was laid on that wicked and malicious Expression of his to the Deceased, *damn you, I'll have your Blood*; he declared, that as he hoped to find Mercy at the Hands of Almighty God, he never made use of that Expression. He then prayed to be recommended to his Majesty's Clemency, in regard to his long and faithful Services in the Army. As to the first, the Court told him, that as the Words

were sworn, and stood in the Special Verdict, his Allegation availed nothing: And to the second, That as that was a Court of Justice, he must apply elsewhere for Mercy.

The Prisoner being, after this Resolution pronounced, intitled by the Course of the Court to have four Days to move in Arrest in Judgment, he was sent back to Newgate, and a Rule for bringing him up to receive Judgment the End of the Week was made; before which Time, an Account came of the Death of his late Majesty at *Osnabrug*, the 11th of June. And afterwards, at the Time appointed by the Rule, he was brought to the Bar, and Judgment was pronounced against him, and Execution awarded (a). After which, a pretty strong Application was made to his Majesty King George the Second for a Reprieve; but he was pleased to declare, that the Judges having adjudged the Prisoner guilty of Murder, the Law should take its Course. In which Attempt, the Prisoner not succeeding, he killed himself in Newgate, in the Night before the Day appointed for his Execution, by cutting through the Great Artery in his Arm with a Razor, by which he bled to Death.

On Monday, the 19th of June, he was brought up, and objected, "That there was no Joinder of Issue, for want of a *Similiter* (b): but the Precedents in all capital Cases being in this Manner, the Objection was over-ruled. And Mr. Justice Fortescue, in a very serious Speech, pronounced the Sentence for his Execution; which was appointed for Monday the 3d of July. Upon the Morning whereof, he opened a vein, and bled to Death (c), to avoid the Infamy of an Execution."—He was buried in the Highway, with a Stake drove through his Body.

On his destroying himself, the following Account was published in a Narrative of his Life.

"John Onby—aged about 53 Years, was born at Barwell in Leicester-shire.—His Father was an Attorney, of an unblemished Character, and practised with great Success.—He took Care to bestow an Education on his Son John—as designing him for the Business of the Law; who accordingly served a Clerkship with a Gentleman of great Note and Eminence in his Profession: but proving a Youth of an aspiring and haughty Temper—his Head ran upon Things greater than the Provision they had made, or were capable of making for him.

"The Custody of the great Seal of England being committed to Sir Nathan Wright, a very near Relation of Mr. Onby's Mother; Application was made to this Gentleman, to bestow some genteel Employment on his young Kinsman.—But nothing greater than the Place of his Train-bearer could be procured.

"His great Spirit brooked with it for some Time, hoping that some-

"thing better would offer.—But as nothing did, he quitted the Lord-Keeper's Service, and took up a Resolution of going abroad into the Army.

"His Friends soon procured him a Commission, and he served in several Campaigns under the late Duke of Marlborough in Flanders, where he acquired the Reputation of a gallant Officer, he having distinguished himself in several Battles and Sieges, and received divers Wounds.

"He having once the Misfortune to quarrel with an Officer of Horse at *Bruges*, they went out together from the Camp, and fought. His Antagonist received a mortal Wound, and died the next Day. But this being done, as the People of Honour call it, fairly, Mr. Onby was called to a Court-Martial, and very honourably acquitted; and had now established that vain, empty Character, so much admired by too many in the Army, viz. of having felled his Man.

"The next Exploit of this Nature was performed by him at *Port-Royal* in *Jamaica*; where fighting a Duel with one Lieutenant *Tooley*, they were both desperately wounded. Mr. Tooley languished for about eight Months, and then died; but having been long before perfectly reconciled to Mr. Onby, the latter was never called in Question about his Death.

"Having served about 22 Years in the Army, and rising gradually, according to his Right of Seniority, he at length attained to the Rank of a Major in the Regiment of Dragoons, commanded by the Honourable Brigadier *Honeywood*. But upon the Peace of *Utrecht*—his Pay was curtailed, and a Stop put to his farther Preferment.

"In these Circumstances he returned to England, versed in all Kinds of Vice, particularly Gaming, to which he had much addicted himself in the Camp, and had there met several Revolutions of Fortune. Sometimes an auspicious Hand of Dice having enabled him to make an Entertainment for the chief Generals in the Army; his Ambition leading him to great Profusions that Way, when it has been in his Power. And at other Times his ill Luck has reduced him to scandalous Necessities. He now associated himself with the principal Gamesters of this Town, designing to support himself after their Example; and frequented all the public Places of Resort, where Gentlemen played, being seldom without Cards or Dice in his Pockets. And there is no Doubt, but it was he who conveyed the Dice upon the Table at the *Castle Tavern*, in *Drury-Lane*, which produced Gaming; the Consequence whereof was then the Murder of Mr. *Gower*; and since that, of himself."

III. The Trial of JAMES CARNEGIE of Finhaven, before the Court of Justiciary (in Scotland), held at Edinburgh, July 25, 1728, for the Murder of Charles Earl of Strathmore.

Curia Justiciaria S. D. N. Regis tenta in novo Sessionis Domo Burgi de Edinburgh, decimo quinto Die Mensis Julii, Millesimo septingentesimo vigesimo octavo, per honorabiles Viros Adamum Cockburne de Ormiston, Justiciarium Clericum, Dominos Jacobum Mackenzie de Roytoun et Gulielmum Calderwood de Poltoun, Magistrum Davidum Erskine de Dun, Dominum Gualterum Pringle de Newhall, et Magistrum Andream Fletcher de Miltoun, Commissionarios Justiciariorum dicti S. D. N. Regis.

Curia legitime affirmata.

Intran.

JAMES CARNEGIE of Finhaven, Prisoner in the Tolbooth of Edinburgh, Pannel, indicted and accused at the Instance of *Susanna Countess of Strathmore*, and Mr. *James Lyon*, Brother-German and nearest of Kin to the deceased *Charles Earl of Strathmore*, with Concourse and at the Instance of *Duncan Forbes*, Esq; his Majesty's Advocate, for his Highness's Interest, for the Crime of WILFUL and PREMEDITATE MURDER committed by him upon the Person of the said *Charles Earl of Strathmore*, as is more fully mentioned in the Indictment raised against him thereanent, which is as follows: "James Carnegie of Finhaven, now Prisoner in the Tolbooth of Edinburgh, you are indicted and accused at the Instance of *Susanna Countess of Strathmore*, and Mr. *James Lyon*, Brother-German and nearest of Kin to the deceased *Charles Earl of Strathmore*, with Concourse and at the Instance of *Duncan Forbes*, Esq; his Majesty's Advocate, for his Highness's Interest: THAT WHERE, by the Laws of God, the Law of Nature, the common Law, and the municipal Law, and Practice of this Kingdom, as well as the Laws of all well-governed Realms, WILFUL and PREMEDITATE MURDER, and all MURDER and HOMICIDE, or being Art and Part thereof, are most atrocious Crimes, and severely punishable; yet true it is, and of Verity, That you have presumed to commit, and are guilty, Actor, or art and part, of all, or one or other of the foresaid horrid Crimes: IN SO FAR AS, having a causeless Ill-will and Resentment against the deceased *Charles Earl of Strathmore*, you conceived a deadly Hatred and Malice against him; and shaking off all Fear of GOD, and Regard to the foresaid laudable Laws, on Thursday the Ninth of May, in this present Year, One Thousand Seven Hundred and Twenty-eight, or one or other of the Days of the said Month, about the Hour of Eight or Nine of the Night of that Day, or some other Hour of that Day or Night, upon the Street of the Town of *Forfar*, within the County of *Forfar*, you

did, with a drawn Sword, or some other offensive or mortal Weapon, without the least Colour or Cause of Provocation then given by him, invade the said deceased Earl, who had no Weapon in his Hand, and did basely and feloniously murder and kill him, by giving him a Wound therewith in the Belly, some Inches above the Navel, which, by following the Thrust with a second Push, went through the Intestines and the Back, a little lower than where the said Weapon entered the Belly: Of which Wound, after great Pain, on Saturday immediately thereafter, or in some short Space thereafter, he died; and so was cruelly and barbarously murdered by you. AT LEAST, at the Time and Place above-mentioned, with a drawn Sword, or some other mortal Weapon, without any just Cause or Provocation, you gave the said deceased *Charles Earl of Strathmore* a Wound in the Belly, which reached through the Intestines and Back, wherethrough he soon after fell down, and died at the Time foresaid. AT LEAST, at the Time and Place above described, the said *Charles Earl of Strathmore* was with a drawn Sword, or some other deadly Weapon, feloniously and barbarously wounded, and of the said Wound died within a few Days thereafter; and you were art and part in his Murder. By all which, it is evident, That you are guilty, art and part, of the Crimes of WILFUL and PREMEDITATE MURDER and HOMICIDE, or one or other of them, at the Time and Place, and in the Manner above set forth. And which Facts, or Part thereof, or your being art and part of any of the said Crimes, being found proven by the Verdict of an Assize, in presence of the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, you ought to be exemplarily punished with the Pains of Law, to the Terror of others to commit the like in Time coming."

Pursuers.

(d) Procurators in Defence.

Mr. *Duncan Forbes*, his Majesty's Advocate.
Mr. *Charles Arskine*, Solicitor.
Mr. *Alex. Hay*, Advocate.
Mr. *Patrick Grant*, Advocate.
Mr. *George Ogilvy*, Advocate.
Mr. *John Ogilvie*, Advocate.
Mr. *Hugh Dalrymple*, Advocate.

Mr. *Robert Dundas*, Advocate.
Mr. *James Fergusson*, Senior, Advocate.
Mr. *John Forbes*, Advocate.
Mr. *William Grant*, Advocate.
Mr. *James Paterson*, Advocate.
Mr. *George Smollet*, Advocate.

(a) Lord Raymond's Reports, Vol. II. p. 1499, 1500.

(b) Strange's Reports, Vol. II. p. 773.

(c) The Case was, He desired, the Morning of his intended Execution, to be still, that he might compose himself against the Coming of his Friends; about Seven, he said faintly to his Footman, who came into the Room, Who is that, *Philip*? A Gentleman coming to his Bed-side soon after, called *Major! Major!* but hearing no Answer, he drew open the Curtains, and found him weltering in his Blood, and just expiring. Mr. *Green*, a neighbouring Surgeon, was instantly sent for; but before he came, the Major was dead; he had made so deep a Wound in his Wrist with a Penknife, that he bled to Death. *Select Trials at the Old-Bailey*, Octavo, Vol. II. p. 153.

(d) Among the several Scotch Words in the following Trial—for *compared*, read *appeared*: for the *Pannel*, read the *Prisoner* or *Defendant*; for *Pursuers*, read *Counsel against the Prisoner*; for *Procurators in Defence*, read *Counsel for the Defendant*; for *Assize*, read *Jury*; for *affozie*, read *acquitt*: and when it is said *Bridgeton*, it means Mr. *Lyon of Bridgeton*; the Name of Place being the common Description in Scotland. As *Lochiel*, for *Cameron of Lochiel*; *Foulis*, for *Munro of Foulis*, &c.

The Libel being openly read in Court, and debate *viva voce*, in Presence of the Lords, they ordained both Parties to give in their Informations to the Clerk of Court, in order to be recorded; the Pursuers to give in theirs against Saturday next; and the Pannel's Procurators to give in his against Friday thereafter: And continued the Cause till the 1st Day of August next to come, at nine o'Clock Morning; and ordained Witnesses and Affiziers to attend at that Time, each Person, under the Pain of Law; and ordained the Pannel to be carried back to Prison; and granted second Diligence for the Pursuers against the Witnesses.

Information for Susanna Countess of Strathmore, and Mr. James Lyon, Brother-German to the deceased Charles Earl of Strathmore, and his Majesty's Advocate for his Highness's Interest, against James Carnegie of Finhaven, Pannel.

THE said James Carnegie is indicted and accused as guilty, art and part of WILFUL and PREMEDITATE MURDER; at least of MURDER and HOMICIDE: In so far as, upon the 9th of May last, upon the Streets of Forfar, with a drawn sword, he wounded the deceased Charles Earl of Strathmore in the Belly, some Inches above the Navel; which Wound went through the Intestines and the Back, a little lower than where the said Weapon entered the Belly; of which Wound he died soon after.

The Indictment, in the first Place, charges the Fact as proceeding from a causeless Ill-will and Resentment the Pannel had conceived against the Defunct, who, at the Time the Wound was given, had done nothing that could be pretended as a Colour or Cause of Provocation: And a Circumstance is noticed, from which it may be inferred, that there was deadly Hatred and Malice; namely, That after one Push there was a second, whereby the Wound went quite through his Body.

There is a second Branch of the Indictment, in which the Circumstance of *premeditated Malice* and *forethought Felony* needed not to be libelled; and he is charged only with *Murder or Homicide*, as separately relevant. And, lastly, Art and Part is charged upon him.

At calling before the Lords of Justiciary, against the first Branch of the Indictment, it was excepted, "That the Indictment was too general, particular Circumstances not being expressed from which the causeless Ill-will or Resentment mentioned, and forethought and premeditated Malice could be inferred, whereby the Pannel was deprived of the Benefit due to all Pannels, when tried for their Life, to exculpate himself, by shewing, that if at any Time, prior to the Time mentioned in the Indictment, there was any Appearance of Grudge or Quarrel between the Defunct and him, there was an After-reconciliation and entire Friendship: And it was said, That general Libels ought not to be sustained."

To this it was answered, That a previous Grudge is charged, and that the deceased was invaded without the least Colour or Cause of Provocation; which is the strongest Evidence of Forethought, especially when joined with this other Particular, that the first Thrust was followed with a second Push, which was a Mark of inveterate and relentless Malice; and that it was sufficient to charge a previous Quarrel in general, which would be made appear by the Proof. Nor will it be found, that in Libels of forethought Felony, it is usual or necessary to libel all the Circumstances from which the Forethought may be presumed, especially when the *species facti* is charged in that Manner, as affords the Presumption of Forethought, setting forth, That the Wound was given without the least Colour or Cause of Provocation on the Part of the Defunct at that Time. Neither can it be thought unfair with regard to the Pannel, who if he had any relevant Ground of Exculpation, would have Access to prove Friendship with the Defunct, to take off any Charge of precedent Quarrels, whereof he could not be ignorant. And still there must be left Ground of Complaint, where no good Reason of Exculpation is offered, whereby the Pannel can be allowed to adduce Proof, which it is believed is, without Contradiction, the Case upon the first Branch of the Libel.

As to the two last Branches of the Indictment, it was alledged, "That several Circumstances attending the Fact complained of were concealed, which, when opened, afforded the Pannel plain and obvious Defences; and therefore it was intimated, That the Pannel, a Person disposed to Peace, and in entire Friendship with the Defunct, chanced to be in Company with him about the Time charged in the Indictment, with one John Lyon of Bridgeton, and others: That Bridgeton gave him the highest Provocation, not only by Words, but by proceeding so far, as to throw him into a Kennel, where the Pannel was in Hazard of perishing, being extremely drunk: That getting up, heated with Liquor, and to extremely provoked, he drew his Sword, and pursued Bridgeton, and that the Defunct thrusting himself between them, casually received the Thrust aimed at another."

From these Circumstances, it was pled for the Pannel, "That if he did kill the Defunct, it was a mere Misadventure, rather a Misfortune as [than] a Fault, and in no Event could subject him to the *pœna ordinaria*; for that, *imo*, In these Circumstances had he killed the said John Lyon of Bridgeton, the Pain of Death could not have been inflicted either by the Law of God, the Common Law, nor by the municipal Law of this Kingdom, neither by the Laws of other well-governed Realms; particularly by the Laws of our neighbouring Nation, in regard the Fact was done of Suddenty, by a Person in Drink, and highly provoked."

And, *imo*, As to the Law of God, Chap. xxi. Ver. 13. of Exodus was appealed to, where it is said, *That if a Man lie not in Wait, there was to be a Peace appointed whither he should fly*; which seemed to require Forethought. And the xxxvth Chap. of Numbers, Ver. 22. where it was said, *That if any one thrust another suddenly without Enmity, the Congregation was to judge between the Slayer and the Revenger of Blood*; from which it would seem, that Slaughter or Suddenty was not punishable by Death.

To this it was answered, That in the Law of God the general Rule was, *Whoso sheddeth Man's Blood, by Man shall his Blood be shed*: And at the Hand of Man, and at the Hand of every Man's Brother, and at the Hand of every Beast was the Life of Man to be required, Gen. Chap. ix. That by the Law of Moses, Death of a Suddenty was plainly capital; nor had the Manslayer the Benefit of the City of Refuge, but where the Slaughter was mere Misfortune, and casual, which was plainly the Meaning of the Words in Exodus, *If a Man lie not in Wait, but God deliver him into his Hand*; which could not with any Propriety be understood of Slaughter

committed, where the Intention and Design antecedit *istum licet non con-gressum*.

And this Matter is clearly explained in the xxxvth Chap. of Numbers, where he who smites with an Instrument of Iron, is called a MURDERER; and where it is said, *That he who smites with a throwing Stone, or with a Hand-weapon of Wood, wherewith a Person may die, and he die, the Murderer is surely to be put to Death*. And then the Law proceeds plainly to treat of Cases, where Death ensues from Strokes or Thrusts of a Weapon not deadly, and there it requires indeed Hatred and Enmity; but if it be done suddenly and without Enmity, or (which is remarkable) in the 23d Verse; *With any Stone wherewith a Man may die, seeing him not, and was not his Enemy, nor sought his Harm*; then the Congregation was to judge between the Slayer and the Revenger of Blood. From which 'tis plain, that Slaughter upon Suddenty, even without Forethought or previous Enmity, was capital by the Law of Moses, if the Wound was given with a lethal [deadly] Weapon, except when it was done by mere Chance, *As by throwing a Stone, whereby a Man may die, the Person who throw it seeing him not, and so at no Time was his Enemy, or sought his Harm*. And this is the Case mentioned, Chap. xix. Ver. 4. Deut. where it is said, *Whoso killeth his Neighbour ignorantly, whom he hated not in Time past* (which is limited by the Example immediately subjoined to Homicide merely casual), *shall fly into one of these Cities, and live*. Now, in the present Case, the Nature of the Weapon and of the Wound are such, as clearly exclude founding with any Colour upon the Disposition of the Law of Moses, though the Question were of the Pannel's claiming the Benefit of the City of Refuge. But neither is it an Argument of any Force to plead, that where the Benefit of the City of Refuge was granted, that by the Law of Nature the Crime was not capital; for the Revenger of Blood could never have been tolerated to kill without the City of Refuge, where innocent Blood was spilt, whereby the Land must have been polluted, and the Subjects were permitted impune, so notoriously to break in upon the established Laws of Nature; and therefore, though it is an Argument of unavoidable Force, that where-ever, by the Law of Moses, capital Punishments are allowed, such Punishments are lawful: But the Argument is not of equal Strength, that where the Powers of the Law were suspended by the *jus asyli* established by positive Precept, that therefore, in Countries where there is no such Privilege, either by the Laws of God, or the Laws of the Land, that there the Punishment is not to be capital, where the *jus asyli* could have been claimed.

2do, It was contended, "That by the Common Law, not only *dolus*, but *propositum* was necessary; and that Slaughter committed *impetu et rixa* were not to be punished capitally." And to this Purpose, the Authority of the learned Voet. was cited, who seems to say, *That in rixa, if the Person cannot be discovered who gave the deadly Wound, the ordinary Punishment should not take Place*.

But when this Matter is considered, it is plain there arises no good Argument for the Pannel from the Common Law: For though there is a Difference to be made between *propositum* and *machinatio premeditata*, and sudden Passion and Heat of Drink, determining the Will to commit the Crime; yet as Laws were made and became necessary, chiefly from the depraved Passions of Mankind, they cannot afford a sufficient Excuse against the ordinary Punishment of an atrocious Crime; and there is *dolus*, when a Crime is even committed of a sudden, although there be no Forethought: So it is commonly said, that Opportunity makes the Thief, and Theft is committed *impetu*, nevertheless not without *dolus*. Nor is it necessary to prove or libel a Forethought in the Commission of the Crime. In the same Manner Passion or Provocation may unfortunately determine the Will to the Commission of a horrid Crime; but it would be of dangerous Consequence to allow of Bloodshed under Colour of Passions which Men ought to subdue, or of Drunkenness which they ought to avoid, or of a sudden vicious Turn of Mind; and therefore, in the Roman Law, whoever committed Slaughter *dolo malo*, whether deliberately and upon Forethought, or of Suddenty, was to be punished *ex lege Cornelia de Sicariis*: And to show that it was sufficient, that the Design should only precede the Act from which Death followed, and not the meeting of the Persons, as the Acts of the Mind are only to be known by external Circumstances; the Kind of Weapon, in the same Manner as in the Law of Moses, was sufficient to found a Presumption of such *propositum*, as, joined with the Act of Killing, brought the Manslayer under the *pœna legis Corneliae*: So in the l. 1. § 3. ff. *ad legem Cornelianam de Sic.* it is said, *Si gladium strinxerit, & in eo percusserit, indubitato occidendi animo id eum admisisse*; and if prior Forethought had been necessary, the Kind of Weapon could not possibly have founded a sufficient Presumption: But as it manifestly made appear the Intention to kill, whether that Intention had its Birth from Passion or Drink, it was voluntary Slaughter, done *dedita opera*, and therefore to be punished capitally. And the Passage cited from the learned Voet. rather confirms this Doctrine, *That if in rixa, which must suppose Suddenty, the Person who inflicted the mortal Wound was discovered, he was to be subjected to the ordinary Punishment*. And the same Author, § 9. of that Title, observes, *That though such as commit Slaughter, calore iracundiae, may be said impetu delinquere*; yet there *neque judicium, neque assensus animi, neque voluntas dest*; and says, *That a Person provoked by verbal Injuries, how great soever, was not free from the pœna ordinaria*. And the Truth is, if Passion and Provocation were sufficient to excuse Slaughter, it were in vain to lay down the Rules so anxiously conceived in the Laws concerning the *moderamen inculpatae tutelae*, where the Slayer must prove that he was *constitutus in periculo vitæ*. And had the Case stood otherwise in the Roman Law, it could never have been doubted, when Jealousy was the Rage of a Man, and Adultery the highest Provocation against a Husband, and a real Injury; the Question could never have been stated to be determined by the Emperor, as in l. 38. ff. § 8. *ad legem Julianam de adult.* Whether a Husband, *impetu tractus doloris, uxorem in adulterio deprehensam interfecerit*, was liable to the *pœna legis Corneliae de Sicariis*? And who, by that Decision, upon the peculiar Circumstances of the Case was excused [exempted], and nevertheless made subject, *si loci humilis*, of being condemned *ad opus perpetuum*, and if *honestior* was to be condemned *relegari in insulam*. But as the Case must be determined upon the Law of Scotland, it is unnecessary to dwell too long upon the Arguments drawn from the Roman Law.

3tio, It was contended for the Pannel, "That by the Law of Scotland, Slaughter and Murder were of old different Species of Crimes, and only Murder

"Murder committed upon forethought Felony was properly computed Murder, and punished as such; but that Slaughter committed upon Suddenness, or *chaud melle*, and in *rixa*, was deemed only *homicidium culposum*, and not punishable by Death." And to support this Position, several Acts of Parliament were appealed to, by which it was statuted, That Murder was to be capitally punished; but *chaud melle*, or Slaughter committed upon Suddenness, was to be punishable according to the old Laws: And that in this Case, if the Pannel had even killed *Bridgeton*, at whom he aimed the Thrust, in the Circumstances above set forth, it was not Murder upon Forethought, but upon Suddenness and high Provocation.

To this it was answered, That this Doctrine, so directly contrary to the received Opinion, had little Countenance from the old Laws and Acts of Parliament, less from the constant Practice before the Act of Parliament King Charles II. in the Year 1661, and stood in plain Contradiction to this last Law, and the constant Practice and repeated Decisions of the Court of Justiciary from that Time down to this Day.

By the old Law, particularly Chap. 3. of the first Statutes of King Robert I. intituled, *Men condemned to the Death should not be redeemed*, IT IS STATUTED AND ORDAINED, GIFF ANY MAN, IN ANY TIME COMING OR BYGANE, IS CONVICT OR ATTAINTED OF Slaughter, REIF, OR ANY OTHER CRIME TOUCHING LIFE AND LIMB "COMMON JUSTICE" SHALL BE DONE UPON HIM, WITHOUT ANY RANSOME." Here Slaughter in general is mentioned, and Justice was to be done upon the Person convict of it, and the Punishment by the Title was plainly Death: So that, at common Law, Slaughter in general was capital. The next Paragraph does indeed save the King's Power (which must be the Power of pardoning), and the Liberties granted by the King to the Kirk and Kirkmen, and other Lords; which must be understood of special Immunities in the case of Manslaughter: For no Privilege was to protect against Murder upon Forethought; and the Exception confirms the Rule.

By Chap. 43. of the Statutes of King Robert III. it is statuted, THAT NA MAN USE ANY DESTRUCTION, HERSHIPS, BURNING, REIF, Slaughter, IN TIME TO COME, UNDER THE PAIN OF TINSSEL OF LIFE AND GOODS: Whereby the Pain of Death is clearly made the Punishment of Slaughter in general. And in the immediate subsequent Chapter, the Sheriff was to take diligent Inquisition of Destroyers of the Country, or such as had destroyed the King's Lieges with Herships, Slaughter, &c. and was to take Bail from them, if arrested, to compare at the next Justice-ayr; and if Bail was not given, the Sheriff was to put him to the Knowledge of an Assize: And *gif he be taint with the Assize for sic an Trespasfour*, it is said, HE SHALL BE CONDEMNED TO DEATH: Which seems only to relate to Manslaughter, and not to Murder upon forethought Felony, which was one of the Pleas of the Crown, to be tried only before the King's Justiciar; as is evident from Chap. 11. King Malcolm II's Laws; and Chap. 13 and 15. whereas Slaughter might be tried by the Sheriff, where there was a certain Accuser, as appears from Book I. of the *Regiam Majestatem*, Chap. 1. § 7, 8, 9.

There are sundry others of the old Statutes, that seem plainly to presuppose that Slaughter was capital, and particularly these of Alexander II. Chap. 2. § 3, 4, 5, 6. And so *Stene*, in his Treatise of Crimes, Tit. 2. Chap. 6. says, That Slaughter in *rixa*, or *chaud melle*, is generally punished by Death, and Confiscation of the moveable Goods pertaining to the Trespasfour; but with this Difference, that the Girth or Sanctuary was no Refuge to him who commits Slaughter by forethought Felony, but he should be delivered to the Judge Ordinary, to underly the Law: Which plainly appears from Act 23. Part 4. James V. whereby Masters of Girth are ordained to deliver up such Persons as are guilty of Murder upon forethought Felony. And it is in vain to found upon Law 90. Part 6. James I. which says in the End, GIFF IT BE FORETHOUGHT FELONY, HE SHALL DIE THEREFORE; because the Act relates to all Manslayers; and though that particular and most atrocious Species be mentioned, as that for which the Murderer should die, yet the Argument will not hold, That therefore no other Kind of Slaughter was capital: For it is there said in the general, That if the Slayer is taken with red Hand, the Law shall be done upon him within that Sun; which cannot be understood of a Crime not capital. And Sir George Mackenzie, in his Observations upon it, says, *This may seem to imply, that Men die not for Murder committed without forethought Felony; but this holds not in our Law, for Murder, though committed without forethought Felony, is punishable by Death, except it was either casual, or in Self-Defence.*

The Act 51. Part 3. James I. was improperly founded on by the Pannel's Procurators; for that Act does no more than extend the Difference between forethought Felony and *chaud melle* to all Transgressions as well as Slaughter; as Sir George Mackenzie observes upon that Law, where he says, That *chaud melle*, or *homicidium in rixa commissum*, is capital by our present Law.

That Criminals who resorted to, and took Sanctuary in Churches, had Protection, though their Crimes were capital, is extremely plain from Chap. 6. of the Statutes of K. Alexander II. where it is said, *That Thieves and Reivers who fly to holy Kirk, if moved with Repentance, he confits that he has bewily sinned, and for the Love of God is come to the House of God for Safety of himself, he shall have Peace in this manner, That he shall not lose his Life nor Limb, but restore what he had taken, and satisfy the King, and swear upon the Evangel, That for thereafter, they shall never commit Reif nor Theft; but if he declared himself innocent, he was to be tried.* And in the last Paragraph of that Chap. it is said, *Moreover Manslayers, &c. if they fly, in manner foresaid, to the Kirk, the Law aforesaid shall be kept and observed to them.*

There seems to have been this other Difference too, by the Books of the old Law between Murder upon Forethought and Slaughter, that the Trial of Murder was summar, whereas Manslaughter could not be tried till after forty Days, as appears by the Statutes of Robert II. from Chap. 3. to Chap. 9.

After the Reformation, when the *jus asyli*, formerly given to Churches, dropped, the Distinction between Murder and Manslaughter was looked on with less Attention, and Libels were commonly framed indifferently, for Murder, and Slaughter in general, without any Mention of forethought Felony; nor was it ever objected, that Malice or premeditate Design was requisite to make the Crime capital: And Criminals were punished to Death, where from the Proof there was not a Colour or Pretence of Forethought, or any premeditate Design; as will appear from looking into the Books of Adjournal. And many Instances might be given, particularly in the Case of *Jean Currie* against *William Frazer*, the

last of July, 1641; where the Pannel was condemned upon an extra-judicial Confession, administered with other Circumstances; in which he set forth the Fact, that the Defunct and he had some little Quarrel about a Staff; and hearing that he had murdered his Brother, he came into a House where the Defunct was; and that either the Defunct, or some other that was by, took the Pannel by the Arm, to hold him: Having freed himself, he aimed a Stroke with a Whinger at the Defunct's Arm; but missing it, he struck the Defunct about the Pap: And upon this Proof, he was found guilty, and executed.

In the Case of *Bruce* against *Marshall*, the 3d April, 1664. Slaughter was libelled; and he was condemned upon his own judicial Confession: From which it appears, That he was so far from having any Forethought, that he suffered not only the greatest Provocation in Words, but was even beat with Hands and Feet by the Defunct while he was on the Ground; but at last getting up, and (as the Confession bears) being overcome with Passion, he drew a Knife, and struck at him in two several Places of his Body, whereby he died. And upon this Confession, where there was Suddenness, Provocation and Passion, he was brought in as guilty, and condemned to be beheaded.

The Law remaining somewhat uncertain concerning casual Homicide, and there being no longer any Benefit of Girth as formerly; in the Year 1649, an Act was past during the Usurpation, for removing all Question and Doubt that might thereafter arise in criminal Pursuits for Slaughter, ordaining, that the Cases of Homicide after following, *viz.* casual Homicide, Homicide in lawful Defence, and Homicide committed upon Thieves and Robbers, should not in Time coming be punished by Death, notwithstanding any Laws or Acts of Parliament, or any Practick made heretofore, or observed in punishing of Slaughter. And this past into a Law after the Restoration in the Year 1661; and at the same time, all Decisions given conform to this Act, since the 4th of February 1649 Years, are declared to be sufficient to secure all Parties interested, as if the Act had been of that Date; which was necessary, because the Acts during the Usurpation had been rescinded: And this Law has ever been looked upon as the Standard. And the Practice of the Court of Justiciary, since that Time, clearly demonstrates, that Slaughter of Suddenness, and Slaughter upon Provocation, which could not be brought under one or other of the Particulars there mentioned, have been taken to be capital.

The Procurators for the Pannel here observed, "That though in the Cases there mentioned, the Law ordained Slaughter not to be capital, yet it neither said, nor supposed, that the former Law, whereby Pannels were intitled to plead against a capital Punishment, was thereby abrogated, but only statuted in the Cases there mentioned."

To this it was answered, That the Narrative of the Statute was for removing of all Question and Doubt that may arise thereafter in criminal Pursuits for Slaughter, and consequently cannot be supposed to have left doubtful Cases, that the Pannel's Procurators must admit were not so clear as casual Homicide, and Homicide in Defence: nay, the Law seems to suppose pretty plainly, that all Slaughter by the Laws and Acts of Parliament, or Practicks, was capital, not declaring what was Law from any other Period than the Year 1649, but enacting the same with a *non obstante*, and judging it necessary to confirm the Decisions that had past, conform to that Act during the Usurpation, which would have been vain, if it had not been at least doubtful, whether casual Homicide, Homicide in lawful Defence, and Slaughter committed upon Thieves and Robbers, did not subject those guilty to the Pain of Death: And if those Degrees of Homicide were so much as doubtful, it is not possible to conceive that *chaud melle*, or Slaughter committed, *ded ta opera*, though without Forethought, was, by the Law of Scotland, not capital. Or if it should be supposed to have been doubtful, whether these last Degrees of Homicide were capital: that the Legislature, upon a Narrative, that all Question and Doubt that might arise hereafter in criminal Pursuits for Slaughter, should be removed, would have enacted in the clearer Cases, with a *non obstante*, and left the more difficult in the dark, as surely the greatest Advocates for Slaughter on Suddenness must admit, that, at least, it is more culpable than either Homicide merely casual, or Homicide in lawful Defence.

The Argument drawn from the Rubrick of the Act, which mentions Degrees of casual Homicide only, can conclude no more, than that the Title is imperfect; and it would be resting too much upon an Argument *à rubro*, to make it defeat what is said in the Law, That all Questions concerning Slaughter were thereby to be removed, and which opposes casual Homicide to Homicide in lawful Defence; and consequently cannot under the Words, *casual Homicide*, comprehend all Slaughter not upon forethought Felony. And Sir George Mackenzie in his Observations upon the Act takes notice, that the Title is very ridiculous, and consequently no Argument can be drawn from it.

One Thing may not be improper to notice, is, that if killing by forethought Felony was the only Species of Slaughter capital, the Crown was disabled from pardoning any capital Slaughter whatsoever, which does not appear to have been the Opinion of our Lawyers.

As to the Decisions subsequent to this Law, they will be found entirely agreeable to the Doctrine now laid down; Sir George Mackenzie observes, that tho' many Lawyers are positive, that tho' *homicidium in rixa*, even where the Author of the Plea is known, may by the Rigor of Law be punished by Death, yet that no Country uses this Rigor; yet he remembered, that in *William Douglass's* Case, this was urged, and albeit it was not proven that he was the Killer, yet the Assize found him guilty, and he thereupon died. This is a Case more favourable, than where the Person that gave the mortal Wound is known, though given suddenly, and even upon Provocation; and therefore shews what our Law is, and with how little Reason the Procurators for the Pannel maintain their Argument upon the Law of Scotland.

In the Case, his Majesty's Advocate against *Nicolson*, the 24th June, 1673. Murder and Slaughter, without Forethought, were charged upon *Nicolson*, the Pannel; and his Procurators pleaded the Benefit of the Act of Parliament anent casual Homicide, in the several Degrees thereof, he being in a Condition that he was not able to remember. To this it was answered, That the Defence was not relevant, in regard the Homicide could not be said to be casual, such as the Case of throwing of Stones over Dikes, and accidentally killing a Passenger: And the Pannel having afterwards proponed a Defence, That being in use to carry a Gun as a Fowler, and calling ac-

cidentally for Meat to his Dogs at a Mill, the Defunct fell upon him, and offered to secure him as a French Soldier, or fit to be one; in the Struggle, his Gun being half bent, went off, and killed the Defunct: Both the Libel and Defence were found relevant, and it appeared upon the Proof, that Nicolson was drunk, and that there was no previous Quarrel; but taking Exception at somewhat the Defunct said, he shot him with his Gun; and by the Verdict of the Assize, he was found guilty of the Slaughter committed upon the Defunct, and sentenced to have his Head struck off in the Grass-market; which shows that neither Drunkenness nor Suddenness is a relevant Defence against the *pœna ordinaria* in Slaughter.

And, in the Case of *Murray contra Gray*, 10th June, 1678, the Lords found the Libel relevant, and that there was no Necessity of any distinct Probation for proving premeditated Malice; which clearly shows that Slaughter, other than upon Forethought, was capital. And to show that Provocation and Passion are not received as Defences against the *pœna ordinaria*, a Multitude of Decisions might be brought, particularly in the Case of *Aird*, who was indicted in 1693, for the Slaughter of *Agnes Bayne*, having given her some strokes on the Side and Belly with his Foot, by which she fell into Fainting-Fits, and immediately died. The Defence was, *great Provocation and casual Homicide: Provocation*, in as far as she threw a Chamber-Pot in his Face; and when he gave her hard Words, she and her Neighbours fell upon him, and beat him; upon which he gave her the Strokes above-mentioned. And in that Trial it was argued, there was no *animus occidendi*, no previous Malice, no mortal Weapon; and the Texts from Scripture urged in defence of the present Pannel, and the Arguments from the civil Law, and from our own Acts of Parliament were urged: Nevertheless the Lords found the Libel relevant, repelled the Defences; and, upon the Proof, he was sentenced to die.

In the Case of *William Carmichael* in 1694, Drunkenness was founded on to excuse a *pœna ordinaria*, and Forethought was neither libelled, nor proven; and the Lords found the Libel relevant, and, upon the Proof, he was sentenced to be hanged.

In the Year 1695, *George Cuming*, Writer in Edinburgh, was indicted for the Crime of Murder or Manslaughter of *Patrick Falconer*; the Defences now offered for the Pannel, upon the Distinction in the old Law, between Forethought and *chaud melle*, were offered; nevertheless the Libel was found relevant, and the Assize returned a Verdict guilty of Manslaughter; upon which he was condemned to die.

In the Case of *Burnet of Carlops*, the 22d January, 1711, though a Defence was sustained, yet the Libel without Forethought was found relevant: And in that of *Hamilton of Green*, the 30th June, 1716, the Pannel offered to prove, That he was accidentally at the House of *Thomas Arde*, of whose Murder he is accused, at the Day libelled, with some of his Acquaintances, and had no deadly Weapon along with him; That he became inebriated to a great Degree, and having left the House, and returned to ask for the Slip or Cover of the Sheath of a Sword, the Defunct gave him most indecent, injurious and scurrilous Language, and persisting in it, the Pannel pushed, or struck at him with his Sword, having the Scabbard thereon, that he had Reason to believe had a Crampet upon it: And being still more and more provoked by repeated, injurious Words, to protect himself from further Insolence he had Reason to look for, the Pannel still remaining on Horseback, the Defunct rushed himself upon the Sword. And this circumstantiated Fact was offered to be proven. Nevertheless the Libel was found relevant, and the Pannel's hail Defences repelled, and, upon the Proof, was sentenced to have his Head severed from his Body; and was accordingly beheaded.

In the Case of *Thomas Ross* and *Jaffrey Roberts*, the 20th July, 1716, it was pled for the Pannels, that being Recruits lately come from England to Scotland, and not knowing the Way, they asked the Defunct the Road to Edinburgh, who refusing to shew it, and one of the Pannels expostulating with him, why he treated a Stranger so, that came to serve the King? He uttered very disrespectful Words with respect to his Majesty; and one of the Pannels having called him Villain for such opprobrious Expressions, he came up to *Ross*, and with his Fist gave him a Blow on the Face, and then pulled him down to the Ground, and beat him with a great Stick, to the imminent Danger of his Life, saying, That he should never go alive out of his Hands: And *Roberts* having come to his Assistance, and rescued him a little; *Ross*, the Pannel, gave the Defunct a Wound with a Knife, whereof he died. *Ross* pleaded There neither was nor could be forethought Felony, or premeditated Malice, against a Person whom he had never seen before: That it was committed upon Suddenness: That he had the highest Provocation, both verbal and real. Nevertheless, by the Interlocutor, *Ross*, the Pannel, his giving the Wound was found relevant to infer the Pain of Death. And the Defence from Provocation by Words, and receiving a Blow on the Face, being pulled down to the Ground, and beat with a great Stick to the Danger of his Life, jointly sustained relevant to restrict the Libel to an arbitrary Punishment, was found to be elided by the Reply, That, at the time of giving the Wound to the Defunct, the Defunct's Hands were held by *Jaffrey Roberts*, the other Pannel. From whence, 'tis evident, that Slaughter upon Suddenness, in *rixa* or *chaud melle*, and by a Person who had received the greatest verbal and real Injuries, even beyond that of being thrown into the Kennel, of the Nature that is set forth into which the present Pannel was thrown, is by that Interlocutor found *homicidium dolosum*, and not *culposum*, but capital.

And, in a very late Trial, in the Case of *Davidson*, the Soldier, Slaughter upon the greatest Suddenness was sustained, and he was upon the Proof executed.

And the Judgment given in 1717, in the Case of *Brock* and *Lindsay*, determines this Point beyond all Dispute. These Pannels were accused of the Murder of one *Anderson*: And as the Libel did expressly set forth a Quarrel and a Struggling betwixt the two Pannels and the Defunct, which made it directly an *homicidium in rixa*; so the Pannels, at least *Lindsay*, offered a pretty strong Defence, namely, that the Defunct, without any Provocation, justled them, and struck at *Lindsay*, and beat him down to the Ground; and it was while they were on the Ground, the Wound was given. And the Defence was pled for two several Purposes: First, That the Crime was not capital, because no forethought Felony. And, 2dly, To intitle them to the Act of Indemnity, under which all Homicides were included, except wilful Murder, and Slaughter of forethought Felony. And the Interlocutor upon the Relevancy was in thir Words, Find the Pannels, or either of them, at the Place and Time libelled, their giving *Archibald Anderson* a Cut or Wound in the Neck or Throat, or other mortal Wound, with a Knife or other mortal Weapon, whereof he, the Defunct, soon

thereafter died; or that the said Pannels, both or either of them, were art and part therein, relevant to infer the Pains of Death, and other Pains libelled: And repel the bail Defences for the Pannel, excepting that Defence pled upon his Majesty's gracious Act of Indemnity; against which the said Lords superseeded to give their Judgment, till the Conclusion of the Probation, and Return of the Verdict.

This then is an undoubted Authority, that Homicide may, by the Law of Scotland, infer the Pain of Death, though it be neither wilful Murder, properly so speaking, nor forethought Felony; otherwise the Court could not have found the Crime relevant to infer the Pains of Death, and at the same time reserve the Consideration, whether there was any forethought Felony, or not.

Upon this Interlocutor a Proof was adduced, and a Verdict returned, finding *Lindsay*, one of the Pannels, guilty; and yet the Court having resumed the Consideration of the Indemnity, found him intitled to the Benefit of it: That is, in other Words, they found the Crime was neither voluntary Murder, nor Slaughter of forethought Felony. So that 'tis plain, had not the Indemnity intervened, *Lindsay* must have suffered Death for killing, though there was no previous Design of Forethought.

And an Interlocutor upon the Relevancy, much to the same Purpose with the former one, was also pronounced, the 31st of August, 1721, in the Case of *Samuel Matthews*, a Soldier; where the Libel was found relevant to infer the Pain of Death, reserving the Consideration of another Act of Indemnity then pled for the Pannel.

It would be in vain, and lengthen a Paper already too long, to run through all the Decisions which shew, that neither the Drunkenness of the Pannel, nor Provocation given him, nor the Suddenness upon which the Fact was committed, can afford a Defence to the Pannel, to exculpate the Slaughter, or lessen the ordinary Punishment: And therefore the Pursuers shall leave the first Branch of the Defence with the Lords, with this Observation, that if it is really founded in Law, by looking into the Books of Adjournal, one would think our Law has hitherto been very ill understood.

2do, It was offered, what indeed is alone applicable in the present Case, "That if the Pannel intended only to wound or kill *Bridgeton*, and by Misadventure the deceased Earl of *Strathmore* was wounded, and of that Wound died, the *pœna ordinaria* was not to be inflicted."

It was answered, That according to the Rules of the civil Law, he who intending to kill one, kills another, is nevertheless subject to the *pœna ordinaria*; so *Julius Clarus* delivers his Opinion in his *Receptæ Sententiæ*, lib. 5. § *homicidium*, N. 6. where, after having taken notice, that the contrary was indeed the Opinion of some, adds, *Sed certe ego si casus contingeret, illi facerem caput amputari*. And the learned *Mathæus*, lib. 48. tit. de *Sicariis*, § 12. gives the same Opinion, observing that the Act is consummate, there is *animus* or Design of killing, and Death: That it would be a ridiculous Defence, that the Pannel intended to steal the Goods of one Man, but happened to steal those of another; or against Adultery, that he intended to defile one Man's Wife, and happened to light upon that of another: And he thinks 'tis as unreasonable to hope for Safety from this Defence, that the Meaning was to kill one, but another received the Stroke, and died.

Vet. in his Commentary agrees with them, lib. 48. tit. 8. n. 2. where he says, that there is no Difference, *Sive vulnus in titium directum ab eo declinatum, Mævio in proximo stanti lethale fuerit, sive denique occidatur quæ cædis impediendæ causa, sese medium inter aggressorem & defendentem interposuerit: quia prævalet, quod principale est, nec error talis tollit aut occidendi animum, aut eadem lege Cornelia vindicandum*. And for this not only founds upon the l. 18. § 3. & § ult. ff. de injur. and l. 5. § 1. ff. de serv. corrupto; but adds the Authorities of *Farinacius*, quæst. 125. n. 156 & 157. as also, that of *Pachinæus*, *Carpzovius* and *Berlichius*. and others. And this Opinion obviates the Defence, as put in its most favourable Light, which however would be of very delicate Proof, that the Defunct thrust himself between *Bridgeton* and the Pannel, and received the Stroke aimed at the other.

The learned *Sande*, lib. 5. tit. 9. defin. 6. which has this Title, *Qui alium pro alio occidit, nihilominus ordinaria, l.g. Cornel. pœna afficiendus*, says, after agreeing, that, according to the Roman Law, such Error would not have excused the Murder, *Hæc sententia ubique usu obtinuit, & secundum eam, reus ad mortem condemnatus & decapitatus est*, 17th November, anno 1621; and there alledges the Authority of *Gomesius*, *Emanuel*, *Soir*, and *Carolus Molinæus*, *Qui alios cumulat*, in his Book *ad consuetudines Parisienses*. And Sir *George Mackenzie* in his Criminals, tit. Murder, § 9. says, after stating the Question, "Yet I think he should die, seeing the Design of killing a Man, and not any particular Man, is Murder; and the Killer intended to deface GOD Almighty's Image, and to take from the King a Subject."

'Tis nothing to the Purpose, that some of the Authors who write upon the Roman Law, are of a different Opinion, in a Case not determined in Words by the Text, when the Bulk of the Commentators are of the other Side, the most recent and of greatest Authority; and when it appears to be received as a Rule by the Practice of Nations, that the ordinary Punishment should be inflicted. And it may not be improper to observe, that the Cases where Lawyers dissent from the received Opinion, are generally unjustifiable Homicide, that is, where the Bystander was killed, when the Killer intended to execute his Purpose in lawful Defence, and not in *homicidio culposo*, which is the highest the Pannel's Case could possibly be pled upon Provocation, according to any Opinion delivered by the strongest Advocates for the Question the Pannel pleads.

That it is not always necessary, that the Intention should be directed towards the Mischief done, in order to inflict the Pain of Death, must be evident from looking to the *xxi. Chap. of Exod. Ver. 22. and 23. where, If a Woman with Child is hurt when men are striving, and Mischief follow, Life is to be given for Life*. And the Kind of Killing now in question was plainly such as, according to the Law of *Moses*, would not have intitled the Slayer to the Benefit of the City of Refuge: For though in the *xix. Chap. of Deut. Ver. 4. Who killeth his neighbour ignorantly, whom he hated not in time past*, is said to be intitled to that Privilege; yet this is limited immediately with an Example of Manslaughter merely casual.

The Procurators for the Pannel insisted, "That this Kind of Killing was intirely casual, beyond, and without the Intention of the Party: That in the Case of *Masson*, in the Year 1674, *Burnet of Carlops*, and several others, where it appeared there was no Intention to Kill, the Punishment was mitigated."

It was answered, That where, from the Nature of the Weapon, and Means by which the Wound was given, taking all the Circumstances together, there was no Evidence or Presumption that the Pannel intended Death to any Person whatsoever; and the *propositum* was neither proved, nor could be presumed, as in the Case of *Maffon*. And in that of *Burnt of Carlops*, where Persons having Swords, only struck with Staves, it was held as approaching towards a casual Homicide. But that can never be pretended, when the Wound given as libelled was so clearly mortal, and the Instrument the most lethal [deadly]; and the Decision of *Carlops*, even with that Difference, stands single in the Books of Adjournal.

It was further contended for the Pannel, "That as *animus occidendi*, and Death following, are admitted to be necessary, in order to inflict the highest Punishment; so as from the Circumstances mentioned in Exculpation, 'tis evident there was no Intention against the Defunct: And it cannot be known whether the Pannel's Design was to kill *Bridgeton*, since he was not killed, or if the Wound would have been mortal, had the Sword reached him; and consequently the necessary Requisites to constitute a Murder, were not to be found here."

It was answered, That the Invasion with a mortal Weapon, with which the Defunct was killed, was a sufficient Proof in Law that the Invader intended to kill, since Death followed; and that there is no wounding by Measure, and Certainty not to kill. The Act implies *dolus* and Malice, which, with Death following, makes Murder, without any further Proof of an Act of the Will to kill; and there would have been as little Evidence that the Pannel intended to kill *Bridgeton*, if he had actually received the Wound and died, because it was possible the Sword might have pierced further than he intended; and if he did not design to kill *Bridgeton*, and killed the Defunct, he must have been the Person against whom the Mischief was directed. As indeed it may be argued from the Rage and Drunkenness pled in Excuse and Defence, 'tis possible that *ex rabie* he intended to kill whomever he met with; and if Rage from Passion and Drink is allowed to palliate Murder, 'tis impossible any one can be safe. And these very Circumstances, without which the Defence has not a Colour, must, at the same Time, give Evidence, that the Pannel's Intention of pursuing *Bridgeton* with a Sword, was to kill and destroy him; for he pleads them to excuse his killing of the Defunct, as sufficient Provocations to incite him to it.

The Law of England was frequently mentioned by the Procurators for the Pannel in the pleading, as what would justify the Arguments brought for them; and particularly it was said, "That all Killing of a Sudden by that Law, was only Manslaughter, and not Murder." But the contrary will appear, by looking into *Hawkins's Pleas of the Crown*, Book 1. Chap. 31. of Murder, where he clearly distinguishes between deliberate Murder, and Murder committed on a sudden: And in this last Case, Malice prepensed is, by the Law of England, often implied, as Lord Chief-Justice *Kylinge* lays it down, *Regina versus Mawgidge*, and justifies it by the Case of *Holloway*, who espying a Boy that came to cut Wood, took him, and tied him to an Horse's Tail with a Cord, and then gave the Horse two Blows, whereby he run away, and broke the Boy's Shoulder, whereof he died; which must have been sudden, and was adjudged Murder. And pag. 130, he supposes A to have been provoked by B, and to have drawn his Sword, and made a Pass at him, when B had no Weapon drawn, but missed him; thereupon B draws his Sword, and passes at A, and there being Interchange of Passes between them, A kills B. I hold, says the Author, this to be Murder in A, for A's Pass at B was malicious, and what B afterwards did was lawful. Here is both Suddenity and Provocation, and yet, in the Opinion of that great Lawyer, it would have been held Murder. And in the present Question, neither *Bridgeton*, nor the Deceased, had any Weapon drawn.

And to shew, that according to the Law of England, the aiming at one, and hitting another, does not make Death following Manslaughter; in the End of the next Page he sets down the Case of Dr. Williams, a *Welshman*, who having a Leek in his Hat, upon St. David's-Day, a certain Person pointed to a Jack-of-Lent that hung up hard by, and said to him, Look upon your Countryman! At which Dr. Williams being enraged, took a Hammer that lay upon a Stall hard by, and flung at him, which hit another, and killed him: And though being indicted upon the Statute of Stabbing, it was resolved he was not within that Statute, because of the Kind of Weapon; Yet, says the Author, if the Indictment had been for Murder, I do think that the Welshman ought to have been convicted thereof (a).

And since the Pannel's Procurators insisted so much upon the Law of England, the Pursuers cannot but mention the Authority of one of those Lawyers, as to one of the Cases they themselves stated in the Debate, *Hawkins's Pleas of the Crown*, Chap. 31, in fin. The Case is, That a Person shooting at tame Fowls with Intent to steal them, accidentally kills a Man; that Author says, That it is agreed it would be Murder, and not Manslaughter.

'Tis true indeed, that it would appear by the Law of England, as laid down in these Reports, that if there is Provocation, in some particular Cases, sufficient to alleviate the Act of Killing, it reduces it to a bare Homicide. But then no Provocation from Words is ever sustained, nor even Assaults, but upon this Ground, That he who was affronted or assaulted, might reasonably apprehend, that he that treated him in that Manner might have some further Design upon him, which resolves the Matter into a Kind of Self-Defence; and in this the Law of England differs from the Law of Scotland, which requires, in order to lawful Defence, and killing under the Notion of Danger from the Assailant, *ut quis sit constitutus in Periculo Vitæ*. But then there is no Pretence of apprehending dangerous Consequences, when the Party killed, or intended to be killed, was flying, and had no Weapon, as in this Case, and the Passion in such Circumstances resolves itself simply into Revenge, which no Law ever sustained to alleviate or palliate Murder; for there the Malice prepensed is clear and evident.

But then, if it be considered in the present Case, that the Party affronting or invading, is not only set forth to have fled, and to have had no Weapon in his Hand, but that he escaped; what Colour is there, upon these Principles, to alleviate the killing of a Person interposing to prevent the Mischief, when there was no Resistance upon the Part of any

Person whatsoever, as in the Case of a Combat, and where it was voluntary as to the Person giving the Wound, in regard he could have stopped when *Bridgeton* fled, which cannot be said with regard to the *Welshman* who threw the Hammer.

To conclude this Matter, it appears pretty evident, the Circumstances offered in Exculpation afford, by the Law and Practice of Scotland, no relevant Defence, suppose the Person killed had been the Provoker, much less in the Case where the Person killed generously interposed to prevent the Mischief, having given no Colour or Cause of Provocation, having no Weapon, and where the Person, against whom the Invasion is said to be meant, was without drawn Sword, and flying: The Murder in these Circumstances must have proceeded either from Rage and Revenge, which no Law can ever favour, since Laws were made, and Judges appointed, that private Persons should not attempt judging in their own Case, and to bridle the unruly Passions of Men, or from set Purpose and Design to kill the Defunct, from former Resentment. And what adds to the Presumption of the last, is the Nature of the Wound, quite thro' the Body, and that the Sword went through the Back lower than where it pierced the Belly; which excludes all Possibility of pleading, that the Pannel's stumbling might have pushed it forward, because, by the Nature of the Thing, had he stumbled after the Sword pierced the Defunct's Body, it must have raised the Point of the Sword, so that it could not have pierced lower in the Back than in the Belly.

Upon the first Branch of the Libel, the Pursuers think it unnecessary to open the particular Circumstances from which the Pannel's causeless Ill-will and Resentment may appear against the Defunct; that is Matter of Evidence, and upon which no Interlocutor in the Relevancy can pass, and must lie in the Breast of the Assize: And against this Relevancy no Exception, or Colour of Exception can be pretended to lye. And as to the separate Relevancy, and *Art and Part*, what is offered to be proven, that the Defunct thrust himself in a Manner upon the Pannel's Sword: As it is of too delicate Proof, and was repelled in the Case of *Hamilton of Green*, it is believed the Lords can have no Regard to it. And as for the Drunkenness and Provocation, especially where the Provocation is said to have been given by a third Party; if it were sustained, it must turn up what have been thought the Foundations of the Law of Scotland, and stand in Opposition to all the Practice that can be discovered from the Books of Adjournal. And the allowing such Defences as might possibly have some Colour in the Law of England, to be proven, would be of dangerous Consequence in the Law of Scotland, where the Pursuers are tied up to a precise Relevancy: So that the Procedure in that Part of the Island, in Trials of this Kind, unless the whole Form of Trial were adopted in our Law, would open a Door for leaving Murders unpunished. The Law of Scotland alone can be the Rule in this Case; though, at the same Time, it is believed, that the *species facti*, as set forth by the Pannel, would be sufficient Warrant for a Verdict of Murder, even according the Laws and Practice of England. In respect whereof, &c.

CHA. ARESKINE.

Information for James Carnegie, of Finhaven, Pannel; against Susanna, Countess of Strathmore, the Honourable Mr. James Lyon, Pursuers, and his Majesty's Advocate, for his Highness's Interest.

THE said James Carnegie, of Finhaven, stands indicted before your Lordships of WILFUL and PREMEDITATE MURDER and HOMICIDE; in so far as, Having a causeless Ill-will and Resentment against the Deceased Charles, Earl of Strathmore, he conceived a deadly Hatred and Malice against him; and (on the Day libelled) "Did, with a drawn Sword, without the least Colour or Cause of Provocation then given by him, invade the said deceased Earl, and did basely and feloniously murder and kill him, by giving him a Wound therewith in the Belly, whereof he soon after died. At least, At the Time and Place described, the said Charles, Earl of Strathmore, was, with a drawn Sword, feloniously and barbarously wounded, and died of the said Wound within a few Days thereafter; and that the Pannel was art and part in this Murder. And the Indictment concludes, By all which it is evident, That you are guilty, art and part, of the Crimes of wilful and premeditate Murder and Homicide, or one or other of them, at the Time and Place, and in the Manner above set forth."

The Pannel was brought to your Lordships Bar, upon the 15th of July current, to plead to this Indictment, where he appeared under that deep Melancholy and Depressure of Spirit with which a Man and Christian must be loaded, who finds himself accused, not only of shedding of Blood, but of shedding the Blood of one, whose personal Character and Qualities drew, from all who had the Honour to know him, the highest Esteem and Regard; and for whom the Pannel himself had all the Honour, entire Friendship, sincere Affection, and high Respect, that either his Rank, personal Merit, or great Benevolence could call for; and of having done this barbarously, from premeditated Malice, deadly Hatred, and Felony fore-thought.

Your Lordships having put the Question to him, in the ordinary Way, What he said to the Indictment? He expressed himself in these Words:

My Lords,

I FIND myself accused by this Indictment of maliciously murdering the Earl of Strathmore; but as to any Ill-will, Malice, or Design to hurt the Earl, GOD is my Witness, I had none: On the contrary, I had all the due Regard, Respect, and Kindness for his Lordship, that I ever had for any Man. I had the Misfortune that Day to be mortally drunk, for which I beg GOD's Pardon, so that, as I must answer at GOD's great Tribunal, I do not remember what happened, after I got the Affront your Lordships will hear of from my Lawyers. One Thing I am sure of, if it shall appear that I was the unlucky Person who wounded the Earl, I protest before GOD, I would much rather that a Sword had been sheathed in my own Bowels. And further, I declare, That I do not so much as remember, that I saw the Earl after I came out of the Kennel, and even not so much as the drawing of my Sword; and therefore I cannot acknowledge the Libel, as it is libelled."

From these Words so expressed, it is evident, in what a dismal Situation of Mind this unhappy Gentleman must be. If what he hath said be true, he

(a) Lord Chancellor Bacon is in this Opinion of *Hawkins* expressly. See Vol. IV. (Edit. 1740.) p. 41. on explaining this Maxim of English Law. *In criminolibus sufficit generalis malitia*, &c. where he states Cases very similar to the Case here argued.

cannot be guilty of the malicious murdering the deceased Lord; yet he may have been the unhappy Instrument of his unfortunate Death; and what a bitter Reflection that must afford, all Circumstances, particularly that of Friendship, considered, will occur to every generous Man: It may produce Thoughts more afflicting than that of Death itself.

The Counsel for the Pannel, in the Entry to the Debate, judged themselves under a Necessity, from the great Honour all of them had for the Person of the deceased Lord; and always will have for those who remain of his Family, and from the particular Obligations of Friendship that some of them owed him in a more distinguished Manner, to declare, that if they had the least Apprehensions, that his Lordship's Death had happened by, or from any Design or Intention of the Pannel against his Life, that no Motive, even of Relation or natural Tie to the Pannel, would have induced them to open their Mouth in his Defence; but that Innocence is always presumed, and that the Circumstances, so far as yet appears, seem to set forth the Action as a Fatality, and not a Design, Justice and Duty called upon them to give their weak Assistance; until the Matter appeared in another Light.

The Fact, as laid in the Libel, is in very general Terms; and those Circumstances from which the Nature of the Action falls to be determined, and which are material for the Pannel's Defence, being entirely omitted, the Procurators for the Pannel were obliged to set forth the Case as it truly happened, according to the Information given them; which by our Law and Form, they are enabled to do, without owning the Libel, or admitting even those Facts, which, in the Recital, according to Information, they are led to narrate: And the Account given of it was,

"That, on the 9th of May last, the deceased Earl of Strathmore, the Pannel, and several others, were called to be present at the Funeral of a Daughter of Patrick Carnegie of Loures, a near Relation of the Pannel's; that they dined together at the Gentleman's House, where they drank a good deal, all in Friendship and Familiarity, without the least Appearance of Quarrel or Difference: That, after the Burying was over, they together with the Lord Rosehill, Mr. Thomas Lyon, and Mr. Lyon of Bridgeton, and other Gentlemen, went to one Clerk Dickson's, a Tavern in Forfar, where they drank pretty plentifully; and where the Pannel happened to be overtaken with too much Liquor: That all this while, nothing but Friendship appeared betwixt the deceased Earl and the Pannel; but that Bridgeton was, from Time to Time, bearing hard upon the Pannel; and, by the whole Tenor of his Conversation, endeavouring to fret or affront him.

"After this, the Pannel waited on the Lord Strathmore, at the Lady Auchterhouse's, where his Lordship went to visit, and Bridgeton followed them thither, and in that House began the former Way of Conversation, making the Pannel's Family-concerns the Subject of his Discourse, in the most provoking Manner, asking him in a jibing Way, to supply a Lord in the Company with Money, pulling him rudely by the Breast, and gripping him by the Wrist, and striking his Hand against the Table, telling him, he must give that Lord such a Sum at that Time; then insisting, That he should give him the Choice of his Daughters; and still gripping him, and dashing his Hand in the forehead rude manner, told him, he would have him promise to do so; and asking him, in an insolent way, What, would he not do it? Then telling him, if it were his Case, if he refused, he would maul him, shaking his Hand in the Pannel's Face. After this, in a ridiculing Way, desiring him to settle his Estate in a certain manner, since he had no Sons of his own; then upbraiding him with his Debt. All which, the Pannel bore with Patience, and endeavoured to ward off the Discourse, when Bridgeton still insisted in the most provoking Way. And that Bridgeton likewise used very great Rudeness to the Lady in whose House they were; particularly, when she in Civility offered him a Glass of Brandy, he, seeing the Pannel already overtaken with Drink, desired the Lady to give it to him, her Brother; and upon her saying that her Brother did not seem to want it at that Time, he gripped her by the Arm so rudely, as to make her complain, and swore, by GOD, her Brother either should drink it, or she should drink it herself; and persisted in this Way of doing, till the Lord Strathmore thought it proper to break off the Visit, and so went out of the House.

"That Finhaven and Bridgeton followed the Earl; and when they came to the Street, some Words passed, and Bridgeton used the Expression, God damn him, meaning the Pannel, and with that gripped him by the Breast, and pushed him into a dirty Kennel two Feet deep, over Head and Ears, where, in the Condition he was, he might have been smothered if a Servant of the Earl's had not helped him out, who at the same time expressed his Indignation at the Action he had seen, by these Words addressed to Bridgeton, Sir, though you be a Gentleman, you are uncivil.

"That Bridgeton, after having so flung the Pannel into the Kennel, leaving him there, walked forward; at the same time turning about, and folding his Arms across his Breast, scornfully laughed at him in that Condition.

"That the Pannel being helped out of the Kennel in manner foresaid, immediately drew his Sword, and, in a just Passion, pursued Bridgeton with a staggering Pace: And Bridgeton run towards the Earl of Strathmore, whose Back was then to him, and endeavoured to pull out his Sword; at which time the Pannel coming up with Bridgeton, made a Push at him; in which Instant the Earl turning hastily about, pushed off Bridgeton, and threw himself in the Way of the Sword, by which he received the fatal Wound."

These are the unlucky Circumstances of the Fact, as the Lawyers for the Pannel have been instructed to plead: And from it, as so stated, the Defence insisted upon for the Pannel was, That the Act of Killing is not Murder, nor capital, where there is no Malice nor Forethought against the Person killed, either proved to have been conceived and retained at any time preceding the Act of Killing, or presumed from the Circumstances to have preceded the Act immediately before the committing of it: But that in this Case there is no antecedent Malice specified or libelled; and therefore it must be taken for granted, that there was none. And as to presumed Malice immediately preceding the Act, that the Circumstances entirely exclude that Presumption; first, Because, as the Fact is laid, any Blow or Push that was intended, was made at, and designed for Bridgeton, and not against the Earl of Strathmore; and since the *initium facti* is to be

considered, as well as the Event, a Push begun and intended against Bridgeton, could never be the Foundation of a Presumption of Malice against the Lord Strathmore, the Person killed, without which, the Killing could not be capital, but in this Case was merely casual and accidental, it having happened by the Earl's unluckily turning about in the Time of the Pannel's very Act of pushing against Bridgeton, whereby the Earl received the fatal Wound. 2do, That the Pannel could never be more criminal in having killed the Earl of Strathmore by a Thrust directed at Bridgeton, than he would have been if he had killed Bridgeton himself; but that so it was, that if he had killed Bridgeton, after the Provocation given in Manner above set forth, that it would have been construed only as casual or culpable Homicide, without Forethought, because done *ex incontinenti*, & *ex subito impetu*, & *calore iracundie*; yea, in some Measure in Self-defence, since the Pannel having been thrown into the Kennel; even to the Danger of being suffocated, he had Reason after that to expect the worst from Bridgeton, since no Gentleman will throw another into a Puddle, who is not supposed to be ready to go further; as he cannot but expect the strongest Retort of the Injury; and that the Pannel had the more Reason to think so; that Bridgeton immediately betook himself to the Earl of Strathmore's Sword, and endeavoured to pull it out, having none of his own, by reason that the known Ferocity of his Character and Behaviour is such, that the Country-Gentlemen of his Acquaintance decline to keep company with him, if he wear any Arms: In such case the Pannel was to expect the worst, and so was in some measure in his own Defence; altho' he may have exceeded the *moderamen inculpatæ tutelæ*; which Excess, in such Circumstances, would not be punishable by Death, but only by an arbitrary Punishment.

And in support of this Defence the Counsel for the Pannel shall now, in this Information, endeavour, though somewhat out of the Order of their pleading, to follow the Information given in for the Pursuers. And first, To show your Lordships, that Killing in such Circumstances was not capital by the Divine Law, or Law of Moses. 2do, That it was not capital by the Common Law, which we in great measure follow in Matters of that Kind. 3do, That it was not capital by our own ancient Law. 4to, That our ancient Law in that particular is not altered by the Statute of Charles II. 5to, That the Practice of the Court is not inconsistent, but agreeable to what is here pled. And 6to, That the Laws of our neighbouring Nations are for the most part consonant to those Principles, as well as the Judgment of foreign Courts.

And to begin with the Divine Law, it may be divided into two: First, The Law of Nature, which is the first of all Laws, and hath no other Author than God Almighty himself. 2do, His Will revealed by Writing, particularly in the Laws delivered by Moses.

And as to the Law of Nature, one of the first Principles seems to be, that every Action must be construed and regulated from the Intention of the Actor. Every Action whatever, except in so far as it is conjoined with the Will and Intention of the Agent, differs in nothing from the Action of an irrational Creature; yea, if we may so speak, as to call the Operation or Impulse of an inanimate Creature an Action, the Actions of Man separated from his Intention and Design as a rational Creature, differ in nothing from the Actions of Brutes, or the Impulse of Things inanimate; and consequently that Action, be what it will, can neither be Crime nor Virtue; it is a mere Impulse or Motion, not properly subject to Laws or Rules. But then, indeed, when it comes to be conjoined with the Intention, or, which is the same Thing, considered as the Action of a rational Agent, there it comes to be subject to Laws, to be considered as criminal or virtuous: Or if it appear to be accidental, so as to have depended upon no Will nor Deliberation of Reason, then it returns to be of the Nature of the Act of an irrational Creature, or inanimate Substance, and is subjected to no Penalty, nor yet capable of receiving a Reward. The plain Consequence of which is, that it is the *animus* alone that determines the Nature of the Act; and if the *animus* or Intention was criminal, then, by the Law of Nature, the Action itself amounts to a Crime. On the other hand, if it be good and virtuous, the Act is laudable by the Law of Nature, supposing even a bad Consequence should follow. But, in the third Place, If the Action truly arise from no Intention or Principle governing that Action, it is neither laudable nor punishable, it returns to be of the Kind already mentioned, the same with the like Act of an irrational Creature, or the Impulse of an inanimate Substance, moved by a Cause intrinsic to itself. And the Consequence of all this is, that by the primary Law of Nature, the Intention must make the Crime; and therefore if there appear no Intention to commit that particular Fact which happens to be complained of, it is not a Crime, notwithstanding of a bad Consequence; it is considered as a Fatality.

And the Application is plain to the present Argument, that if the unfortunate Act of killing the deceased Lord did not flow from any Intention to him directed; then that Act is not by the Law of Nature a criminal Act, however the antecedent Acts directed against another may be criminal. It is another Question, how far a rational Agent, *versans in illicito*, is bound for Consequences that did not fall under his Intention? We shall afterwards endeavour to shew, that that is neither a Question in the Law of Nature, nor in the Divine Law; but is a Question arising from the municipal Laws of particular Kingdoms, or at farthest from the Law of Nations, sometimes called the *secondary* Law of Nature.

As this Point, that the Intention directed towards the Act committed, must govern the Action, so as to render it criminal or not, according to the first Principles of the Law of Nature, seems to be pretty plain, if we retire our Thoughts from other After-laws; so indeed it is confirmed and illustrated by the written Law of God, as delivered by Moses, with regard particularly to the Question of Manslaughter. It is almost unnecessary to observe, that whether the Remedy against the penal Consequences of Actions, committed without Intention, was in form of an Absolvitor upon the Trial, or by having Access to a City of Refuge; it is the same Thing: The Question is, What was to be the Punishment that was to take effect? If the Punishment was to be stopt in that Form, by flying into a City of Refuge the Principle of Law is the same, as if the Effect had been to be stopt in any other way. And just so, as we will afterwards have occasion to notice, it is the same Thing as to our Law, whether the Manslayer was to be safe, by flying into Gyrrhor Sanctuary, according to the old Law, or now to be safe by a judicial Absolvitor or Restriction of the Punishment. And just so with regard to the Law of neighbouring Nations; it is all one, whether a Man is to be freed by Benefit of Clergy, or such other Form, if he is to be free. The Foundation

Question

Question is only, What was the Punishment that necessarily, *annexum*, falls to be inflicted upon a Homicide of such and such a Kind; and as in this Case, upon a Homicide committed without Forethought or malicious Intention directed against the Person that hath suffered? And therefore if, by the *Mosaic Law*, one in the Pannel's Circumstances was to have the Benefit of a City of Refuge, the Argument concludes, that by that Law he would not have been subjected to the Pain of Death. Indeed we believe we will be able to go a little further to shew your Lordships, that, according to the Opinion of the most learned Interpreters and Doctors of the *Jewish Law*, the Benefit of the City of Refuge was scarce necessary in such a Case as that which is now before you.

In the sixth chap. of *Deut.* the Cities of Refuge are appointed to be separated in the Midst of the Land, that every Slayer may fly thither: And this is the case (says the Text) of the slayer, which shall fly thither, that he may live: *Whoso killeth his Neighbour ignorantly, whom he hated not in time past; or, as it is said to be more literally in the Original, from Yesterday the third Day.* By this Text your Lordships see those two are conjoined as explicatory of one another, *ignorantly whom he hated not in Time past*; and so the Word *ignorantly* is put in opposition to *Hatred in Time past*; and by that means the Sense is plain, that by *ignorantly* is not meant, without knowing that he kills his Neighbour, but without a Fore-knowledge, a Foresight, a former Ratiocination and Design: In which Sense, Knowledge is most frequently taken, because it is impossible to maintain, that if a Man ignorantly kill his Neighbour, even whom he hated before, taking the Word *ignorantly*, in that Sense, of his not knowing that he kills him, or killing him by mere Accident, without his Knowledge, can be liable as a Murderer; because it is impossible to conjoin even previous Enmity with accidental ignorant Killing, so as to make out a Crime of Murder; that were exceeding inconsistent with every Principle of Reason, far more with a Law flowing from infinite Perfection. But then the Matter is fully explained by *Ver. 11.* of that same Chapter, which determines when a Man is not to have the Benefit of the City of Refuge; *But if any Man hate his Neighbour, and lie in Wait for him, and rise up against him, and smite him mortally that he die, and flieeth into one of these Cities: Then the Elders of his City shall send and fetch him thence, and deliver him into the Hand of the Avenger of Blood, that he may die.* Here are both Sides of the Question put, the one fully to explain the other; the last to explain what is meant by *ignorantly*, whom he hated not in Time past. The last Text does by no means say, that if a Man smites his Neighbour whom he knoweth, although without Hatred, and without lying in Wait, and without rising up against him, that he shall surely die; but on the contrary, puts the Issue of his dying upon his hating of him whom he killed, and upon his rising up against him whom he did kill; and upon his lying in wait, that is, in other Words, upon his designing to take his Opportunity from a premeditated Malice: For indeed the Meaning cannot be that of a formal lying in wait, or lurking in a Passage where the Person was to pass; but he who designs the Thing, and takes his Opportunity, lies in wait in the plain Sense of the Text. Besides, the Word *ignorantly* very plainly imports, and carries under it that Case of a Man's killing, by Misadventure, one whom he did not intend to kill, that is plainly Ignorance as to him who was killed; and yet it will be true, that if he designedly kill one in place of another, mistaking the Person, but designing to kill that Person, as supposed to be the other, he does not ignorantly kill the Man whom he does slay, he kills him knowingly, although he mistake the Man.

Nor is it of any Importance, that the Examples immediately subjoined in the 5th Verse, are Instances of Slaughter intirely accidental; and where the Slayer did really not know that he killed, that is an Example, but not an Example exhausting the Rule, which the 11th Verse fully clears, as not extending the capital Punishment to all who came not under the Description in the 5th Verse, but to those alone who *hated their Neighbour, lay in wait for him, and rose up against him.*

And though this is plain enough from that Part of the Law, yet the Matter is indeed more fully explained in xxxvth Chap. of *Numb.* where there is another Ordinance as to Cities of Refuge, and they are appointed to be six; and the general Rule is set down, *That every one that kills any Person unawares, may fly to those Cities.* Nothing can be plainer than the meaning of killing unawares, that is, without Deliberation, unexpectedly, without Fore-thought, *ex improviso, ex inconsultu*: These are all synonymous, and accordingly the *Septuagint* Translation so renders the Words *involuntarily*; that is, *involuntarily*; and so likewise the *Jewish Doctors* have explained it, as will afterwards be noticed.

After this the Text goes on with an Enlargement or Amplification of that general Law, "And if he smite him with an Instrument of Iron (so that he die) he is a Murderer, &c. And if he smite him with throwing a Stone (wherewith he may die) and he die, he is a Murderer, &c. Or if he smite him with an Hand-weapon of Wood (wherewith he may die) and he die, he is a Murderer." These are the Amplifications; but then follows the Limitation in the 20th Verse. *But if he thrust him of Hatred, or hurl at him by lying in wait, that he die; or in Enmity smite him with his Hand, that he die: He that smote him shall surely be put to Death; for he is a Murderer, &c.* Here is the Limitation, he that killeth or thrusteth with an Iron-Weapon, is a Murderer, under the Limitation introduced by the Particle *but*, as an explicatory Exception to the Generality of the Rule, *but if he thrust him with Hatred*; that is, in other Words, that he is a Murderer, if he thrust him in Hatred: And therefore Commentators refer from this Text to the other in *Deuteronomy*, already cited, for Explication of this, where it is statuted, *That if a Man hate his Neighbour, and rise up against him, and smite him; whereby they plainly understand, thrusting him of Hatred, as the same with rising up against him, and smiting him with Hatred, so as to comprehend every Manner of Killing with any Weapon; and consequently that this is not a distinct Manner of Killing, from what is expressed in the 16th Verse, but a Quality adjoined to the Manner of Killing, so as to make it Capital, viz. That it must be done in Hatred.* And this is yet more clearly explained by the 22d and following Verses, where the Opposition is stated betwixt thrusting suddenly and of Enmity, with a direct Reference to the 16th, 17th, and 18th Verses, *But if he thrust him suddenly without Enmity, or have cast upon him anything, without laying of wait; or with any Stone wherewith a Man may die, seeing him not, and cast it upon him that he die, and was not his Enemy, neither sought his Harm: then the Congregation shall judge, &c. and shall deliver the Slayer out of the Hand of the Avenger of Blood.* There all the three Methods of

Killing before-mentioned are referred to: Thrusting, properly applicable to the killing with a Sword, but without Enmity; casting any Thing upon him, without lying in wait, or Fore-thought, or with any Stone, wherewith a Man may die, the very Thing expressed in the 17th Verse, and from which he is deemed to be a Murderer; yet, if he was not his Enemy, neither sought his Harm, he is not a Murderer, he is not to die, but to be delivered from the Avenger of Blood. So that these three last Verses are a plain Limitation of all that went before; the Instrument, whatever it was, was to raise a Presumption, if a mortal one: But yet if it appear the Person was not thrust, or hurled at, or smitten in Enmity, &c. the Slayer was to be delivered from the Avenger of Blood.

Neither can it stumble your Lordships, that in the 22d Verse are these Words, *seeing him not*, as if this were one of the Requisites necessary for the Slayer's Safety, that he did not see the Man whom he thrust at, or killed with a Stone, though not done in Enmity: For, first, 'Tis impossible to imagine, that the Words, *seeing him not*, however they might refer to the Case of throwing a Stone, can have any Reference to the Words, *thrusting without Enmity*. How can a Man thrust at him whom he seeth not? Or, How can he smite him whom he seeth not, in any proper Sense of Smiting? And therefore it is plain, that as to the Thrusting, the only Limitation is, that it be done without Enmity. But, 2do, Your Lordships will observe, that the Word *Him* in that Sentence, *seeing him not*, is not at all in the Original; it is an Adjection of the Translator's, and, as such, is distinguished in different Characters in any correct Editions of our Bibles, and indeed is an erroneous Adjection: The Words should be only *seeing not*; and perhaps the Translations ought not at all to be by the Participle *seeing*, but, according to the Idiom of the *Latin Language*, by an Adjective, such as, *improvidus, imprudens*, or the like; and, according to our Language, by a Substantive and Adverb, such as, *without foresight*. And so the *Septuagint* does translate it in these Words, *ex insidus*, which, in our Language, is directly *without foresight*, that is, without Premeditation or anterior Design to give the Stroke. And so the Sense comes out, that where a Thrust or Blow of that kind is given, without Enmity, Foresight and Premeditation, or, in other Words, *sine dolo*, that there Death was not to follow, but the Slayer to have the Benefit of the City of Refuge. And that the most ancient Lawyers, and *Jewish Doctors* themselves, have understood the Scope of the *Mosaic Law* to be such, is the next Point we are to endeavour to shew your Lordships.

And, in the first place, We beg leave to refer to an ancient Treatise, called *Mosaicarum & Romanarum Legum Collatio*, last published by the learned Schulten, with his own Notes upon it; in the first Tit. of which, *De homicidiis casu, V. voluntate*, § 5. are those Words, *Item de casualibus homicidiis Moyses legaliter dicit, Si autem non per inimicitias immiserit super eum aliquod vas non insidians, vel lapidem, quo moriatur, non per dolum* (your Lordships will please mark those last Words) *& ceciderit super eum, & mortuus fuerit, si neque inimicus ejus, &c. liberabitur percussorem.* Here is directly set down, by way of Paraphrase, the Sense of the 23d Verse of the xxxvth Chap. of *Numb.* before cited; and in place of these Words, *seeing not*, the Paraphrase of this ancient Collator is express by these Words, *non per dolum*; which shews what Understanding he had of the Words, directly congruous to what we have above set down, and, as we apprehend, to be the *Septuagint* Translation; and this Paraphrase the Annotator approves of as the just Meaning of the Text.

But we beg leave to give your Lordships another great Authority, who founds his Opinion upon the Notions of the *Jewish Doctors*, or rather sets forth what they all agreed on to be the Import of the *Mosaic Law* on this Head, and that is the great and learned *Selden*, in his Treatise, *De jure naturali & gentium, juxta disciplinam Hebræorum, Lib. IV. Cap. 2.* The Title of which is, *De homicidio involuntario, seu quod casu factum aut errore.* There the learned Author takes notice of all the Texts upon this Subject, and of the *Jewish Doctors* who had wrote upon it, whose Names we need not trouble your Lordships to repeat, but refer to the Quotations *Selden* makes. That learned Author takes notice of three Sorts of Homicide, which he and the *Jewish Doctors* reckoned to be involuntary, according to the *Mosaic Law*, and not to be punished with Death: The First is, What is merely accidental. The Second is, Where the Killing was not merely accidental, but as he expresses it, *prope accedens ad violentiam*. The Third we beg leave to set down in his own Words, as coming up directly to our Case: *Tertia autem homicidii involuntarii species est, ubi qui alium occidit ex errore quidem aut ignorantia, quæ tamen prope accedit ad id quod spontaneum est seu voluntarium; veluti ubi quis alterum occidere volens, alterum jactu aliterve perimit, aut ubi jactu sive saxi sive teli in hominum cætum, cujus nec ignarus qui jecerit quis occisus: adeoque intervenit culpa latissima. Ex tribus hisce homicidiis involuntarii speciebus, nulla est quæ morte ex sententia forensi ordinaria, sive in *Hebræo* aliove circumciso, sive in proselyto domicilii, aut gentili alio puniretur. Nam in universum pronunciant, homicidium nullum, seu qui non sponte scelus patriaret, sic fore puniendum.* Yea, he goes further, That, in this last Case, according to the *Jewish Doctors* Opinion, there was no need of going to the City of Refuge, for that the Avenger of Blood had not a Power in that Case to kill.

We apprehend, nothing can be more direct or strong to the present Case, than that Authority which is laid down, as the universal Opinion of the *Jewish Doctors*, which we hope does deserve some Regard in the Interpretation of the *Mosaic Law*.

And this naturally leads us further to observe to your Lordships what we insinuated before, that the Question started by *Roman* and *modern Lawyers*, how far a Person that intends to kill one Man, is liable to the Pain of Death if he kill another, hath no Foundation in the *Mosaic Law*, either from the Texts, or the Opinion of those *Jewish Doctors*. As to the last, your Lordships see, that *Selden* from them, directly states the Case, *ubi quis alterum occidere volens, alterum jactu aliterve perimit*; and he and they determined that to be an involuntary Homicide, not punishable with Death; and we apprehend, that in this they are founded in the Words of all the Texts, *If any Man hate his Neighbour, and lie in wait for him, and rise up against him, and smite him mortally, that he die*: Not one Word here of rising up against one and killing another; not a Word of hating one, and in consequence of that Hatred killing another: That was a Case which did not fall under that Law. The Hatred and the Rising-up, was, by that Law, to be against the Man who was killed; if another by Fatality happen to be killed, that was a different Case, it was an involuntary Homicide; the Crime there was not the Killing, but stood upon the rising up against

against him who was not killed; and so the Punishment was for Invasion, but not for Killing. The Texts in the Book of Numbers are all to the same Purpose: *If he smite him who is killed of Hatred, or burl at him by saying of wait that he die, or in Enmity smite with his Hand that he die, &c.* where all the Rules are still directed towards the Person alone that is killed; and that of killing another, when the Stroke was not designed at him, is quite left out of the Case. And the Application of this Reasoning to the present, unhappy Accident, is too evident to need Enlargement. If it appear that the Push was aimed at Bridgeton, that the Enmity was against him, and not against the deceased Lord; then, whatever be the Constitution of the Roman, or more modern Laws, the present Case is quite out of the Description of the Mosaic Law concerning this Article of Manslaughter.

What hath been already said at so great Length, does fully obviate what is offered in the Pursuers Information in way of Answer. It is true, that the general Rule in the Divine Law is, *Thou shalt sheddeth Man's Blood, by Man shall his Blood be shed*; and so, by the Sixth Commandment, the Prohibition is general, *Thou shalt not kill*: Yet even the Commandment itself admits of Exceptions; such as, Killing in Self-Defence, and Killing in Execution of Justice, and Killing in Prosecution of just War, and the like. The other Rule likewise admits of Exceptions, not so as entirely to justify the Killing, and to make the Act lawful, but yet so as to excuse from the Pain of Death. The Texts already noticed are express, that a Man's Blood may be shed, and yet the Blood of the Shedder not be required on that Account. The Question is, Whether this misfortunate Pannel's Case comes not under the Exceptions? And that we have already discussed.

The Position, That, by the Law of Moses, "Death of a Sudden" was plainly capital, and that the Slayer had the Benefit of the City "of Refuge, only where the Slaughter was by mere Misfortune," is assumed without sufficient Foundation. 'Tis plain, that he who thrusts without Enmity, does not kill the Man by mere Casualty: The Act from which Death follows, is a voluntary Act, although without Enmity: And although the Killing is involuntary, and so can never be said to be merely casual in the Sense the Pursuers would take the Words; neither are the Words in Exodus, *If a Man lie not in wait, but GOD deliver him into his Hand*, in the least contrary to what hath been advanced: For it is most properly said, that where the Act is without the Design of the Killer, without Enmity, and without Hatred; that there, in so far as concerns the Killing, GOD hath delivered the Man into the Hand of the Slayer. The plain Meaning is, That where a Man is killed, not with Design, but that the Thing happens by the over-ruling Hand of Providence, permitting Things of that Kind, in his Sovereign Wisdom, and from his Supreme Power; that there the Person is delivered to Death by the over-ruling Hand of GOD. And where could ever this be more properly applied, than on the present melancholy Occasion, when the providential turning-about of the unfortunate, deceased Lord, occasioned his receiving the fatal Wound?

It is likewise a Position assumed without Reason, "That wherever a Man was killed by a mortal Weapon, that was Murder by the Mosaic Law." We hope we have already demonstrated the contrary. If Enmity and Fore-thought was required, (and we need only repeat that one Text, which expresses the Killing a Man with a Stone, wherewith he may die) there the Text declares the Stone to be a mortal Weapon; yet for all that, in case of the Circumstances mentioned in the other Verse, the Slayer was not to die, but to be delivered from the Avenger of Blood: And this single Consideration must be sufficient to refute such a Position. Is it not possible for a Man to use a mortal Weapon, where there is no Enmity, nor Design to kill the Person who is slain? If it be possible, as it certainly is, then can we imagine that a Law, so perfect as the Divine Law itself, could make a Man guilty of Murder, because of the Use of such a Weapon, where he really intended no more Harm, than a Man that used a Weapon of another Kind? Besides, that in truth every Weapon is a mortal Weapon with which a Man may be killed: And therefore, to imagine that the Divine Law laid such a Difference betwixt an Instrument of Iron, and one of another Kind, is certainly to go too far. The Law of GOD has put the Matter upon a much juster Footing, to wit, the Intention of the Person, which alone can distinguish his Actions.

The Pursuers also say, "That though the Argument is good, that wherever the Benefit of the City of Refuge was not competent, there the Crime was capital; yet it does not follow, that where the Power of the Laws were suspended by the Jus Asyli, that the Punishment is not to be capital in a Country where the Jus Asyli takes no Place."

But, with Submission, this is no solid Way of arguing: The Question hitherto treated is, What was the Law of Moses, with regard to Punishments in the Case of Manslaughter? If the Punishment in any Case was not capital, because of the Privilege of the Asylum, the Conclusion is just, that the all-wise GOD did not intend such Punishments should be inflicted for such an Offence, and the Form of granting the Protection for the Punishment, does not alter the Substance of the Law.

The next Point undertaken to be illustrated is, That Manslaughter, under such Circumstances as occur in the present Case, was not, by the Common Law, punishable by Death: And this Argument must indeed be divided into several Branches, such as, 1^{mo}, That culpable Homicide was not so punishable, and that Homicide committed upon such high Provocation, as was here given by Bridgeton, could amount to culpable Homicide only. 2^{do}, That, by that Law, the deceased Lord not having been intended to be killed, but the Invasion, whatever it was, intended against another; the killing the Earl was casual, or at worst culpable, not punishable with Death.

And as to the first of these Points, we shall not trouble your Lordships with Infinity of Laws and Opinions of Lawyers that might be adduced upon the Point, but only take Notice of some of the most remarkable, and which seem most apposite to the present Case. And in the first Place, The Foundation of the Roman Law on this Point, appears to have been laid down as early as the Days of Numa: For the Roman Writers take Notice of a Law of his in these Words; *In Numæ legibus cautum est, ut si quis imprudens hominem occidisset, pro capite occisi & natus ejus in concione offerret arietem*. This Law is taken Notice of by Pistareus, in his Annotations upon the fore-cited, ancient Treatise, comparing the Mosaic and Roman Law, with regard to this Head of Manslaughter, as agreeing precisely with the Law of Moses; and the plain Meaning of it is, That where a Man kills another, although culpably, yet if it be *sine*

dolo per imprudens, he is not to suffer Death, but to make an Assythment to the nearest Relations of the Person killed: And the same Treatise takes Notice of a Rescript of Adrian's to the same Purpose, directed to Taurinus Ignatius, approving of a Judgment given in the Case of one Marius Evaristus, whereby the Proconsul had mitigated the Punishment of Manslaughter upon that ground, That suppose it was done *per lasciviam*, and culpably, yet it was *sine dolo*. The Words of the Rescript are, *Pœnam Marii Evaristi recte, Ignate Taurinus moderatus et ad modum culpe; refert enim, & in majoribus delictis consulto alio quod admittatur an casu; & sane in omnibus criminibus distinctio hæc pœnam aut justitiam promovet debet aut temperamentum admittere*. And Schulten, in his Annotations, explains what is meant by *casu*, in these Words; *Per casum hic intelligitur fieri quod non sit dolo, quomodo et quod impetu sit, casu dicitur fieri*, l. 1. §. 3. ad leg. Corn. de Siccar. *Ubi pro causa, edictiones veteres & glossam recte haberi casu certissimum est*. Which, by-the-by, shows how erroneous the Pursuers Interpretation of the Words *casu* and *casual* is, when they would restrict them to what is done by mere Accident.

The general Rules of the civil Law are plain on this Point, That it is the *animus qui maleficia distinguit*; That there can be no Murder, *sine animo occidendi*. But these general Topics need not be insisted on, where the Texts themselves are so express, such as not only these already mentioned, but even that l. 1. §. 3. ad leg. Corn. de Siccar. *Divus Adrianus rescripsit, eum qui hominem occidit, si non occidendi animo hoc admisit, absolvere posse*. And a little after, *Et ex re constituendum hoc, nam si gladium strixerit, & in eo percussit, indubitate occidendi animo id eum admisisse*. But then he adds the Exception, *Sed si clavi percussit, aut cucuma in rixa: quamvis ferro percussit, tamen non occidendi animo, leniendam pœnam ejus qui in rixa casu magis quam voluntate homicidium admisit*. It is true that the Pursuers, and indeed several of the Doctors, endeavour to turn this Text the other Way, by a plainly erroneous Interpretation, and wrong pointing of the Text. They pretend, "That where a Wound is given by a Sword, there the *animus* is undoubtedly presumed;" and so far right as to the Rule. But then the Law sets down the Exceptions; first, If the Stroke be *clavi aut cucuma*, suppose these be mortal Weapons wherewith a Man may die, yet because they are not Instruments expressly made for Death, the Presumption is, that *aberat animus occidendi*, unless Circumstances make it appear otherwise. Then the second Exception is *in rixa, quamvis ferro percussit*, although a Man strike with a Sword, yet if it be *in rixa*, suddenly, or upon a Provocation given, *tamen non occidendi animo, leniendam pœnam*, because *in rixa, casu magis quam voluntate homicidium admisit*. Those Doctors, indeed, who go wrong in the Interpretation of this Text, pretend, That the Meaning of *quamvis ferro* is not, although he strike with a Sword, but would make the Meaning to be, *Although he struck with an Instrument of Iron*, and so make the Word *ferrum*, and also those Words, *in rixa*, refer to other Words, *clavi aut cucuma*; so as that the Sense should be, if a Man strike, *clavo aut cucuma in rixa*, although these be Instruments of Iron, he is not presumed to have had the *animus occidendi*. But, with Submission, as both the learned Noodt and Schulten observe upon that Law, the Interpretation is strained, and indeed illiterate: For the Word *ferrum* is never used in Law in that Sense, but always does signify a Sword; and so the Expression is the same, but ornately repeated in other Words, as if the Emperor had said, *in rixa quamvis gladio percussit*: And so the Sense is, that the *animus* is in general presumed from the using a Sword, that it is not presumed where the Instrument is not an Instrument made for Death; but if the Killing happen *in rixa*, the *animus* is not presumed, although the Stroke be given with a Sword.

And this is likewise the Opinion of the learned Grotius, in his Annotations upon the Text, in Numbers above cited, Ver. 16. which, in the Latin Translation, is rendered, *Si quis ferro percussit*; on which Grotius hath this Note, *Mors Ebraeorum multis verbis rem circumloqui. Sensus est; mortis esse pœnam qualicumque telo quis hominem occiderit. Ex telo presumitur malum consilium, nisi contrarium appareat*. There your Lordships see that Author's Opinion is as we plead, that the using a mortal Weapon presumes the Design, but not *presumptione juris & de jure*; for he adds, *nisi contrarium appareat*.

The Rescript of the Emperor Antonine is likewise as express on this Head as can be, l. 1. Cod. de Siccar. *Frater vester rectius fecerit, si se præsidi provincie obtulerit. Qui si probaverit, non occidendi animo hominem a se percussum esse, remissa homicidii pœna, secundum disciplinam militarem sententiam præsideret; crimen enim contrahitur, si et voluntas nocendi intercedat, ceterum ea quæ ex improviso casu potius quam fraude accidunt, fato plerumque non noxæ imputantur*. Here the Emperor plainly sets down these two Things, first, That *pœna homicidii est remittenda, si animum occidendi non habuerit*. 2^{do}, That where the Thing is done *ex improviso*, there is no *animus*; that 'tis to be looked upon as done *casu*, by Fatality, rather than Crime: But nevertheless, that in such a Case there may be an arbitrary Punishment.

The Doctors of the Roman Law seem to be unanimous on this general Point. Carpzovius, one of the severest Criminalists, is most express upon it; *Cessat porro pœna ordinaria homicidii, si culpa vel casu fuisset commissum homicidium*; and goes on, *quod adeo verum est, ut in homicidio lata culpa, dolo non equiparetur*. Clarus is likewise as express upon this general Head; and such Shoals of others are by them quoted and referred to, that it were vain to repeat their Names, or trouble your Lordships with quoting their Words. We don't know that any Lawyer of Reputation differs upon the general Point.

But then indeed the Question comes, What is culpable Homicide? And whether the present Case falls under that Description? Which is next to be illustrated. And here we humbly insist, that where the Homicide is committed upon a sudden Quarrel, and Provocation given, especially by real Injury, and that Quarrel begun not by the Killer; that this is no more than culpable Homicide: And for this, in the first Place, we oppose the Law already cited, *in rixa quamvis ferro percussit*. And to the same Purpose is the first Law, §. 5. ff. ad finat. consult. Turpilianum, the l. 2. Cod. de abolit. and the §. 2. l. 16. de pœnis; the Words of which we shall not trouble your Lordships with repeating, because they are the common Texts founded upon by Doctors on this Head. We have likewise for us the Authority of all the ancient, moral Philosophers; such as, Aristotle, Plato, Plutarch, and many others, likewise commonly taken Notice of by the Lawyers on this Subject. It is true, some of the severest Criminalists, such as Matthæus and Carpzovius, don't admit the Rule in general, but still they admit as much as is necessary in the present Question: They don't allow, that where the

the Killer is *auctor rixæ*, that he is at all to be excused, although the Killing happen in *colere iracundiæ*; but then most of them do admit it, if the Killer be not the *auctor rixæ*, but be the Person provoked, to whom a just Provocation has been given, especially by a real Injury: And so particularly *Carpozovius*, one of the severest, after he has argued at length against the general Point, concludes in his *Quæstio* 6. §§ 14 and 16. *Nihil quoque adversatur regula aucta, quod scilicet delictum ira commissum, mitius puniri soleat; quia hæc regula de ira ex justa causa proveniente accipienda est: duplex etenim ira est, alia ex justa causa provenit, quæ si non in totum, tamen ex parte excusat, ut delinquens mitius puniatur; alia vero non provenit ex justa causa, quæ in nihilo excusat.* Then he adds, *Hæc distinctio communiter recepta est ab interpretibus*, and cites several. And then concludes, *Si ergo justa causa calorem iracundiæ præcedat, veluti si quis ab alio fuerit provocatus, aut alio modo offensus, tunc is qui ira et intenso dolore permotus, provocantem seu offendentem interficit absque dubio a pœna ordinaria liberabitur; secus vero si quis, absque justa et probabili causa iratus, aliquem occidat, de quo casu nō hic loquimur, qui pœna homicidii ordinariæ neutiquam est eximendus.* And then takes Notice, that the Practice in the Court of *Lipswick* is agreeable to this.

There is an adjudged Case very apposite, published in a Book, called *Alphonſi Villaguti Neapolitani Consultationes Decisæ*, very learnedly resolved. It is the *Decisio* 29. We shall state the Case in the Words of the Author, *Quidam nobilis Ragusinus fuisset verberatus, extra (sed prope) ecclesiam sanctæ crucis castri Gravosæ, a quodam alio nobili Ragusino, in eodem pacto evaginavit pugionem contra dictum verberantem, ac in fugam jam conversum & ipsum insequens, unico vulnere sibi inflixit in dicta ecclesia (quam ille ingressus fuerat) dictam ecclesiam egrediens sese in fugam dedit & cum dictis verberator, ex dicto unico inflixto vulnere intra dictam ecclesiam mortuus esset.* The Case came to be tried, at least the Questions upon it, to be resolved by the said *Alphonſus*; where several Questions occurred, but those which are most applicable to the present Case are two: First, *An huiusmodi homicidium in ecclesia perpetratum, fuerat dicendum voluntarium nec ne, eo quod dictus nobilis infectus fuisset illum cessantem a verberibus inferendis, ac sic unico vulnere inflixto interfecisset?* The second Question is, *An dictus nobilis prædicto modo ac de causa violans dictam immunitatem ecclesiasticam, veniat in foro seculari, & ecclesiastico pœna ordinaria plectendus, vel solum mitiori pœna?* The Resolution upon the first Question is, That though, at first View, the Homicide might seem voluntary, *Eo quod dictus nobilis, nemine ipsum compellente, fugientem hominem vulneraverit, nihilominus nullo pacto fore judicandum homicidium voluntarium, aut pro tali dictum nobil-m puniendum.* The Reasons for this Resolution are set down with great Learning and Judgment, but are so long, that 'tis impossible to repeat them: First, They are taken from the Definition of voluntary Homicide. 2^{do}, From the Texts of the Roman Law, and the Opinion of Doctors. 3rd, From that Particular, that the Nobleman had been immediately struck before; on which the Words are remarkable, *Ex hoc ergo articulo, apertissime elicitur homicidium huiusmodi fuisse casuale, & non voluntarium, nam nulla mora interjacente, evaginato pugione, ipse nobilis baculo percussus in secutus fuit dictum percussorem jam fugientem, & hoc pro honoris proprii redemptione, ut sic se tueretur ab injuria corporali recepta ex verberibus:* After which follows a long Reasoning, all in the Pannel's Favours. And this Case we take the more Notice of, because the Pursuers pretended to make a Distinction betwixt the Case of a Wound given the very Moment a real Injury is done, and the like given after the Injurer has desisted from beating, and retired to some Distance; but there is no Difference, except the Interval be so long, as it can be supposed the Thought of the Person injured was cool. The other Question is likewise resolved in Favour of the accused, that in such a Case, not the ordinary Punishment, either ecclesiastical or civil, ought to take Place, but only the *pœna mitior*, and confirmed by very strong Reasons, which we cannot recite, but refer to.

Amongst other Authors that might be cited for supporting this Opinion, is the learned *Voet*, in the very Section cited by the Pursuers, *ad tit. ad leg. com. de sic. n. 9.* where, after he has said what is cited for them, that one killing another who has provoked him only by a verbal or slight Injury, *vix est ut ab ordinaria pœna absolvendus sit*; he adds, that if the Provocation was by an atrocious real Injury, that would be sufficient to mitigate the ordinary Punishment; and to confirm that, cites *Mathæus Berlichius*, &c. And the Reason given by these Authors for making this Allowance, in case of just Provocation, is exprest in these Words by *Gothofred*, *ad l. 17. d. 1. Quod ei sit ignoscendum, qui provocatus se ulcisci voluit, quique justum dolorem prosequitur.*

And indeed we apprehend this Opinion is founded in the first Principle of Nature; for scarce any human Constancy can suffer such high real Injury, without the Passions being inflamed: And although Killing is no Doubt an Excess in the Retortion of a real Injury, yet still it is but an Excess, and the Injury shews the Thing done without Design; and therefore, because of insuperable, human Weakness, the Punishment falls to be mitigated. And the Application to the present Case, as we apprehend, is obvious; *Bridgeton* had given the highest Provocation, not only by a Track of verbal Injuries and Endeavours to pick a Quarrel, but had committed the most provoking real Injury, to throw a Gentleman over Head and Ears in a dirty Puddle, in the Middle of a Town, and Sight of so many On-lookers; no Injury could be more provoking. Yea indeed there was more in it than an Injury only: One that was able to throw the Pannel into the Puddle in that Manner, was likewise able to have suffocated him there; if the Pannel had no Reason to expect otherwise, and therefore no Wonder if he betook himself to his Sword. And the other Circumstance noticed, that *Bridgeton*, immediately upon the doing the Thing, endeavoured to draw and make himself Master of my Lord *Strathmore's* Sword, gave the Pannel Ground to expect the worst; and so it may be doubted, if he was obliged to wait till *Bridgeton* should have an Opportunity to give him the Blow, even with a mortal Weapon. And when this is considered, the Fact goes further than a Retortion of the highest Injury: The Pannel was in some Measure put upon his Defence; and granting that his pushing at *Bridgeton* was an Excess, yet still that Excess falls only to be punished *pœna extraordinaria*.

All Lawyers distinguish Excesses of that Sort into three Kinds, that of Time, Place, and Weapon that is used; and Excess in point of Time is punished even with Death, where the Interval is great; because that Interval presumes Fraud and Deliberation: But here was no Excess of Time; the Thing was done *ex incontinenti*, when the Injury was fresh

and recent. There is likewise Excess in point of Place, when the Injurer is allowed to retire to a considerable Distance from the Place where the Injury is given; and this in some Measure coincident with the other, because it implies an Interval of Time: Yet if it be not great, the Lawyers hold it to be only punishable arbitrarily. And then the third is the Excess in the Use of the Weapon, where there is no Interval of Time or Place; and that is always agreed to be punishable only arbitrarily, where the Provocation is high.

From what is said it seems plain, that if *Bridgeton* had received the Thrust; the Homicide would have been culpable only; and so it remains to be considered, if the Case comes out worse for the Pannel, because it was my Lord *Strathmore* that received the Wound, and not *Bridgeton*. And we apprehend it does not, but on the contrary, that this gives a great Strength to the Defence: And that because, 1^{mo}, The Push being designed at *Bridgeton*, shews that there was no Malice at my Lord *Strathmore*, neither premeditated, nor presumed from the giving of the Wound: For admitting it to be true; that in an ordinary Case, the giving a Wound with a mortal Weapon presumes the Dole or malevolous Intention; yet that can never be where the Push is pointed at another than him who by Fatality receives it. And so the Case comes out thus, That the Pannel in making one Push, could not design it at two Persons; and so if he designed it at *Bridgeton*, 'tis impossible to say he had a Design against my Lord *Strathmore*. It is plain in the Nature of the Thing, that the Design, tho' presumed from the giving the Wound, yet in point of Time it precedes the actual receiving of the Wound, altho' that Preceding or Precedence be but momentary; and therefore if, in the very Act of Pushing, the Design appears to have been against *Bridgeton*, it excludes all Pretence of any animus against another who received the Wound by Fatality, in the very Moment that the Design was pointed against the other.

And here your Lordships will likewise observe, that there can be no animus occidendi presumed at all against any Man, not even against *Bridgeton* himself; because the drawing a Sword, and pushing at a Man with it, does not of itself presume a Design to kill the Man pushed at, except the Wound, and Death actually follow: For it is from the Event of the Wound, and Death following alone, that the Intention is presumed. Therefore since Death did not happen to *Bridgeton*, the Law cannot presume an Intention to kill him; since the Foundation of the Presumption is removed, or did not happen. If the Blow had missed him, or had not killed, but wounded him; the Intention would not be presumed: And therefore it cannot here be presumed, as the Case happened; for there is no such Presumption in Law, as that Killing one presumes a Design to kill another; except where it appears that the Slayer killed one Man by Mistake, taking him to be another: As for instance, killing *Caius* in the Dark, when the Killer really believed him to be *Titius*; there indeed the killing of *Caius* presumes the Intention of killing *Titius*, although he was not actually slain: And therefore in that Case the Killer is indeed guilty of Murder. But 'tis quite another Case, where one Man is killed, not by Mistake for another, but by Fatality, when the Push was intended at another, whom the Killer knew, which is the Case in Hand. And therefore we do humbly insist, that it cannot be said there was an Intention to kill *Bridgeton*, since his Death did not follow. Neither can it be said there was an Intention to kill the Earl of *Strathmore*; because, though his Death did most unluckily happen, yet the *intium*, upon which the Intention must be founded, did not happen, the Push being made at *Bridgeton*; for those two must always concur, the Push made at the Man who dies, and the actual Death: And where it happens otherwise, the Death is a mere Fatality; not intirely innocent, because the Killer was so far faulty in invading the other; but then it is no more than an Invasion; it is not Murder from Malice presumed. No Presumption of Law can get the better of contrary Evidence: The Presumption of Law may be, That where a Man is killed, he was intended to be killed: But if from the Circumstances the direct contrary appear, that there was no Intention against him; this is Evidence which excludes the Presumption; and so there can be no Murder in the Case.

It is indeed a Case stated by the Lawyers, What should be the Consequence, if a Person intending to kill one Man, kill another? And we acknowledge they are greatly divided among themselves upon the Question; a great many of the ablest of them are in all Cases clear, that where one Man is killed, and another was designed, it cannot be Murder, because of the Want of an Intention against him. *Bartolus*, *Farinacius*, *Gomesius*, *Menochius*, and Numbers of others quoted by them, are plain in that Opinion, and give an Account of several Judgments of the Courts of *Mantua*, and *Naplis*, and others, to that Purpose; and *Farinacius* says, that it is the common Opinion, *Et ab hac sententia in judicando non esse recedendum.* And however other Lawyers may seem to differ, yet, in the first Place, the divine Law, for any Thing that can be found in it, is on this Side; because it plainly speaks only of beating him, and rising up against him who happens actually to be killed, and mentions no such Case as deserving Death, as this is of rising up against one Man, and by Fatality killing another. 2^{do}, That this was the Opinion of the Jewish Doctors, is plain from the Quotation already brought from *Selden*, where this very Thing of killing one Man in place of another is made part of the third Case stated of involuntary Homicide, and determined not to be capital. But 3th, Those Lawyers, who at first view seem to differ, do really not differ, when the Cases are distinguished: For what they plainly mean, is only where a Man by Mistake kills *Titius*, believing him to be *Mevius*. This we admit is capital, for Reasons before given; but not the other of killing one by Fatality, and not for another, but directing the Blow at the other.

But then your Lordships will observe, that all Lawyers agree in this, That wherever a Man is to suffer for killing one, when he intended to kill another; that can only be where the Forethought and dolose Intention to kill the other is certain, but not where the Invasion is *ex impetu*: And therefore, supposing one invade another, with an Intention to hurt, or *percutere*, as the Lawyers call it, but without a certain Evidence that his thorough Intention was to kill; there, supposing the Blow intended for one do kill another, the Killer cannot suffer Death: And which by-the-by shews your Lordships, that there is no such Presumption in Law, as, That because the Push killed the Earl of *Strathmore*, therefore the Pannel intended to kill *Bridgeton*; for if that were Law, then the Question could never occur, but would be inept, Whether a Man intending to kill one, and killing another

with that Blow, is guilty of Murder, or is presumed to have intended to kill that other at whom the Stroke was intended? We shall trouble your Lordships only with two Authorities on this Point, which are very direct to the Case: The first is that of *Barbichus*, which we the rather notice, because he seems to be against us on the general Point; after discussing which, he hath these Words, speaking of his own Opinion, *Fallit, si quis aliquem non occidere, sed percutere tantum, velens, alium præter intentionem percutiat ut moriatur*. From this your Lordships see, that it is no consequence, That because the Thrust killed my Lord *Strathmore*, therefore it should be presumed the Pannel intended to kill *Bridgeton*: If that were true, that Lawyer's Position, from whom Nobody differs, must be direct Nonfense. And therefore since there is no other Evidence of a further Intention against *Bridgeton* than *percutere*, except it arise from the Death of my Lord *Strathmore*, and that his Death cannot presume it; we are directly under the Position the Lawyer lays down, That though my Lord was unhappily killed, yet the Pannel ought not to suffer Death, where it does not appear that he intended to do more than to push at *Bridgeton* at random, *percutere*, without a certain Design to kill.

But this is yet more plainly laid down by another very distinct Lawyer, *Majurius Labio*, in his Treatise called, *Homicidia excusatus*, cap. 35. where treating of this very Question, he first notices, that if the Killer was *occupatus in re licita*, such as defending against any Aggressor, which in some measure is the case here, that then he is not liable, although he chance to kill a third Party: But then he goes further, *Aut etiam, ut amplius dicta extendamus, reus quantumvis in re illicita occupatus, tali tamen in casu constitutus fuit, ut si Caium interfecisset, non nisi culpæ reus futurus fuisset, ejusque loco cum infelici fato Sempronius lethalem acceperis ictum, magis est, ut reus hoc ipso causam suam non gravasse censeatur: cum enim Caii interfectione mortem meritis non fuisset, certe imprudentia atque in facto error magis eum à Sempronii cæde excusare debet: atque Caius potius, si is vel rixæ auctor fuerit, vel iracundiam alterius justam provocaverit, id quod inde secutum imputandum re. r.* Here your Lordships see he is stating the Case of a *Rixa*, where one had given Provocation as *Bridgeton* did; he indeed supposes, that in such a Case killing the Provoker ought not to infer Death; much less, says he, the accidental killing of a third Party: And your Lordships will observe he asserts further, that the Provoker, or auctor *rixæ*, is rather to be judged guilty of the Slaughter.

And a little after, he comes yet closer to the present Case: *Quod si tamen Caium adversarium occidere nollit, sed illi tantum nocere, Sempronium autem imprudenter se ictui obicientem, eo ipso interenerit, tunc certe imprudentia Sempronii delictum rei aggravare non debet; si enim is moderatorem rixæ se non obtulisset, corpusque suum subito & ex propinquo non objecisset, Caius a cadente forte remotior, non nisi vulnus aliæve noxam inde reportasset, unde Sempronio mors oblata est: excusandus ergo a tanto merito percussor tunc, cum occidendi animus hic non adfuisse apparet.*

This is to apposite to the present Question, that one would think it were a Resolution on the Case: For by that your Lordships see, that notwithstanding one's being killed, the Author says it does not from thence appear, that there was an Intention to kill the other: The other, who, as being at a greater Distance, might not have been killed, might only have been hurt and wounded, although the Person that came unhappily in the way happened to be killed. This is just what we have pled, That it does not appear there was an Intention to kill *Bridgeton*, because he might not have been killed, but he might only have been hurt or wounded; and therefore the Pannel ought not to suffer Death, because of the Fatality of killing the deceased Lord, *qui subito corpus suum ex propinquo objecit*. And upon all those Grounds, we humbly insist, that if *Bridgeton* had been killed, there would have been no Place for a capital Punishment: But then separately, whatever be in that, that since it does not appear (nor cannot, since Death did not follow) that there was a certain Intention to kill him, the casual Killing of the Earl of *Strathmore* cannot be punishable with Death.

What has been said, fully removes any Argument that may be drawn from Sir George Mackenzie's Opinion, "That he who by mistake kills one for another, should die." For your Lordships see, that he speaks only of that Case, when one Man is certainly intended to be killed, but another is killed by mistake, being supposed to be him: That is not the Case now before your Lordships.

And in this Question, concerning the Pannel's Intention and Design, the Circumstance of his being overtaken with Drink, is a Circumstance that assists in the Argument. We do not say, that being drunk affords a Defence for killing; nevertheless it is a Circumstance whereby to show, there was no Malice or Dole, especially against the Earl of *Strathmore*; since every body may conceive, how easy it is for a Man that is drunk, pushing at one, even to stagger upon another, or not to have the Judgment and Presence of Mind to draw back, when that other suddenly throws himself in the way of the Thrust.

What is laid down by the Pursuers, in opposition to all this, in their Information, is so fully obviated, that it is quite needless to repeat their Argument; only whereas they say, "That if Killing, notwithstanding of Provocation, had not been capital, it could not have been a Doubt in the Common Law, Whether a Husband ought to suffer Death, who killed his Wife taken in the Act of Adultery?" But we apprehend, that the direct contrary Consequence follows, that if high Provocation had not afforded a Defence, then indeed there could not have been a Doubt the Husband must have died, because high Provocation was all that he had to plead: But the Doubt was, whether a Provocation of that kind, where there was no real corporal Injury to the Husband himself, was sufficient? And the Law determines that it was; and consequently establishes the Rule, That high and grievous Provocations ought to alleviate the Punishment.

The Brocard, That *versans in re illicita tenetur de omni eventu*, affords no Argument against the Pannel in this Case; nor indeed hath it been much insisted on by the Pursuers. 1mo, It is not true in many Cases. But, 2do, It holds in no Case, except with regard to Consequences or Events, that happen with regard to that Subject or Object, against whom or which the unlawful Act is directed: As for instance, if one sets fire to a House, he is guilty of Murder, if a Person happen to be burnt in that House; or if he undermine a House, he is liable for all the Goods that may be destroyed by its Fall; but he is not liable for any extrinsic Damage that may happen to another Subject casually and by accident: And therefore, suppose it

were proved, that one unlawfully invading another, without a Design to kill, might in some Cases be liable, if Death followed; yet that can only be with regard to the Person he invades, but never with regard to what accidentally happens to another Person. And so *Carpzovius* explains the Matter, *Qu. 1. §. ult.* in these Words: *Supra dicta enim (quod nempe danti operam rei illicitæ imputari debeat, quicquid fuerit præter ejus intentionem ex eo actu sicutum) procedunt tantum, quantum ad subjectum, circa quod versatur ipsa malitia illicitæ operantis, & quantum ad ea quæ illi objecto per se & immediatè junguntur, aut necessario sequuntur; non autem quoad illa quæ per accidens oriuntur, a re illa mala, cui opera datur.* Besides, 'tis certain, that the Brocard is no Rule at all in the Matter of Manslaughter, otherwise there never could be such a Thing as culpable Homicide; which 'tis plain there is.

The next Thing to be considered is, What was and is the Law of Scotland concerning this Matter? And first, As to our ancient Law, the Pursuers seem to be the first that ever disputed, that according to it there was a Distinction betwixt Slaughter and Murder. Sir George Mackenzie is express upon it. By our Law, says he, Slaughter and Murder did of old differ, as *homicidium simplex et premeditatum* in the civil Law; and Murder only committed, as we call it, upon forethought Felony, was only properly called Murder, and punished as such; for which he quotes the express Statute, *Parl. 3. cap. 51. K. James I.* appointing that Murder be capitally punished, but *chaud melle*, or Slaughter committed upon Suddenty, shall only be punishable according to the old Laws, and several other Acts of Parliament, to which we beg leave to refer [See the Abstract of them at the End]; which expressly make the Distinction betwixt forethought Felony, and Slaughter of Suddenty: And though none of all these Laws particularly express the Punishment of Manslaughter, as they could not well do, because that was arbitrary according to Circumstances; yet, as Sir George observes, the Opposition and Distinction is established betwixt Slaughter by Forethought, and *chaud melle*, and the Punishment of the one to be less than that of the other: And therefore, we apprehend, we may leave this Point as clear and undoubted.

The Pursuer has endeavoured, to no manner of purpose, to set up others of our ancient Laws, in opposition to those observed by Sir George Mackenzie, such as the third Statute of King Robert I. which, with Submission, is nothing to the purpose: For, first, It does not concern capital Crimes only, but any Crime touching Limb, as well as Life. 2do, Though the Word Slaughter is mentioned, without adding by forethought Felony, yet the same Thing is added in other Words, when it says, touching Life or Limb, to which alone the Act relates, that is, forethought Felony; because Slaughter, by *chaud melle*, touched neither Life or Limb. The Title of the Act is, *Men condemned to Death should not be redeemed*. But what is that to the purpose, in a Question, Who should be condemned to Death, and who not?

The 43d Chap. of the Act of King Robert III. is as little to the purpose; for as it speaks of Hairships, Burnings, Reif, and Slaughter, 'tis very plain it means only wilful, premeditated Slaughter, otherwise it would follow, that not only wilful Fire-raising, but burning of a House by Neglect, or *lata culpa*, would infer the Pain of Death, which Nobody ever dreamed. And the next Paragraph makes it further clear, appointing Sheriffs to take diligent Inquisition, *GIF ANY BE COMMON DESTROYERS OF THE COUNTRY, OR HATH DESTROYED THE KING'S LIEGES WITH HAIRSHIP, SLAUGHTER, &c.* Can a Man be a common Destroyer by Slaughter, except where the Slaughter is supposed to be by forethought Felony? 'Tis certain he cannot; and therefore the Pursuers Procurators fall into a great Mistake in Law, when they say, that gif he be ken'd with the Affize, *Si attentus fuerit per affizam tanquam talis malefactor, condemnabitur ad mortem*, must relate to Manslaughter, because the Sheriff could not judge of Murder. It is directly otherwise: If he be attainted by the Affize as such a Malefactor, that is, as a common Oppressor by Slaughter, &c. he is to be condemned to Death. This is an Exception from the Rule, that Murder was to be tried by the Justice-ayr: This Law appointed it to be tried in that Way, in case the Person accused could find his Barras or Borgh to compare at next Justice-ayr; but if he could not, the Sheriff was immediately empowered to try: And by-the-bye, this does not concern particular Fact, but concerns that general Accusation of being a common Oppressor, like to the Case of a Sorner, or one habite and repute an Egyptian. Nor can the Lawyers for the Pannel find any Word in the Statutes of Alexander II. which the Pursuers refer to, that does in the least pre-suppose that Manslaughter was capital in them: The direct contrary appears, that Manslayers were to be tried, whether guilty of Murder or not; and if found not guilty, that they were to have the Benefit of the Gyrrh. And accordingly *Skeen*, in his Annotations, refers directly to the Acts of Parliament, which Sir George Mackenzie takes notice of, establishing the Distinction, and to some of the English Acts to the same Purpose.

As to the Passage cited from *Skeen*, in his Treatise of Crimes, *tit. Slaughter*, there is certainly a direct Blunder in the Printing; and instead of these Words, *or casually by chaud melle*, probably it ought to have been, *not casually, or by chaud melle*; for otherwise he directly contradicts himself, and cites Acts of Parliament which prove the very contrary of what the Pursuers would make him assert: Yea, the very next Paragraph establisheth the Distinction in these Words, *SUA THAT THE GYRTH OR SANCTUARY IS NAE REFUGE TO HIM WHA COMMITS SLAUGHTER BE FORETHOUGHT FELONY*; ergo, it was a Refuge to him that committed Slaughter, not by forethought Felony, and saved him even from the arbitrary Punishment of Manslaughter. And *Skeen* himself, in his Explication of the Words *chaud melle*, says it is in *Latin rixa, an hoc, sudden tuitzie, or debate*, which is opposed, as contrary to forethought Felony; and cites the Act James I. But how is it contrary in our Law, if the Effect and Punishment be the same? And upon the Words *forethought Felony*, he in like manner makes the just Distinction, and supports it by the Authority of *Cicero*, in his Treatise *De Officiis*, where he is writing, as a Moralist, and not as an Orator.

The Pursuers Answer to the 8th Act, 6 Parl. 7. 1. is quite trifling; for nothing can be plainer than the Opposition there stated betwixt forethought Felony and other Slaughter: And when the Act statutes, *THAT IF IT BE FORETHOUGHT FELONY, THE SLAYER SHALL DIE*, the Consequence is obvious, according to the plainest Rules of Logic, that if it be not forethought Felony, he shall not die, otherwise the Act is absurd. And as to Sir George Mackenzie's Observation upon these Words, it is certainly not so accurately placed as an Observation upon that Act, because it plainly relates

relates to the Act of Charles II. and therefore falls to be considered, when we come to argue the Import of that Act.

The Pursuers Observation, by way of Answer to the 51st Act, Part 3. James I. is entirely nought; for if it extend the Difference between Forethought and *chaud melle* to all Transgressions as well as Manslaughter, then for certain it establishes the Distinction in the Case of Manslaughter; and so Sir George Mackenzie likewise says, in his Observations on this Act, as well as in his Criminals. And as to his further Observation, That *chaud melle* is by our present Law punishable by Death; that still refers to the Act of Parliament Charles II. and must be examined with it.

The Pursuers have further pled, "That the Benefit of the Sanctuary might be competent where Crimes were capital;" which he founds upon the Statutes of Alexander II. But this is not worth disputing; for if the Flying to the Sanctuary, joined with Repentance, and so forth, rendered the Crime not capital, it is all the same thing; that is, in effect, to render the Crime not capital only by another Form, but still the Substance remains, that according to the Law the Pain of Death was to be inflicted. At the same time that Statute concerning Reifs, whereby Repentance absolves from the Punishment, is somewhat peculiar, and does not at all contradict the other Laws, which make or suppose *chaud melle* not to be capital; and the last Part of the Statute, appointing, THAT IF MANSLAYERS FLY TO THE KIRK, THE LAW SHALL BE KEPT AND OBSERVED TO THEM, establishes the Point, that if they were not found Murderers by Forethought, they were to be returned to the Sanctuary, and freed from Punishment.

The Pursuers say, "That after the Reformation, when the *jur assili* was in effect abolished, then the Distinction betwixt forethought Felony and *chaud melle* ceased; and that it was never objected, that Malice or premeditate Design was requisite to make the Crime capital." And for this they take notice of two Cases, Currie against Fraser, July 1641, and Bruce against Marshall, April 1644. But in the first place, The Procurators for the Pannel with Reason say, That if that happened, it was an Error in Judgment; for since the Distinction was established by the old Laws, and that there was no Law at that time altering or repealing those old Laws, the Abolition of Popery, and of the Flying to the Kirk in consequence, was no Reason for judging contrary to the civil Laws that were still standing; and if an Escape of that kind happened, it must be attributed to the over-great Zeal, and, if we may be allowed to say it, a Sort of enthusiastic Keenness of those Times: And we do apprehend, that the Act 1649, and the Act of Charles II. were intended to correct the Errors that by too great Zeal had then crept in.

At the same time, as to the two Cases cited, they are nothing to the purpose; for as to the first, which is Fraser's, there was not one Circumstance pled or proved which could make the Slaughter *chaud melle*: But, on the contrary, it appeared direct premeditate Murder, no real Provocation, but a Quarrel about a Staff; a Murder committed in Revenge, upon the Slayer's hearing the Person killed had murdered his Brother, which plainly implied a premeditate Design. What Argument this can afford, is submitted. This indeed may be remarked, that the Case gives some Notion of the Spirit of the Times; the Presbytery took Evidence whether the Murder was accidental or wilful, they found it to be wilful, and no ways accidental; their having done so, was taken as Evidence in Court, and even the Wife of the Deceased was sworn as a Witness: Things, it is hoped, not to be drawn into example; only so far it shews, that even then it was a Consideration by the Presbytery themselves, Whether it was a wilful Murder or not? Which seems to point at an Establishment of the Distinction. But, in short, there is not one Circumstance in the whole Case that could exclude the Premeditation or Forethought, but all quite on the contrary.

The other Case of Marshall, in the 1644, is as little to the purpose; he was libelled for wilful Murder, and he confessed it, without pleading any Defence, because indeed he had none. He in his Confession adjoined some Circumstances which might have given some Colour, but indeed very little for a Defence: But he offered no Proof even of those Circumstances; and his own Declaration could be no Evidence of them. They were not intrinsic, but extrinsic Qualities of the Declaration. He had given repeated Stabs with a Knife. Where could be the Question that that was Murder? And these being all the Instances the Pursuers bring before the Act of Charles II. it is plain they prove nothing by them.

As to the Act, Charles II. [See the Act at the End] it is humbly insisted for the Pannel, That it introduces no new Law against any Person accused of Slaughter, but ascertains somewhat in their Favours, viz. "That casual Homicide, Homicide in lawful Defence, and Homicide committed upon Thieves, &c. shall not be punished by Death. And then further statutes, That even in case of Homicide casual, it shall be lawful to the Criminal Judge, with Advice of the Counsel, to fine him in his Means, &c. or to imprison him." This Law seems introduced to correct some Abuses that had been; whereby Homicides falling under some of those Descriptions, either had been punished with Death, or at least that it had been made a Doubt of, if they might not be so punished. What those Cases were, does indeed not appear from the Records, so far as the Pannel's Procurators know; but it seems such Cases, at least such Doubts, were. But then the Act does not determine what was meant by casual Homicide, and does by no means say, that nothing was to be reckoned casual Homicide, except that which was merely accidental; but, on the contrary, it leaves casual Homicide to be explained, according to the Construction of former Laws, whether our own Laws, or the Laws of other Nations.

2do, It is plain from the Act, that, by casual Homicide, something is understood quite different, at least beyond Slaughter merely accidental; for the Act is concerning the several Degrees of casual Homicide: And so even Homicide in Defence, and Homicide committed upon Thieves, &c. are brought under that general Description of casual Homicide; and these last Kinds are given as Exemplifications of the general Description; which shews, that casual Homicide was intended to be opposed only to Slaughter dolose, committed either by premeditate Forethought, or Malice presumed to be taken up from the Circumstances immediately preceding the Act; and therefore, however critical Exceptions may be taken to the Rule, yet materially there is no strong Objection lies to it, because when *casual* is taken in the extensive Signification, as opposite to *fraudulent* and *dolose* Slaughter, all the Species mentioned in the Act do properly enough fall

under it, and are Degrees of casual Homicide. And indeed it is worth observing, and makes in this Case for the Pannel, that the Rubric cannot be said to have been indigested or adjected by mere Inadvertency, since the same Rubric is made use of in the Act 1649, and again repeated in the 1651, so many Years after.

And this Rubric affords another plain Argument, That the Legislative did at least consider that there might be Degrees of casual Homicide, and consequently they could not understand by that, only merely accidental Slaughter, strictly so called: Since there can be no Degrees of that; it is but one, and does not admit of Degrees. And therefore this is sufficient to shew, that more was meant than the Pursuers incline to admit; and if more was meant, that can allow of no other Construction, than to bring under these Words what the Lawyers call *culpable Homicide*, so as that your Lordships and the Jury may judge from Circumstances, whether the Slaughter is to be reckoned as casual, or really malicious, from Malice prepense.

The last Part of that Act of Parliament further enforces that Matter, which gives a Power not only to fine for the use of the nearest Relations, but even to imprison for casual Homicide. Now, how is it possible to believe, in Consistency with any Justice, that a Man might be imprisoned for a Fact intirely innocent, and no ways either culpable or criminal? Yet such Homicide merely accidental is: And therefore this shews to Demonstration that the Legislator understood, that under the Description of casual Homicide, such a Fact might come as carried a *culpa* along with it, and was not absolutely accidental or innocent.

And this being the plain Meaning of the Law, it must remain only to consider, whether culpable Homicide, or more particularly the present Case, does not, in a true and legal Sense, fall under the Words *casual Homicide*. And we hope we can be under no Difficulty to make that good, from what has been already said; first, That even by the Jewish Doctors and Interpreters of the Mosaic Law, Homicide without Hatred and Forefight, hath been called *casual Homicide*; the Passage above cited from the Collation of the Mosaic and Roman Law expressly shews it. 2do, All that has been said from the Texts of the civil Law, and Lawyers, prove it; since they directly call Slaughter, *ex subito impetu, ex calore iracundiae, in rixa*, where there was just Provocation, *casual*; *casu magis quam voluntate fit*; *casu magis quam noxa imputandum*: And all the rest of their Expressions plainly denominating all Slaughters *casual* in the large Sense, except that which is done *doloso animo occidendi*. 3tio, The Expressions in our own old Laws prove the same Thing; those Kind of Slaughters are called *chaud melle* or *Chance-Medley*, which is casual: And so Skene speaks, in the very Place the Pursuers have cited, Manslaughter committed voluntarily, by forethought Felony, or not (which ever of the Degrees be received) casually by *chaud melle*. There your Lordships see *chaud melle* is expressly brought under the Description of casual; and so that being the case, we are under the Letter of the Act Charles II. we are included under the first Branch of *casual Homicide*.

And as we apprehend this holds in general, so it holds more particularly in the Pannel's Case, where, whatever was designed against Bridgeton, yet, as to my Lord Strathmore, the Killing was casual, and therefore falls directly under the Words of the Statute.

It affords no solid Argument against us, that the Act of Parliament bears these Words, FOR REMOVING OF ALL QUESTION AND DOUBT THAT MAY ARISE HEREAFTER IN CRIMINAL PURSUITS FOR SLAUGHTER. For, 1mo, Those Words must still be understood with regard to the Particulars enacted upon, that it is for removing all Doubts as to those Particulars; for it can never be pretended, that this or any Act of Parliament could remove all Doubts, even upon unforeseen Cases, many of which might happen that could not fall under the Words of that Law: For instance, Homicide committed in suppressing a Mob, strictly speaking, falls under none of the Words; or Homicide committed in preventing the Escape of a Prisoner actually imprisoned, and endeavouring his Escape: And many other Cases may be figured. But, 2do, According to the Interpretation we insist upon, the Act of Parliament does remove all Questions, so far as human Eyes could foresee, if the Words (*casual Homicide*) be taken in the Sense we give them; and, on the contrary, it does not remove all Questions, if culpable Homicides, and this very Case be not included; for then the Law has statuted nothing upon them, either one way or other, but hath only statuted upon Murder merely accidental, Homicide in Defence, and the others therein mentioned. Besides, that it may be pled without any Stretch, that a culpable Homicide is a Species of Homicide in Defence; though not precisely in Defence of Life, it is in Defence against a further Injury threatened, and expected from the prior Injury already given: And on these Considerations, we humbly apprehend, the Act of Parliament makes nothing against the Pannel, but rather favours him, since the Question is anent a Homicide purely casual as to the Person that was killed: and which Consideration entirely distinguishes his Case from every other Case that hath been tried since the Act of Parliament. And it may not be improper to notice, that Sir George Mackenzie says, "The Word *casual*, in the Rubric of this Act, is taken in the lax Signification." And why not then take it in the same lax Signification in the statutory Part?

It is now proper to take notice of Sir George Mackenzie's Observations upon the 51st Act, James I. And in the first place, If Sir George be supposed to go as far in his Opinion as the Pursuers plead, we must beg leave to oppose the Law, and submit the Interpretation of it to your Lordships Judgment, as not sufficiently supporting his Opinion. 2do, Sir George says nothing against the Slaughter's being casual in the present Case, where the Blow was intended at one, and another struck by Fatality. 3tio, His Words do not go so far as the Pursuers would stretch them; for, in his Observation on the said 51st Act, he only says in general, That *chaud melle, or homicidium in rixa commissum, is capital by our present Law*: And so it is in many Cases; for instance, where the Killer is the Provoker, where he reiterates Strokes in such a manner, as to shew a Forethought and formed Design, although not premeditated for a long Interval of Time before: But Sir George does by no means say, that *chaud melle* or *homicidium in rixa commissum*, is in every Case capital; the contrary is most certain, as will appear from your Lordships Judgments afterwards to be noticed.

His Observation upon the 90th Act is no ways against us; he says, indeed, "That Murder, though committed without forethought Felony, is punishable with Death." By which he must mean premeditated Malice,

Malice, and that is true; for no doubt Malice, where it can be presumed from the Act itself, and where the contrary does not appear from Circumstances, is punishable by Death, without further Forethought; but then he subjoins an Exception, which leaves the Matter where it was, *except, says he, it be casual*; that is, according to the Words of the Law: And so the Question remains, What is casual in the Sense of that Law?

The Pursuers use an Argument, which seems to be of no Force, "That if Manslaughter was not capital, then the Crown could not pardon any capital Slaughter; because by our Law the Crown could not pardon Murder." We might easily admit the whole, without hurting our Argument; for if it be true that the Crown could not pardon Murder, then it is likewise true that he could not pardon any Slaughter that was capital; because no Slaughter was capital but Murder: Nevertheless the Position, That the Crown could not pardon Murder, is not supported by Practice, and, we doubt, not by our Law; because in several Cases, even of Murder, the very Thing statuted is, THAT THE PERSON OF THE CRIMINAL SHALL BE IN THE KING'S WILL; consequently the King can pardon, as well as order to be put to Death.

The Pursuers, in their Information, next go on to mention a great many Cases that have been judged by the Court since the Act 1661; and the first mentioned is that of *William Douglas*, which appears in the Records, and is noticed by Sir *George Mackenzie*, and is indeed noticed by him as a Foundation for some Things, wherein he seems to go too far. But this Case will never deserve any Regard; it has always been looked upon as a hard one, and we are afraid a Reproach on the Justice of the Nation. But at the same Time the Fault did not lye on the Court; it was truly the Jury; for the Trial went in general upon the Art and Part; and there appears no particular Pleadings to this Purpose on record in that Case: So that what Sir *George* says of it must be from mere Memory of Things not thought fit to be recorded.

The next Case mentioned is that of *Nicolson*, in the 1673, which can never make for the Pursuers, because there your Lordships sustained both the Libel and the Defence, though indeed the Defence was not proved: And therefore, if the Pursuers say, that the Defence was upon *chance melle*, or culpable Homicide; the Case is with us, because your Lordships sustained the Defence. And although in Reality the Crime was proved to be wilful Murder, and the Defence not proved; yet so far it is on the Pannel's Side, that the Advocate insisted *Nicolson* was *versans in re illicita*, by carrying a Gun, which he acknowledged used to go off on half-bend; yet your Lordships sustained the Defence, "That the Gun went off in a Struggle." And if an Argument from a Lawyer's Pleading be good for any Thing, Sir *George Mackenzie* pled for the Pannel, in that Case, some of the very same Principles we now insist on, "That there was no Prejudice against the Person killed, and that the Gun went off in a Struggle." But indeed, the Case is naught in the Argument, and it seems strange why it is cited: It is true the Man was said to be drunk, and there was not a previous Quarrel; but then there was no Provocation, no *justa causa iracundiæ*, and no *iracundiæ* at all; but the Gun was twice deliberately snapped, and the third Time the Man was killed.

The third Case mentioned, is *Murray contra Gray*, yet less to the Purpose than any other: For there, the giving the Wound was libelled so far premeditate, that the Slayer followed the Person out of the House where he was, and killed him without any Provocation: And not one single Fact was pled in Defence, but a strange Demand made, that the Lords should make an Inquisition, in order to discover who was the first Aggressor; but it was not once pled that the Defunct was the Aggressor or Provoker. What can be the Meaning of citing such Cases?

The next Case cited is that of *Aird*, in the 1693; which indeed is something more to the Purpose, but yet does not answer the Pursuers Intention: For the Lords did not there find, that every Homicide was capital, except what was merely accidental; they indeed sustained the Libel, and repelled the Defences, which were mainly founded upon Provocation by ill Words from a Woman, and her throwing a Chamber-pot at the Pannel's Face, who was a Soldier: Which the Lords did not find sufficient to exculpate from the Libel, which bore reiterate Strokes to have been given the Woman in her own Door (which, by-the-bye, was hamesucken) she thrown over the Stairs, and pursued by the then Pannel. That Case was very singular: First, an Attack upon a Woman by a Soldier, who ought to have contemned Insults from the Female Sex, at least, not returned them with any Blows: No Injury of that Kind from a Woman can justify Blows given, much less reiterated Blows, and deliberately trampling to Death, throwing her over her Stair, and still continuing to pursue her: There, the presumed Difference of Strength, and Difference of the Sex, made such an Attack a barbarous Murder; just as an Invasion by a much stronger Man against a weaker, or by a Man against a Woman, although not with a mortal Weapon, would make a Blow with a mortal Weapon, given by such a Woman or weaker Person, come within the Description of Self-defence: Which is a Case that Lawyers state, although the same Thing would not be good, if they were of equal Strength, or that the Invasion was by the Woman, or Person of weaker Strength.

Another Case mentioned, is that of *Carmichael* in the 1694. But sure your Lordships must be weary of so many Cases, so little to the Purpose: For neither there, is there one Circumstance pled upon to exclude Forethought, or to show that the Thing was casual in any Sense; but some trifling Objections against the Form of the Libel: Only, indeed, Drunkenness, by itself, was founded on, which your Lordships did not sustain. And who can doubt it must be so?

The seventh Case mentioned by the Pursuers, is that of *George Cumming* the 1695. And upon looking into the Case, it must be owned, that it seems a very narrow, hard Case: But then the whole Burden of the Pursuers pleading turns upon this, That supposing there was a *rixa*, and that the Thing happened upon a sudden Quarrel; yet *Cumming* himself was the first Provoker, and the *auctor rixæ*, and therefore could not plead the Benefit even of Self-defence; which indeed brings the Case within what all Lawyers agree on. And had it not been for that Circumstance, 'tis impossible the Decision could have gone as it went: For in effect, the King's Advocate admitted the Defence, barring that Circumstance; but insisted upon that as what governed the Case. Yet still the Decision is narrow.

The Pursuers also mention the Case of *Burnet of Carlops*, anno 1711. But it is plainly against them; and it being to be noticed for the Pannel, shall not be dwelt upon here.

The next Case is that of *Hamilton of Green*, anno 1716; which does not all meet: For there a plain Murder was libelled, that the Pannel first made several Pusses with his Sword and Scabbard upon it; and not content with that, drew the Sword, and gave the Defunct the mortal Wound. And no Provocation was pled upon, on the Part of the Pannel, except what was verbal only. And the only real Injury, by striking with the Sword and Scabbard, was admitted to have been given by the Pannel. And though it was there pled, that the Defunct himself rushed upon the Sword, that was contrary to the Libel. And if the Fact had come so out, the Libel would not have been proved. And therefore, that Case does not all meet; for there were not sufficient Circumstances to exclude the Dole, or so much as to make a *homicidium culposum*.

Another Case they mention, is that of *Thomas Ross*, and *Jeffery Roberts*, 20th July, 1716; which makes against the Pursuers, as it is set forth by themselves: For there the Lords did sustain the Defence of Provocation by Words, receiving a Blow on the Face, being pulled down to the Ground, and beat with a great Stick or Car-rung, relevant to restrict the Libel to an arbitrary Punishment. And though the Words, "To the imminent Danger of his Life," are insert, as they were pled in the Defence; yet that was not a Fact, but a Consequence inferred from the being struck with a Stick. And if the *periculum vite* had been the Foundation on which the Interlocutor went, then it must have been unjust; because no Man alive ever doubted, that a Man in Self-defence might lawfully kill, without being subject to any arbitrary Punishment whatsoever: But the Case was, that your Lordships found the Provocation and real Injuries reduced the Fact to a *homicidium culposum*. You indeed sustained the Reply, That the Defunct was held by *Jeffrey* at the Time of receiving the Wound, because that excluded the Defence of the Pannel's being upon the Ground when he gave the Wound, and made the Fact amount to Murder; because it never was doubted, but if one stab another, especially with a Knife, which is stabbing in the most barbarous Sense, when that other is held, and so put out of the State of doing further Injury, that is Murder by the Law of all Nations.

The Pursuers likewise mention a Case of *Davidson*, without noticing either Date or Circumstances; and therefore the Pannel must conclude there was no Defence proposed, exclusive of the Dole or Forethought.

The Case of *Lindsay and Brock*, the *Greenock Taylors*, is very far from putting the Case out of Doubt, or indeed touching it at all. The Case was, that the Defunct was enticed out of his House, and was attacked by two at the same Time; and when he and they were on the Ground, one of them, which came out to be *Lindsay*, stabbed him in the Throat with a Penknife. There your Lordships did not sustain the Crime as capital against them both, even upon the Art and Part, but only against the one who should appear to have given the Stab, and that came out to be *Lindsay*: But then indeed you found, not without Difference in Opinions, that nevertheless he had the Benefit of the Indemnity, upon this Foundation, that tho' the *homicidium* was *dolosum*, because of the Circumstances, yet it was not from Malice premeditate: And the Majority were of Opinion, that the Indemnity excluded nothing but premeditate Murder, and did not touch any Case done in *rixa*, notwithstanding the Person guilty might be the *auctor rixæ*. This does by no means determine any Question betwixt a *dolosum* and *culposum homicidium*; for that Fact was insisted to be *dolosum*, and indeed so found. 'Tis true, it proves that an Indemnity may reach even a *homicidium dolosum*, where the Dole arose immediately, and not *ex intervallo*; but that says nothing to this Question, nor is it proper to enter upon the Argument about the Indemnity, now that the Judgment is given.

The Case of *Mathews*, the Soldier, the Pursuers admit, was of the same Nature, and so needs no other Answer; only, That, in that Case, there were no Circumstances sufficient to exclude the Dole, or make it only a culpable Homicide.

These are all the Cases the Pursuers have mentioned, and, if Numbers would do, no Doubt there is enough; but your Lordships are to judge how far to the Purpose: And one Thing is remarkable with regard to them all, That not one of them touches the Case in hand, in so far as concerns the Slaughter's being casual as to my Lord *Strathmore*, the Invasion being intended against *Bridgeton*.

But now the Counsel for the Pannel beg leave to take notice of several Decisions, even since 1661, which directly establish the Point pled for the Pannel; and the first is *Mason's* Case in the 1674, to be seen in the Record; and also observed by Sir *George Mackenzie*. *Mason* was accused of killing *Ralston*, The Defences were three, first, That *Ralston* had followed *Mason* from House to House, at last put violent Hands upon him; whereby *Mason* was forced to throw him off, and that he fell against a Stool. 2do, That the Wound was not mortal, but *Ralston* died *ex malo regimine*. 3tio, That the Homicide was merely casual, and in Self-defence, *Ralston* being the Aggressor. The Lords sustained the Libel only relevant to infer the *pœnam extraordinariam*, and seperately sustained the other Defences to assilzie in totum, and remitted all to the Knowledge of the Inquest. Here your Lordships see, the Killing only sustained *ad pœnam extraordinariam*, without regard to the three Defences of casual Homicide, Self-defence, and dying *ex malo regimine*; for they are all sustained seperately to assilzie, even from the *pœna extraordinaria*: Here then was a culpable Homicide, sustained only *ad pœnam extraordinariam*, though neither merely casual, nor in Self-defence; and so there can be no Judgment more direct upon the Point now pled.

And here the Pannel must notice, once for all, That it makes nothing to this Question, That in that, and other like Cases to be mentioned, a mortal Weapon was not used; for it is one Question, What is sufficient to make a Homicide only culpable? And quite another, Whether, in our Law, there is such a Thing as culpable Homicide, though neither merely casual, nor in Self-defence? That of the using a deadly Weapon enters into the Argument, Whether a Homicide is *dolosum* or culpable only? But it makes nothing to the other Question, since Homicide may not be merely casual, although no mortal Weapon is used, as appears both from this Decision, and the Case of *Bain*, cited for the Pursuers.

Another Case is that of *Grierison* and others, 12th March, 1684; where the Pannels being accused of Murder, for killing the Defunct in a Scuffle; the Defence proposed was, That the Defunct was the first Aggressor, and did invade the Pannels, or one or other of them; and that *William Grierison*, or one

or other of them, being standing before the Fire, the Defunct threw the said *William*, or one or other of them, in the Fire, and fell upon him himself; and then, after the Scuffle was over, the Defunct did rise, walked up and down, discoursed, and of new again beat the said *William Grier-son*, and threatened to kill him if he would not be gone; that the Defunct went in good Health to the Door thereafter. These the Lords sustained relevant to liberate from the ordinary Pain of Death. Here is another Decision in Point; the Crime was not found merely casual, or the Court must have allowed; at least, could only have imprisoned, and could have inflicted no other arbitrary Punishment. But that was not the Case, it was found culpable, and not merely casual; and therefore the Punishment restricted. Sure then it is not true in Law, that all Homicides are capital, unless they be merely casual.

A third Case, is that of *Maxwell* and others, 7th November, 1690, pursued for the Murder of *John Russell*, where the Court sustained this Defence, That there was a previous Combination to make a Convocation, in order to debar and keep out Mr. *Walter Macgil*, Minister of from entering into his Church that Sunday, in consequence of which a Convocation happened; and when they were required to disperse, they took the Keys from the Beadle, and beat the Notar, and the Minister's Wife, and others, before the Slaughter was committed, relevant to restrict the Slaughter to an arbitrary Pain. And found yet further, That if any actual Attempt was made, by throwing great Stones at the Minister, before committing the Slaughter, that that was sufficient to liberate from the Slaughter *simpliciter*. Sure the first Part of the Defence implied neither accidental Homicide, nor Self-defence, but a Provocation by real Injuries; yet the Court justly sustained it to restrict.

On the 6th November that same Year, another Judgment was given, very opposite to the Pursuer's Pleadings, in the Case of Captain *Price* and others, who were prosecuted for shooting one *John Reid*, a Tradesman of *Glasgow*, and Serjeant at that Time of a Guard kept in that Town. The Case was, That Captain *Price*, and others with him, had made some Disturbance in the House where they lodged, and committed some Rudeness to the Landlady and her Maid, which occasioned the Guard to be called; and when the Guard came, commanded by *Reid*, and entered the Room where *Price* was, he and his Company resisted the Guard, and one of them shot *Reid* dead. The Defence proposed was, "That before any Guard came, a Mob had begun to rise, and had gathered at the Door where the Officers were, who had shut the Door upon themselves, and cried out to shoot the Dogs, and Words to that Purpose: That when the Guard came, they did not know it was the Guard, but resisted and fired, from Apprehension that it was the Mob, and so killed *Reid* the Commander of the Guard." The Lords "sustained that Defence relevant to restrict the Libel." And in that Judgment, beside the Establishment of the general Principle, this may be observed, That *Reid* was killed by Mistake, as one of the Mob, and there neither was nor could be any Provocation from him; neither was it pled, That the Mob had given any real Injury, but only were gathered in a tumultuous Way, and uttering injurious Words: Yet the Court justly restricted the Libel; tho' it is plain the Slaughter was not accidental, except in so far as the Commander of the Guard was killed in Place of a Mobber. Neither was it Self-defence, because the Pannels had no Right to resist the Guard, only there was an Injury by the Convocation, and an Apprehension given of greater Injuries, though that Apprehension was not so idly founded.

The Case of Captain *Wallace* firing on the Boys from the *Abbey*, may likewise be noticed; but being a well-known Case, needs not be at length recited.

A fourth Case is that of Ensign *Hardie*, 6th June, 1701: He was accused of Murder, by giving repeated Thrusts, with a drawn Sword, to one *Smith*, who at the Time had no Arms, whereof *Smith* instantly died; and that he afterwards boasted of his Crime and Cruelty, telling other Gentlemen, That he had bowed his Sword upon the Person of a Fellow at *Scarbridge*. The Defence proposed, and sustained, was, "That the Defunct was the first Aggressor, and did take Hold of the Pannel's Horse-bridle; and when he was holding the Horse by the Bridle, did give the Pannel a Stroke over the Face with a Rung or Tree, and wounded him to the Effusion of his Blood; and that the Defunct beat the Pannel from his Horse." These were found relevant to restrict the Libel to an arbitrary Punishment. And then the Reply was sustained relevant to elide it, "That the Pannel beat the Defunct on the Face with a twisted Rod, before he struck the Pannel." Here again the Point is fixed; no casual Homicide, nor Homicide in Self-defence: And so your Lordships had found by a former Interlocutor, wherein you repelled the Defence, when proposed as Self-defence, but yet restricted the Punishment, because the Homicide was culpable.

A fifth Case yet stronger, is that of the first of March, 1710: *Peter Maclean*, who was accused of the Murder of *James Ewing*, by shooting him dead with a Fowling-piece, when *Ewing* had no Arms in his Hand. The Defence sustained to restrict the Libel to an arbitrary Punishment was, "That the Defunct quarrelled the Pannel, under the Name of *Rascal*, how he durst carry a Fowling-Piece, and that if the Prince had his own, he durst not do so;" and adding these Words, "That her Majesty was but a Whore; and thereupon assaulted the Pannel for taking his Carabin from him." These are the Words of the Interlocutor; and it is so plain, that no Observation needs to be made upon it.

Another Case is that of *Bathgate*, 23d January, 1710: He was accused of murdering *Andrew Braidwood*, by throwing him down to the Ground, and giving him several Strokes and Bruises, whereof he died. Your Lordships "found the Libel only relevant to infer an arbitrary Punishment;" yet the Fact was not entirely casual, nor pled to be so: And you sustained the Defence, "That the throwing down libelled was only a Wrestling, out of no Malice, and that previous thereto the Defunct was violent and in the Habit of spitting Blood, relevant to elide the Libel in totum."

The Case of *Govan*, 3d March, 1710, is not so plain as the others above-mentioned; but yet it does assist in the Question: For there your Lordships sustained opprobrious Language and Invasion, by beating in a

Scuffle, though without mortal Weapons, relevant to restrict the Punishment of killing with a Sword, even suppose the killing should be proved to have been without the Door of the House, when the last beating was only pretended to have been within the House; and so the beating must have been over before giving the Wound, and the Pannel employed in *prosequendo*, by way of Retortion of the Injury that had been given.

Another unanswerable Case is that of *Carlops*, January 8th, 1711; the Circumstances of which are so well known, that it is in vain to repeat them; sure it was neither accidental Homicide, nor Homicide in Defence: But the Lords sustained the Defence, That the beating was *per plures commissum*, in Conjunction with any two of the following Defences, viz. "That any beating committed by them was in a Tuzie or *Rixa*, in which they mixed themselves, to relieve a Youth in the Defunct's Grips, or in a Struggle with him. Or, *separatim*, That they had Swords about them, and only made use of Staves or Batons, relevant to restrict the Libel to an arbitrary Punishment."

There is another Case likewise worth noticing, 18th December, 1712; the Case of Serjeant *Davies*, who was accused of the Murder of Mr. *Robert Park*—where your Lordships "found the Pannel his being alone, Time and Place libelled, and a Scuffle then happening betwixt the Defunct, with two or three more in his Company and the Pannel, and after a beating with Staves betwixt the said Men and the Pannel, the said Pannel his retiring, and calling for the Guard, and being mutilate in the Hand before he gave the said mortal Wound, relevant to restrict the Libel to an arbitrary Punishment."

Another very late Case is that of *Jasper Reysano*, 14th December, 1724, where the Pannel being accused of killing *Robert Lamb*, by throwing him over the Stairs, without Cause or Provocation, whereby he was brained, your Lordships sustained it only "relevant to infer an arbitrary Punishment." Yet sure it was not accidental, far less in Defence. All which Cases plainly establish the Point, that even since the Act of Parliament, 1661, the constant Practice hath been to find culpable Homicides only relevant to infer arbitrary Punishment; and that there are Homicides not punishable with Death, though neither merely accidental, nor in Self-defence.

There is also a Case which deserves to be noticed as to that Point, of a third Party's being killed when interposing betwixt other two in a Scuffle: Which is the Case of *John Graham*, 1st December, 1712, where *Graham* was accused of murdering *David Cochran*. But your Lordship sustained the Defence, "That while he was attacked by *Blyth* with a drawn Dirk, the Pannel was in his own Defence with a drawn Bayonet; and that in the mean Time, the Defunct interposing as a Keddler betwixt them, did casually receive the Wound libelled relevant to restrict the Libel to an arbitrary Punishment."

This Information having drawn to so great a Length, we are unwilling to trouble your Lordships with further References to the Laws of other Countries, particularly to the Law of *England*; although we apprehend the Law there does not differ substantially from our Law in this Particular, except it be in these; 1st, That Manslaughter is in effect not punishable at all in *England*, otherwise than by a Kind of elusory Punishment; 2^d, That in no Case *dolus* is presumed only from the giving the Wound, except upon the particular Statute of Stabbing: Whereas, indeed, it is in several Cases otherwise with us; culpable Homicide is punishable arbitrarily, and no Doubt in many Cases, where contrary Circumstances do not appear, the giving the Wound presumes Dole, and even by the Statute of Stabbing, the Killer hath the Benefit of his Clergy, if the Person killed give the first Blow or real Provocation, and that although the Provocation did not immediately precede the Act of Killing, if it happened at any Time of the Quarrel.

That by the ancient Law of *England*, Slaying a Man did not infer Death, yet perhaps not what we call Murder itself, seems plain from *Affisa Henrici Regis apud Northampton*, published by *Selden*, in his *Janus Anglorum*, Page 120. of the last Edition; by which it appears, that even Murder itself and Robbery, was punishable only by Mutilation, such as cutting off the Hand or Foot: And all their Law-books, as well as the daily Practice, establishes the Distinction betwixt forethought Felony, and slaying on Suddenty; yea of old, even a Murderer by Malice prepense seems to have had the Benefit of the Clergy, and that Benefit only taken away from such Murderers by the first Act, 23d Henry VIII. and their Books of Reports are full of the Examples that Slaughter on Suddenty is not Murder or capital. In *Coke's Reports* it is stated, that several Men playing at Bowls, two of them quarrelled, and a third, in Revenge of his Friend, struck the other with a Bowl, of which wound he died: This was held Manslaughter; for it was done upon a sudden Emotion, in Revenge of his Friend.

There likewise, two Boys combating together, one of them was scratched in the Face, and his Nose run a great Quantity of Blood; he went three Quarters of a Mile off to his Father; who seeing him all bloody, took in his Hand a Cudgel, and went three Quarters of a Mile to the Place where the other Boy was, and struck him upon the Head, of which the Boy died. This was held but Manslaughter; for the Ire and Passion of the Father was continued; and there was no Time determined in the Law that it was so settled, that it shall be adjudged Malice prepense in Law.

The Case of *Mauvridge*, set down at length by Lord Chief-Justice *Keyling*, in his Reports*, makes strongly for us; and we beg Leave to refer to the whole Treatise there set down, and particularly to the first Ground of Provocation, which he declares to be sufficient so as to alleviate the Act of Killing, and to reduce it to a bare Homicide: "He says, 'If one Man, upon angry Words, shall make an Assault upon another, either by pulling him by the Nose, or filipping upon the Forehead, and he that is so assaulted shall draw his Sword, and immediately run the other thorow, that is but Manslaughter; for the Peace is broken by the Person killed, and with an Indignity to him that received the Assault: Besides, he that was so affronted might reasonably apprehend, that he that treated him in that Manner might have some further Design upon him.'" Your Lordships see how close this is to the Case; The Insult and Indignity done by *Bridgeton* was vastly stronger than

* This Case of *Mauvridge's* is so often quoted in Trials for Murder, that we shall set it down at large; and being drawn up by so great a Man as Lord Chief-Justice *Holt*, gives it great Authority.

any thing here mentioned and having received such an Affront, he had Reason to expect worse; more especially when, as we offered to prove, *Bridgeton* was endeavouring to pull out my Lord *Strathmore's* Sword.

We must likewise humbly refer to several Cases set down by Serjeant *Havokins*, in his Pleas of the Crown, which fully agree with what we now plead; and particularly take notice of what he says, pag. 84. "If a third Person happen, accidentally happen, to be killed by one engaged in a Combat with another, upon a sudden Quarrel, it seems that he who kills him is guilty of Manslaughter only." And it would seem that there is even a Difference made, betwixt killing a Person that endeavours to interpose, if he tell that he comes for that Purpose, and killing one who accidentally is interposed betwixt the two contending Parties, which was my Lord *Strathmore's* Case: The Killing him who interposes to separate, if he give notice what he is doing, is reckoned worse than the Killing the other. And this Observation shews that the present Case is stronger than the above-cited Case of *Graham*, where your Lordships restricted it to an arbitrary Punishment. And what that Author observes, confirms a Distinction we have made, betwixt a Man quarrelling with another, and killing a third Party, where it is proved the Killer had a felonious Intention to murder the other, and the Case where that does not appear; for however, in the first Case, he might be guilty of the Murder of the third Party, yet if a Design to murder the Person he quarrelled with is not proved, then he can never suffer capitally for killing the third Party: And we have already endeavoured to prove, that that must be the Case as to *Bridgeton*, where he gave the Provocation, and no Act followed against him sufficient in Law to establish a Design of murdering him.

The Pursuers have cited the same Books, and *Mauwridge's* Case, as for them; but that we submit. The particular Cases of *Holloway*, and *Williams the Welchman*, spoke of by *Keyling*, are not at all to the Purpose: The *Welchman's* Case was no Judgment; but neither in that nor in *Holloway's* was there any real personal Injury, on which a great Stress is laid in all these Questions.

The Pursuers mention another Case stated, but never adjudged; A Person shooting at Fowls with an Intent to steal them, accidentally kills a Man; that will be Murder. This perhaps may be justly doubted. Sure it would be too severe. But supposing it were so, it is of no Importance: Stealing, even of Fowls, by the Law of *England*, is Felony of Malice prepenſe; And where a Man attempting to commit one Felony, does another, there is little Doubt but in strict Law he is guilty of the Felony committed (a). But what is that to the Case of a Provocation by a real Injury?

The Pursuers have quoted the Authority of *Voet*, and a Decision observed by him from *Sande*, to prove, that where one Man was intended to be killed, and another slain, the Crime is Capital: In which, no doubt, *Voet* differs from many as learned Lawyers, who are of the other Side. But his Opinion, and that of *Sande*, is obviated by what is already said: It is only in the Case of no Provocation or real Injury on the Part of him who was designed to be killed. And 2do, 'Tis always taken for granted by *Voet*, and all who are of that Opinion, that the Design of murdering the Person intended to be invaded, do appear and is proved: But we have already shewn, that cannot be said in the present Case.

The Pursuers pretended, That there was a Circumstance in the Libel which implied Malice against the Earl of *Strathmore*, viz. "That the Thrust given was followed by a second Push." But as there is nothing in this Fact, it may be the Subject of Imagination, but can never be the Subject of Proof, unless it were pretended, as it is not, that the Pannel drew back or out his Sword, and made a second Thrust; which will appear not to be true, from the Nature of the Wound; and the Thrust will be found to have been so momentary, that it was impossible. 2do, If any thing like that happened, it will appear, that there was no more in it, but the Pannel's staggering, or moving the Sword, by his Weight leaning upon it. 3tio, There is no Relevancy in it at all; the Fact being, That the Pannel pushed as at *Bridgeton*: And no Circumstance will make it appear, that he knew he had touched the Earl of *Strathmore* till some time after the Fatality was perfected.

The Pursuers further pretended, "That as they had libelled Malice, they would prove it from other antecedent Facts that had happened some Time before, whereby it would appear, that there was Enmity betwixt the Defunct and the Pannel."

It is answered for the Pannel, 1mo, That no such Facts being libelled, nor, to this Minute, condescended upon, either in the Debate or Information, they can by no means enter into the Proof, otherwise the highest Injustice would be done to the Pannel in this and every such Case: For if the pretended Facts, insinuating Malice, had been libelled, then it would have been competent to the Pannel to have elided the same by a proper Proof, to shew that they inferred no Malice on his Part; he might have proved Diffimulation or Reconciliation, and would have been prepared for that Purpose. But where such Facts are concealed, and may have happened at an unknown Distance of Time, 'tis impossible the Pannel can be prepared with proper Evidences. And though it is sufficient, in an Indictment, to libel Malice in general, in order to make a Relevancy; yet then it is always understood that the Pursuer intends no more than the presumed Malice arising from the Fact libelled: Neither can such Proof come in under the Head of Art and Part, because that can only have Regard to such Facts as happen at the Time of committing the Action complained of, and such as import a Share in the Action; but cannot reach to pretended Qualifications of Malice that happened the Lord knows when.

In the next place, the Pannel offers to exclude all Pretence of former Enmity, by proving, that, for some Time before, they had met from Time to Time occasionally, without any Marks of Enmity, but all the seeming Requisites of Friendship and Civility intervening; and particularly, that that very Day they had dined together, afterwards drunk together for a considerable Time, and visited together, in the Lady *Auchterhouse's*, a common Relation, with all Appearances of Friendship; and that the deceased Earl had kindly invited the Pannel and his Family to come and visit him and his, and made a Challenge of Kindness of it, That he was too great a

Stranger. In the Case of Enmity, the Divine Law itself determines, when Hatred is to be presumed, and when not: "Whoso killeth his Neighbour ignorantly, whom he hated not in Time past; in the Heat of Anger, from Yesterday, the third Day," or, as in the *Latin* Translation, *qui veri & nudius tertius nullum odium contra eum habuisse comprobatur*. So that the very Friendship that passed that Day on which the unhappy Accident happened, excludes all Pretence of former Enmity, suppose there had been any seeming Differences, of which the Pannel is not conscious, far less of Malice, or any capital Enmity that ever was.

Upon the whole, though this fatal and melancholy Accident, which gives occasion to the Trial, does and must ly heavy on the Mind of the Pannel, and produce the strongest Sorrow and Regret in all that had the Honour to know the deceased Earl; yet the punishing the Pannel capitally for an Offence which happened *casu magis quam voluntate*, would be a very rigorous Extension of the Law. It is plain, from what is above said, that culpable Homicide, both by our Law and Practice, is punishable only arbitrarily, and comes under the general Description of casual Homicide in the Act 1661. No Case can be more pitiful or favourable than this, where the Death happened to a Person nowise intended to be hurt: And therefore 'tis hoped your Lordships will sustain the Defence pled, relevant to restrict the Libel to an arbitrary Punishment.

Ro. DUNDAS.

Curia Justiciaria S. D. N. Regis tenta, in novo Sessionis domo Burgi de Edinburgh, primo die mensis Augusti, millesimo septingentesimo vigesimo octavo, per honorabiles viros Adamum Cockburne de Ormiston, Justiciarium Clericum; Dominos Jacobum Mackenzie de Royston, et Gulielmum Calderwood de Poltoun, Magistrum Davidem Erskine de Dun, Dominum Gualterum Pringle de Newhall, et Magistrum, Andream Fletcher de Miltoun, Commissionarios justiciarum dict. S. D. N. Regis.

Curia legitime affirmata.

Intran.

James Carnegie of Finhaven, Pannel,

Indicted and accused ut in die precedenti.

THE Lords Justice Clerk and Commissioners of Justiciary, having considered the Indictment, raised at the Instance of *Susanna Countess of Strathmore*, and Mr. *James Lyon*, Brother-german and nearest of Kin to the deceased *Charles Earl of Strathmore*, with Concourſe and at the Instance of *Duncan Forbes*, Esquire, his Majesty's Advocate, for his Highness's Interest, against *James Carnegie of Finhaven*, Pannel, with the foregoing Debate thereupon; they find, and hereby find, that the Pannel, at the Time and Place libelled, having by Premeditation and forethought Felony, with a Sword or other mortal Weapon, wounded the deceased *Charles Earl of Strathmore*, of which Wound he the said Earl soon thereafter died, or that he the Pannel was Art and Part thereof, relevant to infer the Pains of Law; but allowed, and hereby allow the Pannel, to prove all Facts and Circumstances he can, for taking off the aggravating Circumstances of Forethought and Premeditation: As also find, and hereby find, That he, the said Pannel, Time and Place foresaid, having, with a Sword, or other mortal Weapon, wounded the said deceased Earl, of which Wound his Lordship soon died, or that he the Pannel was Art and Part thereof, *separatim*, relevant to infer the Pains of Law: And repelled, and hereby repel the Defences proposed for the Pannel: And remitted, and hereby remit him, and the Indictment, as found relevant, to the Knowledge of an Assize.

AD. COCKBURNE, I. P. D.

The Lords Justice-Clerk and Commissioners of Justiciary continued the Diet, at the Instance of *Susanna Countess of Strathmore*, and others, against *James Carnegie of Finhaven*, Pannel, till To-morrow, at Nine of the Clock in the Morning; and ordained Witnesses and Affizers to attend at that Time, each Person under the Pain of Law; and ordained the Pannel to be carried back to Prison.

Curia Justiciaria, S. D. N. Regis, tenta in novo Sessionis domo Burgi de Edinburgh, secundo die mensis Augusti, millesimo septingentesimo vigesimo octavo, per honorabiles viros Adamum Cockburne de Ormiston, Justiciarium Clericum; Dominum Gulielmum Calderwood de Poltoun, Magistrum Davidem Erskine de Dun, Dominum Gualterum Pringle de Newhall, et Magistrum Andream Fletcher de Miltoun, Commissionarios Justiciarum dict. S. D. N. Regis.

Curia legitime affirmata.

Intran.

James Carnegie of Finhaven, Pannel,

Indicted and accused ut in diebus precedentibus.

The Lords proceeded to make Choice of the following Affizers:

A S S I Z E.

Sir Robert Dickson of Inverask,	Robert Dundas, Merchant in Edinburgh,
George Loch of Drylaw,	David In-lis, Merchant there,
* John Watson of Murrays,	David Baird, Merchant there,
Walt. Riddel of Granton,	Alex. Blackwood, Merchant there,
George Warrender of Burntsfield,	* John Coutts, Merchant there,
Tho. Brown of Bonington,	John Steven, Merchant there,
* George Haliburton of Fordel,	James Ker, Goldsmith there.
James Balfour of Pilrig,	

N. B. Those of the Jury marked thus * protested against the Verdict.

The above Affize being all lawfully sworn, and no lawful Objection in the contrary, the Pursuers for Probation adduced the Witnesses after deponing, viz.

Robert Hepburne, Hammerman in *Forfar*, solemnly sworn, purged, examined and interrogate, deponed, That he was in the Town of *Forfar*,

(a) At the Lent Assizes at *Chelmsford* in *Essex*, 1763, two Sailors were convicted for the Murder of a Farmer: The Case was, the Sailors came to steal the Farmer's Fowls; the Farmer with his Son pursued them; one of the Sailors struck the Farmer several Blows on the Arm, which (though not likely) killed him. This was held to be Murder; because the Act they were about was unlawful; but the Sailors, after several Respite from Execution, received his Majesty's most gracious Pardon.

the ninth Day of May last, betwixt the Hours of Eight and Nine o' Clock at Night, where he did see the deceased Earl of Strathmore, Lord Rosehill, and Mr. Thomas Lyon my Lord Strathmore's Brother, walking in the Streets; and at the same Time did see Lyon of Bridgeton, and Finhaven the Pannel, standing near to the Lady Auchterhouse's House, upon the Street; what Words passed betwixt them, he being at a Distance could not hear; saw Bridgeton give Finhaven a Push with his Hand; and Finhaven fell in the Gutter; and he saw a Servant of the deceased Earl of Strathmore help Finhaven up out of the Gutter; and when Finhaven got up, he saw him draw his Sword immediately; but that Bridgeton coming up faster than Finhaven, he saw Bridgeton offer to draw my Lord Strathmore's Sword; but does not know whether he got it drawn, or not, but saw Finhaven draw his Sword before Bridgeton offered to draw my Lord Strathmore's; and when Bridgeton was coming up from the Place where Finhaven fell, he looked over his Shoulder, and seeing Finhaven with his Sword drawn, he went faster up to my Lord Strathmore, as said is; and when Finhaven came up, my Lord Strathmore being standing about a Pair of Butts from the Place where Finhaven fell, and when Bridgeton came up, and endeavoured to draw my Lord Strathmore's Sword, as said is, my Lord turned him about, and set Bridgeton aside, and made some Steps towards Finhaven, who would be at that Time about six or eight Ells from my Lord; and he did see my Lord endeavour to take Finhaven in his Arms when they met, and in a little after that, that he did see my Lord withdraw himself aside from the rest of the Company, and saw him put down his Breeches, and lift up his Shirt, and heard him say he had got a Wound, and repeated these Words three Times, and saw him put up his Shirt, and in a short Time thereafter saw my Lord fall to the Ground. And being interrogate, If he saw Finhaven the Pannel make a Thrust at my Lord Strathmore with a Sword? Deponed, He did not see him make the Thrust; but at that Time did see no other Sword drawn but Finhaven's; and after my Lord retired he saw several other Swords drawn. Deponed, That there was no other Company standing with my Lord but my Lord Rosehill, and his own Brother Mr. Thomas, before that Bridgeton and Finhaven came up: And that he saw all this that he has deponed upon, from his own Shop-door, which was about seven or eight Ells Distance from that Part of the Street where my Lord Strathmore was standing. And being interrogate, If he knows what came of Bridgeton, after he came up to my Lord? Deponed, That he knew not what became of Bridgeton after my Lord put him aside: And that there was as much Day-light as he could see what he has deponed upon: And that Finhaven the Pannel was in Boots; and that he was coming fast up after Bridgeton, but Bridgeton went faster towards my Lord; and that when my Lord Strathmore fell, he saw Thomas Adam, Maltman, take up my Lord from the Ground, and saw no other Body assisting. Deponed, He saw the Pannel's Sword twisted out of his Hand by Mr. Thomas, or my Lord Rosehill; but which of them, he knows not; and that it was after my Lord fell. And deponed, That he did see the Wound in my Lord's Belly, a little below the Navel; and that it was bleeding. Deponed, That he saw Finhaven, after his Sword was twisted out of his Hand, walk in his ordinary way of walking, towards the Lady Auchterhouse's House. *Causa scientia patet.* And this is the Truth as he should answer to God.

Robert Hepburne.

AD. COCKBURN.

Nota, The Procurators for the Pannel having (before purging) objected to the above-named Robert Hepburne, why he ought not to be a Witness in this Case; because, since his Citation to be a Witness, he had expressed Malice and Ill-will against the Pannel in his Words, viz. "That he thanked GOD, he had now an Opportunity to hang him, and would do it if he could." And seeing these Expressions were clearly proven against him, by two concurring Witnesses, in Presence of the Court and Jury, they desired the same might be so marked in the Books of Adjournal. Which, and this Deposition, the Lords left to the Consideration of the Jury.

David Lord Rosehill, solemnly sworn, purged, examined and interrogate, deponed, (being interrogate for the Pannel) That the Time libelled, the Deponent on the Occasion of a Burying, was brought in Company with the deceased Earl of Strathmore, the Pannel, and others; and together they dined in Mr. Carnegie of Lours's House; and after Dinner and the Burying was over, they together went to the House of Mr. Dickson, Clerk of Forfar, where they continued some considerable Time, drinking a Glass of Wine together; and after they left that House, they assembled in the House of my Lady Auchterhouse, in the same Town, the Pannel's Sister, where the deceased Earl had gone to make a Visit. Deponed, That during all that Day, and in the several Places where the deceased Earl, the Pannel, and the rest of the Company were, he the Deponent, observed nothing but great Civility and Friendship betwixt the deceased Earl and the Pannel. Deponed, That before they parted from the Lady Auchterhouse's, the Pannel appeared to the Deponent to be drunk, and far gone in Drink, to the Degree of staggering; and he observed the Pannel drink plentifully in these several Houses. Deponed, That he the Deponent, during the Time of his being with the said Company, was mostly engaged in Conversation with the deceased Earl, and had not the Occasion to observe what passed in Conversation betwixt the Pannel and Mr. Lyon of Bridgeton: And being interrogate about what he knew of the Character and Temper of the Pannel? Deponed, That, according to the Deponent's Knowledge of him, which had been of long Continuance, and particularly according to the Character he the Pannel bore in the Country, he was thought to be nowise quarrelsome in his Temper, but to be of a peaceable and good Disposition. *Causa scientia patet.* And this was the Truth as he should answer to God.

Rosehill.

D. ERSKINE.

William Douglas, lawful Son to William Douglas, late Provost and Chirurgion-Apothecary in Forfar, solemnly sworn, purged, examined, and interrogate for the Pursuers, deponed, That on that Day whereon the deceased Earl of Strathmore was wounded, he the Deponent was at Forfar, and on the Streets, where he did see the Earl with my Lord Rosehill and Mr. Thomas Lyon his Brother, and at the same Time, he observed Finhaven and Mr. Lyon of Bridgeton standing together near to the Lady Auch-

terhouse her Lodging; and so on thereafter looking about, he observed Finhaven leaning and falling backwards into a Kennel; and after getting out of it, which he appeared to the Deponent to do very soon, he drew his Sword, and with it went up to the Company where the Earl, Bridgeton, and the rest were; and at the first Sight, upon the Pannel's approaching to the Earl, Bridgeton and the rest, Bridgeton was then interposed betwixt the Earl and the Pannel; but all of a sudden and a clap (a), the Earl came to be interposed betwixt Bridgeton and the Pannel; and at the Time of the said Earl's Interposition, the Pannel was within the Length of his Sword at the Place where Bridgeton was standing; that is to say, had been standing. Deponed, That he did observe the Pannel make a Thrust with his Sword; and at the Time of so doing, the Earl was standing next the Pannel, and his Face towards him. Deponed, That the Earl received a Wound in his Belly, and after receiving it, he saw him pull his Shirt from under his Breeches, and at the same Time saw him bleeding, and soon thereafter his Lordship fell down, and he heard him say, that he had got it; and before the Earl fell, and while he was upon the Ground, he did observe his Brother Mr. Thomas, with his drawn Sword, twist Finhaven's Sword out of his Hand, after seeing and hearing some clashing of their Swords: But at the Time when Finhaven made the Push, as said is, he observed no other Sword drawn but Finhaven's; and at the Time when the Pannel recovered his Thrust, the Pannel and the Earl were very near one another: And all this Time, the Deponent was about the Length of this Room, or some more, distant from the said Earl and the Pannel, whose Sides were opposite to the Deponent; and after the Earl of Strathmore's Fall, and that his Brother Mr. Thomas, twisted the Sword out of the Pannel's Hand, the Pannel, who was in Boots, ran towards his Sister's Door: After the deceased Earl was carried to a House, and his Wound was dressed, he heard his Lordship say, that after the Sword entered his Belly, he the Pannel gave it a second Thrust. Deponed, That when he observed Finhaven falling into the Puddle, as above said, there was none standing with him or by him but Mr. Lyon of Bridgeton. And what he has above deponed, happened on the ninth Day of May last, about the Hour of Nine at Night. *Causa scientia patet.* And this was Truth as he should answer to God.

Will. Douglas.

DA. ERSKINE.

Andrew Douglas, also lawful Son to the said William Douglas, solemnly sworn, purged, examined and interrogate, Deponed, That the Time and Place libelled, the Deponent saw John Lyon of Bridgeton push the Pannel upon the Breast, whereby the Pannel fell in the Gutter, which the Deponent apprehended would have taken him up to the Knee; that it was a very nasty Gutter; and that he saw the Pannel arise out of the Gutter, and immediately draw his Sword, by which Time Bridgeton was walking off towards my Lord Strathmore and others, who were standing upon the Street about the Distance of the Length of this Room from the fore said Gutter: And deponed, That he followed after Finhaven immediately, after standing a little while with his Comrades: And that before the Deponent came up to the Place where my Lord Strathmore and the other Gentlemen were standing, my Lord Strathmore had fallen upon the Street. And the Deponent being asked, how soon that happened? Deponed, That it was in a moment; and that when the Deponent came up as aforesaid, he saw Mr. Thomas Lyon and Finhaven engaged, and making Passes at other with their drawn Swords; which the Deponent explained to be only a clashing with their Swords; and that Mr. Thomas Lyon did very soon twist the Sword out of Finhaven's Hand; whereupon Finhaven ran away to his Sister's, the Lady Auchterhouse's Lodging, and the Door was shut after him. *Causa scientia patet.* And this was the Truth as he should answer to God.

Andrew Douglas.

AND. FLETCHER.

John Ferrier, Residenter in Forfar, solemnly sworn, purged, examined and interrogate, deponed, That, at the Time and Place libelled, the Deponent having Occasion to go to water his Master's Horse, he saw Bridgeton and the Pannel, as they came out from the Lady Auchterhouse's Lodging, about the Bridge-stone near the Shambles, and there heard Bridgeton say to the Pannel, You must give me an Answer to my Question, which the Deponent heard was, If the Pannel would give his Daughter to the Lord Rosehill? And upon the Pannel's saying, No; Bridgeton asked him, If he would drink a Bottle of Wine, and if he would drink the King's Health? And upon the Pannel's refusing to do either, the Deponent saw Bridgeton take hold of the Pannel by the Breast, and violently push him into the Kennel; and heard Bridgeton at the same Time, say, Go, and be damnd, and your King George, whom you love so well. And thereafter Bridgeton walked towards my Lord Strathmore, Mr. Thomas Lyon, and my Lord Rosehill, who were standing upon the Street at some little Distance; and that Finhaven was helped out of the Gutter by a Footman of my Lord Strathmore's: And that upon the Pannel's getting upon the Streets again, he immediately drew his Sword, and ran up the Street after Bridgeton; and before Bridgeton had come the Length of the Place where the Lord Strathmore and others were standing, he looked over his Shoulder, and seeing Finhaven following him in manner above-mentioned, he run up to my Lord Strathmore, who, and the rest of the Company, had still their Backs turned to the Place from whence Finhaven and Bridgeton were coming: And that Bridgeton, upon his coming up to Strathmore, laid hold upon my Lord Strathmore's Sword, and endeavoured to pull it out; upon which my Lord Strathmore turning about pushed Bridgeton off, and in the mean Time Finhaven made a Push with his Sword at Bridgeton, and at that Instant he observed my Lord Strathmore pushing Bridgeton aside, and make a Step towards Finhaven; and observed at same time Finhaven, going on with his Push, to stagger forward with the Thrust upon my Lord Strathmore; and thereafter the Company went all through other (b), so that the Deponent could not see where the Thrust landed: And very soon thereafter the Deponent saw Mr. Thomas Lyon with his Sword ca' (c) Finhaven's Sword out of his Hand, which lighted at a good Distance upon the Street: Upon which Finhaven run off, staggering, towards the Lady Auchterhouse's Lodging, and had almost fallen upon the Street before he got in at the Gate; and much about the same Time the Deponent saw the Earl of Strathmore fall down upon the Street, and afterwards carried off, and that Thomas Adam and Janet Binnie were the first that came to his Assistance. Deponed, That the Kennel was deep and

(a) Viz. Instantly.

(b) Viz. Intermingled, in great Confusion.

(c) Viz. Force.

dirty

dirty, and that the Pannel was deep in it, but not freely covered: That when he arose, his Face was almost as black as his black Coat; and that while these Things past, the Deponent was riding upon the Side of the Street, betwixt the Gutter and the Place where the Earl of Strathmore and others were standing; and upon seeing the Beginning of this Accident, he stopped his Horse a little, till he saw as above-mentioned. *Causa scientia patet.* And this was the Truth as he should answer to God.

John Ferrier.
AND. FLETCHER.

David Barclay, lawful Son to David Barclay, Brewer in Forfar, solemnly sworn, purged, examined and interrogate, deposed, That at the Time and Place libelled he saw Bridgeton push the Pannel into a Gutter, and saw a Servant raise him out of the Gutter: And when the Pannel got to the Street, he saw him draw his Sword, and go towards the rest of the Company, and Bridgeton was beyond the Earl of Strathmore, his Brother and Lord Rosehill, who were interposed betwixt the Pannel and Bridgeton, and did not see the Pannel push with the Sword, and saw a little after my Lord Strathmore fall upon the Street; and immediately after that saw Mr. Thomas Lyon, with a naked Sword, beat the Pannel's Sword out of his Hand, and the Pannel immediately run toward the Lady Auchterhouse's House, and got in at the Door. And deposed, That when Bridgeton thrust the Pannel into the Gutter, the Servant who lifted him up, said to Bridgeton, or some other Servant standing by, that he was uncivil, tho' he was a Gentleman: And that what the Deponent saw and heard, as aforesaid, was betwixt Eight and Nine o'Clock of the Evening of the Day aforesaid. *Causa scientia patet.* And this was the Truth as he should answer to God.

David Barclay.
WA. CALDERWOOD.

Elizabeth Binnie, Spouse to Andrew Gray, Baxter in Dundee, solemnly sworn, purged, examined and interrogate, deposed, That the Time and Place libelled, she saw John Lyon of Bridgeton give a Push to the Pannel, whereby he fell in the Gutter, and was raised out of it by the Lord Strathmore's Servant; and when he got to the Street, saw him draw his Sword, and heard him utter an Oath, but did not know what the Words were: And then the Deponent turned her Back, and did not see Finhaven push with the Sword. *Causa scientia patet.* And this was the Truth as she should answer to God: and declared she could not write.

W. CALDERWOOD.

John Macky, Servant to Mr. Robert Nairn, Brother-german to — Nairn of Drunkilbo, solemnly sworn, purged, examined, and interrogate, deposed, That at the Time and Place libelled, he did see William Macglisb, my Lord Strathmore's Servant, take Finhaven the Pannel out of the Gutter, where the Deponent saw him ly; and did see Finhaven draw his Sword after he was out: And did hear one of the Gentlemen, standing in the Place where my Lord Strathmore was wounded, call out to Finhaven, Stand off, Sir; and a little Space thereafter he saw the deceased Earl of Strathmore taken up. *Causa scientia patet.* And this is the Truth as he should answer to God; and deposed he could not write.

WA. PRINGLE.

James Barrie, Servant to James Carnegie of Finhaven, solemnly sworn, purged, examined and interrogate, deposed, That, at the Time and Place libelled, the Deponent was holding his Master's Horses upon the Streets of Forfar, near to the Lady Auchterhouse's Lodging: That he had seen the said Earl of Strathmore, and other Company with him, go along the Street from the said Lodging, and his Master and Bridgeton followed at a little Distance; heard them conversing together, and thought that Bridgeton lookt and spoke angry at his Master, and demanded that he should give him an Answer; did not well hear what his Master said, except these Words, That he intended to be of that Resolution still: Whereupon Bridgeton, with his two Hands, pushed his Master into the Gutter, at the same Time expressing himself, Go be damn'd, and let that Man take him up for whom he had so great a Favour. And the Deponent seeing his Master lying in the Gutter, quit his Horses, and came to relieve him, but found that my Lord Strathmore's Servant had helped him out before he came, and then he did see his Master draw his Sword, and go pretty fast forward, staggering, and saying, This cannot be suffered; then his Master came up to the Company, and saw him make a Push at Bridgeton; but that before his Master came up to them, he did see Bridgeton make an Attempt to draw my Lord Strathmore's Sword; and as Bridgeton was going toward my Lord Strathmore, he did see Bridgeton look over his Shoulder to Finhaven, and lookt as if he had been laughing. Observed, that when his Master made the Push, as before mentioned, he seemed as if he'd been falling, and saw him close upon Lord Strathmore: But before this, my Lord Strathmore had put Bridgeton aside, and my Lord Strathmore had advanced a Step or half a Step toward Finhaven; and then they went all in a Crowd thro' other, and he did not know what was doing amongst them, but did see his Master's Sword struck out of his Hand by another Sword, and then did see his Master go down to his Sister's Lodging. Deposed, That as his Master was thrown upon the Back in the Gutter, and was covered near over the Belly, and saw his Face all bespattered with Dirt, and saw the Mire run out of his Boot-tops as he went up the Street; and deposed his Master at that Time was very drunk. Being interrogate further, deposed, That he has frequently seen his Master drink, and propose the deceased Earl of Strathmore's Health at his Table, and this a short Time before the unlucky Accident happened. Deposed, That about a Month before, the late Earl and his Master was together at Burnside's Burial, and heard the Earl invite his Master to his House, and heard him answer, That he intended that very soon. Deposed, That his Master rode with Pistols that Day, but deposed there was not so much as a Stone in them. Deposed, That eight or ten Days before this unlucky Accident, his Master bid the Deponent go to the Taylor, and get his Clothes ready, for he intended as soon as he got his Chaise home, to go with his Lady and make a Visit to my Lord Strathmore at Glamis. *Causa scientia patet.* And this is the Truth as he should answer to God.

James Barrie.
WA. PRINGLE.

Elizabeth Vilant, Servant to Margaret Carnegie, Relict of the deceased Mr. Patrick Lyon, of Auchterhouse, solemnly sworn, purged, examined and

interrogate, deposed, That, on the Afternoon of the ninth of May last, she did see my Lord Strathmore and Finhaven in the Lady Auchterhouse's House, and did see nor hear nothing pass between them but what was kind and civil; and she was much of the Time in the Room before Bridgeton came in: But after he came in, she was but coming and going; and when my Lady called for a Glass of Brandy, the Deponent brought it in, and my Lady set it by, and saw Nobody drink it, and that my Lady told in the Company, That Bridgeton had taken her by the Wrist, and that she had not been so ill used by any Man, and complained of Pain. And deposed, That that Afternoon Finhaven appeared to be very drunk. *Causa scientia patet.* And this is the Truth as she should answer to God.

Elizabeth Vilant.
AD. COCKBURN.

Jsabel Meik, Servant to the before-named and designed Margaret Carnegie, solemnly sworn, purged, examined and interrogate, deposed, That in the Evening on the ninth of May last, Finhaven came up to the Lady Auchterhouse's House, and the Door being shut after him, she came up after into the said House: And she turning about upon some People knocking at the Door, and opening the same, there came in two or three Noblemen or Gentlemen with drawn Swords; and Finhaven being then in the Trance*, she took him by the Sleeve, and put him in the Peat-house, and lockt the Door of the Peat-house; and when the Bailie came in search of him, she delivered the Key to the Bailie, who took him out. And deposed, That Finhaven was mortally drunk, and when she saw him, he was all bespattered with Dirt. *Causa scientia patet.* And this is the Truth as she should answer to God. And deposed she could not write.

AD. COCKBURN.

William Dickson, Shoemaker in Forfar, solemnly sworn, purged, examined and interrogate, deposed, That the Time and Place libelled, the Deponent being at his own Stair-foot, saw two Gentlemen standing together whom he then did not know, and one of them did throw the other in the Puddle; and that Gentleman who was thrown in the Puddle was taken forth thereof by another whom he did not know: And when he got up, he drew his Sword, and went up towards other three that were standing together, and the Gentleman who threw him in the Puddle was nigh them; he did not see the said Gentleman push with his Sword at any. Deposed, That my Lord Strathmore was one of the three that was standing there, did not see him fall, but saw him carried away. Deposed, That after the Mob rose, he then saw Finhaven the Pannel, whom he knew to be the Gentleman that was thrown in the Puddle, and that he was chased back by two Gentlemen with drawn Swords to my Lady Auchterhouse's House. *Causa scientia patet.* And this is Truth as he should answer to God; and cannot write.

W. CALDERWOOD.

David Cauty, Merchant, and one of the Bailies of Forfar, solemnly sworn, purged, examined and interrogate, deposed, That upon the ninth of May last, about Nine o'Clock in the Evening, the Deponent being in a House near to the Lady Auchterhouse's Lodgings, there came a Servant, and told that there was very bad News that Night; That the Earl of Strathmore was killed by Finhaven: Upon which the Deponent went to the Streets, and there found a great Mob, who told the same which he had heard before. Whereupon the Deponent went towards Mr. Dickson's House, to which Place the Earl of Strathmore was carried; and then the Deponent met with, at least did see, Mr. Thomas Lyon and Bridgeton, but cannot be sure if my Lord Rosehill was with them, who went towards the Lady Auchterhouse's Lodgings: And Mr. Fletcher of Balnisknow told the Deponent, That he wanted a fore Hammer, to break open the Lady Auchterhouse's Door; whereupon the Deponent being a Magistrate, told, that it was his Duty to preserve the Peace, and prevent any illegal Proceedings, or bad Consequences therefrom. Thereafter the Deponent went towards my Lady Auchterhouse's Lodgings, and there found Mr. Thomas Lyon and Bridgeton, and demanded their Arms, which they delivered to the Deponent; and thereafter went to the said Lodgings, got Access, my Lady Auchterhouse's Servant delivering the Key of the Peat-house, where he found Finhaven lying upon Lint spread above the Peats, notwithstanding at first the Lady and her Servants denied he was there; and the Deponent told Finhaven, he was his Prisoner; and he asked the Deponent, how the Earl of Strathmore was? And the Deponent told he was very bad, as he was informed. And the Deponent having dispersed the Mob, caused carry Finhaven to the Prison; and when he came to Prison, he fell a crying to a great Extremity, as if he had been distracted, and said, It was the greatest Misfortune that could happen him; and said, That he deserved to be hanged for wounding such a worthy Earl: And deposed, That Finhaven appeared to the Deponent to be in Liquor, and drunk; but he did regret his Misfortune in the same Manner as if he had been sober. Deposed, That he was frequently in Prison with Finhaven, and in two or three Days after he was imprisoned, he heard him say, That there had been some Grudge or Misunderstanding betwixt the Earl of Strathmore and him, but that afterwards it was better cultivate, and in a manner done away; but did not hear the Cause of the said Grudge or Misunderstanding exprest. Deposed, That when he heard Finhaven regret the Misfortune that had happened the Earl of Strathmore, he said the Design was against another, namely, Lyon of Bridgeton. *Causa scientia patet.* And this is the Truth as he should answer to God.

David Cauty.
W. CALDERWOOD.

Alexander Binnie, Provost of Forfar, solemnly sworn, purged, examined and interrogate, deposed, That while the Pannel was in Prison within the Tolbooth of Forfar, he the Deponent did frequently visit him, and he did hear Finhaven say, That there had been some Mistakes and Misunderstandings betwixt him and my Lord Strathmore, on account of a Process of Bastardy that was depending before the Lords of Session, but did not hear him speak as if he was under any Grudge or Resentment on that Account. Deposed, That about a Month before the said Earl's Death, he the Deponent was occasionally at a Burial with the said deceased Earl and the Pannel, betwixt whom the Deponent observed nothing like Misunderstanding, but that their Carriage to one another was civil; and particularly remembers, that at the Time Finhaven drank a Glass to the Health of the Countess of

* Viz. Passage from the Kitchen to the Chambers.

Strathmore, and after drinking, threw up the Glass, which broke with its Fall; and this happened in the House of Clerk Dickson in Forfar: And when the Earl of Strathmore went to take his Horse, the Pannel and the Deponent waited of him. And being interrogate, If on that Day he heard the Earl of Strathmore invite the Pannel to visit him? Deponed negative; and, from a Letter put into the Clerk's Hands, apprehends that they were not in a Course of Visiting. *Causa scientia patet.* And this is the Truth as he should answer to God.

Alex. Binnie.
DA. ERSKINE.

[Follows the Letter relative to the above Deposition.]

S I R,

"WE propose to have an Meeting at your House, on Tuesday next, to finish that Affair of Mr. Martine's; wherefore, if your Con-
"niency could allow, I wish you would make an Visit to my Lord Strath-
"more, to satisfy him, and that he may send one Mandate, so as that every
"Thing may go on as was proposed. Your Answer is expected by, Sir,

"Your most humble Servant,

"J. A. CARNEGIE."

Finhaven, Third May, One Thousand
Seven Hundred and Twenty-eight.

"Directed on the Back thus,"

To Provost "Alexander Binnie in Forfar."

Edinburgh, Second of August, One Thousand Seven Hundred and
Twenty-eight, This is the Letter to which Alexander Binnie, Pro-
vost of Forfar, his Deposition of this Date relates.

AD. COCKBURN.

Charles Carnegie, Brother-german to Patrick Carnegie of Lours, solemnly
sworn, purged, examined, and interrogate, deponed, That he knew
that there was not a very good Understanding betwixt the deceased Earl of
Strathmore and the Pannel, and for the Space of two Years they had not
visited one another; but he never did hear the Pannel express any Grudge
or Resentment against my Lord Strathmore. Did hear that about two
Years ago or thereabouts, there fell out some Mistakes in discoursing about
a Bargain of Meal; and that the Pannel was, as he heard, that Night at
Glamis, but went away next Morning about Four o'Clock; but he the
Deponent was not present with them at said time; but did hear, that what
happened betwixt them at that time, gave rise to some Misunderstandings.
Causa scientia patet. And this is the Truth as he should answer to God.

Charles Carnegie.
DA. ERSKINE.

SIR Alexander Wedderburn of Blackneth, solemnly sworn, purged, ex-
amined and interrogate, deponed, That about the End of October, One
Thousand Seven Hundred and Twenty-six, there was a Meeting of the
Gentlemen of the Shire of Angus, concerning their Affairs, in the Town of
Forfar, where the deceased Earl of Strathmore was chosen Preses of the
Meeting; and that the Laird of Finhaven, who was there also, called
down the Deponent to the Street, and expressed himself to this Purpose:
That he had met with several Difobligations from the Earl of Strathmore,
of which there was just now an Instance, That the Earl being Preses of
the Meeting, had kept him out of a Committee that was then chosen; That
the Earl was his Debitor, and was owing him several Years annual Rents;
That he did not much notice, but that he would resent, or make the Earl
repent what he had met with, or Words to that purpose: And this he
said with an Asseveration, and desired the Deponent to acquaint the Earl
with what he had said: But the Deponent refused it, and said they were
all Friends together, and he would forget it against To-morrow. And
deponed, That he, the Deponent, that same Night did speak to my Lord
Gray, to speak to my Lord Strathmore, to get Finhaven added to the Com-
mittee, saying, That would make all Things right; But my Lord Gray
returned no Answer to the Deponent. *Causa scientia patet.* And this is
the Truth as he should answer to God.

Alex. Wedderburn.
WA. PRINGLE.

William Douglas, late Provost and Chirurgion-Apothecary in Forfar,
solemnly sworn, purged, examined and interrogate, deponed,
That upon the Ninth of May last, at Nine o'Clock at Night, the
Deponent was called to the Earl of Strathmore, who had got a Wound;
and having pained and dressed the Wound, he found it went in about
three Inches and a Half above the Navel, and came out to the Back-bone,
about two Inches below; that he first dressed the Wound in the Belly, and
then that in the Back; that the Earl having asked his Opinion of it; he
said he was not without great Hazard, and desired more Assistance; where-
upon an Express was dispatched to Dundee for Physicians; that the De-
ponent thought the Wound mortal, and did not think any could recover
of that Wound; the Earl lived about forty-nine Hours thereafter, and
died upon the Saturday's Night, at Ten o'Clock, of the foresaid Wound.
Deponed, That the Earl said to him, That Finhaven had given him that
Wound, and that after he gave the first Thrust, he pressed the Pomel of
the Sword forward with his Breast; and that it was the Deponent's Op-
inion, from what he observed, whatever Sword had given that Wound,
was either rusty or had a Nitch in, which brought out the Omentum with-
out the Belly; and the Deponent afterward having seen the Sword, which
was called Finhaven's Sword, he perceived a Nitch in it, some more than
a Hand-brode from the Hilt. *Causa scientia patet.* And this is the
Truth as he should answer to God.

William Douglas.
WA. PRINGLE.

Thomas Crichton, Chirurgion-Apothecary in Dundee, solemnly sworn,
purged, examined and interrogate, deponed, That upon the Evening
of the Ninth of May last, the Deponent was sent for from Dundee, to
wait on the now deceased Earl of Strathmore, and arrived at Forfar next
Morning about One o'Clock, and there saw the Wound the Earl had re-
ceived, which appear'd to the Deponent to have been by a Sword, which had
entered about three Inches and a half above the Navel, and had gone out
at the Back, about four Inches from the Back-bone, a good deal lower
than where the Sword entered; and the Deponent said the Wound was

mortal to his Apprehension; and that the Earl of Strathmore died thereof,
in about two Days after the receiving of it. And deponed, That the
Defunct told the Deponent, that Finhaven had given him that Wound;
that he did not believe he designed it for him, and yet there was one Cir-
cumstance which he could not account for, viz. That after the Sword
had entered his Body, Finhaven pressed it forward, till their Bodies were
close together. Deponed, That Bridgeton is a good deal taller than my
Lord Strathmore was: And that my Lord Strathmore wore a fair Wig, and
Bridgeton wore a black one usually. *Causa scientia patet.* And this is
Truth as he should answer to God.

Tho. Crichton.
AND. FLETCHER.

DR. John Wedderburn, Physician in Dundee, solemnly sworn, purged,
examined and interrogate, deponed, That he was called to wait on
the Earl of Strathmore, when he received the Wound upon the Ninth of
May last; and the Deponent saw him next Morning early; and upon
viewing the Wound, it appeared to the Deponent to have been given by a
three-cornered Sword, which had entered about three Inches above the
Navel, and went out in the Back on the Left-side, some Inches from the
Back-bone, and about two Inches lower than where it had entered; and
the Wound was to the Deponent's Apprehension mortal; and accordingly
the Earl of Strathmore died of that Wound upon Saturday Night, about two
Days after he had received it; and the Deponent thereafter saw the De-
funct opened, whereby it appeared, that the Weapon had passed through
the Caul, the Gut-Colon, and the Plexus mesentericus. And deponed, That
the Defunct told him, that he had an Impression, that the Person who gave
him the Wound, had, by applying his Belly to the Pomel of the Sword,
pushed it forward upon him. Deponed, That Bridgeton is of a much taller
Stature, than my Lord Strathmore was; and that my Lord Strathmore
usually wore a fair Wig, and Bridgeton a black one. *Causa scientia patet.*
And this is the Truth as he should answer to God.

John Wedderburn.
AND. FLETCHER.

DR. Charles Fotheringham, Physician in Dundee, solemnly sworn,
purged, examined and interrogate, deponed conform to Thomas
Crichton, the former Witness, in omnibus. *Causa scientia patet.* And
this is the Truth as he should answer to God.

Cha. Fotheringham.
AD. COCKBURN.

[Follows the Witnesses for the Pannel's Exculpation.]

Margaret Carnegie, Lady Auchterhouse, solemnly sworn, purged, ex-
amined and interrogate, ut supra, deponed, That on the Afternoon
of the Ninth of May last, the Earl of Strathmore, Bridgeton, and Finhaven,
were in the Deponent's House; she observed no manner of Difference be-
twixt the Earl of Strathmore and Finhaven; and that the Pannel and the
other Company drunk my Lady Strathmore's Health twice over, and the
Pannel tossed up the Glass; during that time Bridgeton was using rough
Expressions to the Pannel, and was taking him by the Breast, and very rude
to him; and that when a Glass of Brandy was brought, she desired Bridge-
ton to take a Dram, and he desired it should be given to Finhaven, her Bro-
ther; but she said no, for it did appear to her he did not want it, for he
was then very drunk; and that Bridgeton took her the Deponent by the
Wrist, and squeezed it hard, and said it would be no Difficulty to break it;
and during the same Time, Bridgeton took Finhaven by the Arm, and
struck his Hand down to the Table, and said, Will ye not agree to give
one of your Daughters to Rosehill? And Bridgeton further said, If he was
a young Man, and if Finhaven refused him one of his Daughters, he would
maul him, and with that shook his Hand over him. And deponed, She
never knew nor heard of her Brother's being quarrellsome. *Causa scientia
patet.* And this is the Truth as she should answer to God.

Margaret Carnegie.
AD. COCKBURN.

DR. John Kinloch, Physician in Dundee, solemnly sworn, purged, ex-
amined and interrogate, ut supra, deponed, That on the Ninth of May
last, after Lours's Daughter's Burial, the Deponent was in Clerk Dick-
son's House in Forfar, in a Room with the Pannel, who asked the De-
ponent, if he would go into another Room, where the Earl of Strathmore
was, to see his Lordship; and accordingly they went into the Room
where the Earl was, and stayed there about an Hour, and drunk several
Bottles of Wine together; and during that time, he saw nothing but mu-
tual Civilities in the Company, without the least Appearance of Quarrels.
Causa scientia patet. And this is the Truth as he should answer to God.

John Kinloch.
W. CALDERWOOD.

David Denune, Sadler, in Canongate, solemnly sworn, purged, examined
and interrogate, ut supra, deponed, That, in the End of February,
or Beginning of March last, the deceased Charles Earl of Strathmore and
Finhaven the Pannel, with another Gentleman, whom the Deponent did
not know, came to the Deponent's House, called for a Dram, which the
Deponent served them with himself: and the Earl first drunk to Finhaven
and his Family, and then Finhaven drunk the Earl of Strathmore's Health
and his Family's; and at several other times, when the Earl was not
present, the Deponent saw and heard Finhaven drink to the said Earl of
Strathmore's Health. Deponed, He has had Occasion often to see Finhaven,
and be in company with him, and observed him always to be of a good
Temper, and no ways inclined to Quarrels. *Causa scientia patet.* And
this is the Truth as he should answer to God.

David Denune.
W. CALDERWOOD.

David Ogilvie, Son to Sir John Ogilvie of Inverquharity, solemnly
sworn, purged, examined and interrogate, ut supra, deponed, That
he has had frequent Occasions of being in company with the Pannel, and
has oft-times heard him testify his Respect and Regard for the late Earl of
Strathmore, by naming and drinking to his Health; and particularly did
hear him do so at his own House; in the Month of March or April last, when
the Deponent was visiting him; that is to say, did hear him drink both to the
Earl's Health and his Countess's. Deponed, That for these three or four
Years past, he has been intimately acquainted with the Pannel, and observed
him

him always to be of a good and peaceable Temper; and the Character he always heard him get in the Country, was, That he was of a peaceable and good Temper, and no Ways quarrellsome. *Causa scientia patet.* And this is the Truth as he should answer to God.

David Ogilvie.
DA. ERSKINE.

MR. John Martine, Minister of the Gospel at Othello, solemnly sworn, purged, examined and interrogate, *ut supra, deponed*, That he the Deponent having had some Affair to do with the deceased Earl of Strathmore, as one of the Heritors within the Deponent's Parish, on which Account the Deponent went to wait of his Lordship at his House of Glamis, but had the Misfortune to miss him; and upon his Return, having waited of the Pannel, and spoke to him of the Affair, telling him how he had missed my Lord, and desired that the Pannel would fall upon some Expedient to bring either his Lordship, or some from him, to meet with the rest of the Heritors. Upon which the Pannel advised the Deponent once more to wait of his Lordship at Glamis; and for his Recommendation and Introduction, he would write a Letter to the Earl, and acquaint him in it, that he was the Bearer. Accordingly the Pannel did write a Letter to the Earl to the foresaid Purpose, which he delivered to the Deponent; and with it he the Deponent did again go to Glamis, and at that Time also had the Misfortune to miss his Lordship: Upon which he the Deponent delivered the Letter to one Mr. Greenhill, the Earl's Servant; and the Meeting of the Heritors holding upon the Wednesday thereafter, the said Mr. Greenhill came from his Lordship, and attended the Meeting: And *deponed*, That the writing of the foresaid Letter, and delivering of it, was about the End of March, or Beginning of April last. *Deponed*, That the Deponent has for these three Years past been intimately acquainted with the Pannel; and during the whole Course of his Acquaintance, he observed him always to be regular in his Life, and of a peaceable Temper and Disposition, which is the Character he bears in the Country. *Causa scientia patet.* And this is the Truth as he should answer to God.

John Martine.
DA. ERSKINE.

MR. James Maxwell, Minister of the Gospel at Forfar, solemnly sworn, purged, examined and interrogate, *ut supra, deponed*, That soon after the Earl of Strathmore received his Wound, the Deponent waited of him, and from him he went to the Prison and visited the Pannel, whom he found in great Disorder, and under the Impressions of Drunkenness, his Cloaths being all covered with Mire, and his Face besmired with Dirt; the Deponent helped him to take off his Cloaths, and sent for a Coat and some Linens of his own to put on, at least the Coat was his own, which he helped to put on him, and to wash and clean his Face. The Deponent spoke to him suitably to the Occasion of his Visit, both in respect to his Drunkenness, and what was published abroad he had committed upon the Earl of Strathmore, by giving him a Wound; upon hearing whereof, and the Deponent further saying, That he had to his great Satisfaction heard the Earl of Strathmore pray to God to forgive him: Upon this the Pannel fell into the greatest Disorder, tossing himself backwards and forwards upon a Table, and hanging his Head downwards, cried out, Good God! have I wounded the Earl of Strathmore, a Person for whom I had great Kindness, and against whom I had no Design. *Causa scientia patet.* And this is the Truth as he should answer to God.

Ja. Maxwell.
DA. ERSKINE.

The Lords Justice-Clerk and Commissioners of Justiciary, ordained the Assize to inclose instantly, and return their Verdict, in this Place, against To-morrow at Twelve o'Clock, and the haill Fifteen to be then present, each under the Pain of Law, and the Pannel to be carried back to Prison.

Curia Justiciaria S. D. N. Regis, tenta in novo Sessionis Domo Burgi de Edinburgh, tertio Die Mensis Augusti, Millesimo septingentesimo vigesimo octavo, per honorabiles Viros Adamum Cockburne de Ormiston, Justiciarium Clericum; Dominum Gulielmum Calderwood de Poltoun, Magistrum Davidem Erskine de Dun, Dominum Gualterum Pringle de Newhall, et Magistrum Andream Fletcher de Miltoun, Commissionarios Justiciarie dict. S. D. N. Regis.

Curia legitime affirmata.

Intran.

James Carnegie of Finhaven, Pannel,
Indicted and accused, as in all the former Sederunts.

The foregoing Persons who passed upon the Assize of the above Pannel, returned their Verdict in Presence of the said Lords, and whereof the Tenor follows:

"*E* Dinburgh, the Third of August, One Thousand Seven Hundred and Twenty-eight Years, the above Assize having inclosed, did choose Sir Robert Dickson of Inveresk to be their Chancellor, and George Haliburton of Fordel to be their Clerk: And having considered the Indictment pursued at the Instance of Susanna, Countess of Strathmore, and Mr. James Lyon, Brother-German and nearest of Kin to the deceased Charles Earl of Strathmore, with Concourse, and at the Instance of Duncan Forbes, Esq. his Majesty's Advocate, for his Highness's Interest, against James Carnegie of Finhaven, Pannel; the Lords Justice-Clerk and Commissioners of Justiciary their Interlocutor thereupon, with the Witnesses Depositions adduced for proving thereof; with the Witnesses Depositions adduced for the Pannel's Exculpation: They, by Plurality of Voices, find the Pannel Not Guilty. In Witness whereof their Presents are subscribed by our said Chancellor and Clerk, in our Names, Place, Day, Month and Year of God above-written."

RO. DICKSON, Chancellor.

Geo. Haliburton, Clerk.

The Lords Justice-Clerk and Commissioners of Justiciary, having considered the foregoing Verdict of Assize returned against James Carnegie of Finhaven, Pannel: They assilzied, and hereby assilzie him simpliciter, and dismissed, and hereby dismiss him from the Bar.

AD. COCKBURNE.

ABSTRACT of some ACTS of PARLIAMENT, in the very Words of the Statutes themselves, referred to in the foregoing Arguments.

JAMES I. Parl. 3. Act 51. intituled, OF FORETHOUGHT FELONY AND CHAUD MELLA; Statutes, "That as soon as any Complaint is made to Justices, Sheriffs, Bailies, &c. they shall enquire diligently (i. e.) without onie Favour, gif the Deed was done upon Forethought Felony, or throw sudden *chaud mella*: And gif it be found forethought Felony—the Life and Goods of the Trespasser to be in the King's Will:—And gif the Trespass be done of sudden *chaud mella*, the Party skaithed shall follow, and the Party Transgressor defend, after the Course of the old Laws of the Realm."

James I. Parl. 6. Act 95. intituled, THE MANSLAYER SULD BE PURSUED UNTIL HE BE PUT FURTH OF THE REALM, OR BROUGHT AGAIN TO THE PLACE OF THE SLAUGHTER; (the Act appointing the Method of pursuing Manslayers) statutes, "That quhairver he happenis to be takin, that Schireffe, Stuart, or Bailie of the Regality, shall send him to the Schireffe of the nixt Schireffdom, the quhill fall receive him, and send him to the nixt Schireffe, and swaforth from Schireffe to Schireffe, quhill he be put to the Schireffe of the Schire where the Deede was done, and there fall the Law be ministrd to the Party: And gif it be forethought Felony, he fall die therefore."

James I. Parl. 6. Act 95. intituled, OF INQUISITION OF FORETHOUGHT FELONY TO BE TAKEN BY AN ASSIZE; it statutes, "That the Officers (i. e. the Judges ordinary) shall give them the Knowledge of an Assize, whether it be forethought Felony, or suddenly done: And gif it be suddenly done, detain them as the Law treats of before:—And gif it be forethought Felony,—detain them as Law will."

James III. Parl. 5. Act 35. intituled, OF SLAUGHTER, OF FORETHOUGHT FELONY, OF SUDDANTIE, AND FLYING TO GIRTH. Item, "Because of the eschewing of great Slaughtering quhich has been right common amongst the King's Lieges, nowe of late, baith of forethought Felony, and of Suddantie: And because monie Persons commit Slaughtering upon forethought Felony, in truste they fall be defended throw the Immunitie of the Halie Kirk and Girth, and passis and remainis in Sanctuaries; it is thought expedient in this present Parliament for the stanching of the said Slaughters in Time coming, quhairver Slaughtering is committed on forethought Felony, and the Committer of the said Slaughtering passis and puttis him in Girth, for the Safftie of his Person, the Schireffe fall come to the Ordinar, in Places quhair he lies under his Jurisdiction, and in Places exempt to the Lords Maisters of the Girth, and let them wit, that sick a Man has committed sick a Crime, on forethought Felony, *tantum insidiator et per industriam*, for quhill the Law grants not, nor leaves not sick Persons to joyis the Immunities of the Kirk. And the Schireffe fall require the Ordinar to let a Knowledge be taken be an Assize on fifteen Days, quhidder it be forethought Felony, or not: And if it be founden forethought Felony, to be punished after the King's Laws: And if it be founden Suddantie, to be restorid again to the Freedome and Immunity of Halie Kirk and Girth."

James IV. Parl. 3. Act 28. intituled, ANENT MANSLAYERS TAKEN OR FUGITIVE; statutes, "That where any happens to be slain within the Realm, the Manslayer shall be pursued (in a certain Manner), and wherever he happens to be overtane, that the Schireffe fall incontinent send him to the nixt Schireffe, and so furth, quhill he be put to the Schireffe of the Schire quhair the Deed was done; and there fall Justice be incontinent done. And gif it be forethought Felony, to die therefore."

James V. Parl. 4. Act 23. intituled, THE MAISTERS OF THE GIRTH SULD MAKE DEPUTES, QUHA SULD DELIVER MALEFACTURES, THAT MAY NOT BRUIK THE PRIVILEGE THEREOF; statutes, "That they should be holden in all Time coming, to deliver a'l Committers of Slaughtering upon forethought Felony, that flies to Girth, and others Trespassers that breaks the same, and may not bruike the Privilege thereof, conform to the common Law and the Act of Parliament made thereupon of before, to the King's Officers, askand and deliver and them to underly the Law."

Follows the intire Act of Charles II. Parl. 1. chap. 22. intituled, CONCERNING THE SEVERAL DEGREES OF CASUAL HOMICIDE.

"OUR Sovereign Lord, with Advice and Consent of the Estates of this present Parliament, for removing of all Question and Doubt that may arise hereafter in criminal Pursuits for Slaughtering; STATUTES and ORDAINS, That the Cases of Homicide after following, viz. casual Homicide, Homicide in lawful Defence, and Homicide committed upon Thieves and Robbers breaking Houses in the Night; or in Case of Homicide the Time of masterful Depredation, or in the Pursuit of denounced or declared Rebels for capital Crimes, or of such who assist and defend the Rebels and masterful Depredators by Arms, and by Force oppose the Pursuit and apprehending of them, which shall happen to fall out in Time coming, nor any of them, shall not be punished by Death; and that notwithstanding of any Laws or Acts of Parliament, or any Practice made heretofore, or observed in punishing of Slaughtering: But that the Manslayer, in any of the Cases aforesaid, be assilzied from any criminal Pursuit, pursued against him for his Life, for the said Slaughtering, before any Judge criminal within this Kingdom. Providing always, That in the Case of Homicide casual, and of Homicide in Defence, notwithstanding that the Slayer is by this Act free from capital Punishment; yet it shall be leifum to the Criminal Judge, with Advice of the Council, to fine in his Means, to the Use of the Defunct's Wife and Bairns, or nearest of Kin, or to imprison him. And his Majesty, with Advice aforesaid, declares, That all Decisions given conform to this Act, since the thirteenth of February, one thousand six

Hundred

"Hundred and Forty-nine Years, shall be as sufficient to secure all Parties interested, as if this present Act had been of that Date: And that all Cases to be decided by any Judges of this Kingdom, in relation to casual Homicide in Defence, committed at any Time heretofore, shall be decided as is above expressed."

MAWGRIDGE's Case in the Queen's-Bench, Term. Hill. 5 Anne Regine.

AT the Sessions of the Peace held at Guildhall, London, on the First of July, in the fifth Year of the Queen, John Mawgridge of London, Gent. was indicted, for that on the Seventh of June, in the same Year, he did feloniously, voluntarily, and of his Malice forethought, make an Assault upon William Cope, Gent. and with a Sword on the left Part of his Breast, near the left Pap, did him strike and pierce, giving him thereby a mortal Wound, of which the said William Cope did instantly die. Which Indictment being delivered to the Justices of Gaol-Delivery for Newgate, he was arraigned thereupon, and pleaded Not Guilty.

The Jury found this Special Verdict:

That William Cope was Lieutenant of the Queen's Guards in the Tower, and the principal Officer then commanding there, and was then upon the Guard in the Guard-Room; and that John Mawgridge was then and there, by the Invitation of Mr. Cope, in company with the said William Cope, and with a certain Woman of Mr. Cope's Acquaintance, which Woman Mawgridge did then affront, and angry Words passed between them in the Room, in the presence of Mr. Cope and other Persons there present, and Mawgridge there did threaten the Woman; Mr. Cope did thereupon desire Mawgridge to forbear such Usage of the Woman, saying that he must protect the Woman; thereupon Mawgridge did continue the reproachful Language to the Woman, and demanded Satisfaction of Mr. Cope, to the Intent to provoke him to fight: Thereupon Mr. Cope told him 'twas not a convenient Place to give him Satisfaction, but at another Time and Place he would be ready to give it to him, and in the mean time desired him to be more civil, or to leave the Company: Thereupon John Mawgridge rose up, and was going out of the Room; and so going, did suddenly snatch up a Glass-Bottle full of Wine then standing upon the Table, and violently threw it at him, the said Mr. Cope, and therewith struck him upon the Head, and immediately thereupon, without any Intermission, drew his Sword, and thrust him into the Left Part of his Breast, over the Arm of one Robert Martin, notwithstanding the Endeavour used by the said Martin to hinder Mawgridge from killing Mr. Cope, and gave Mr. Cope the Wound in the Indictment mentioned, whereof he instantly died. But the Jury do farther say, That immediately, in a little Space of Time, between Mawgridge's drawing his Sword and the giving the mortal Wound by him, Mr. Cope did arise from his Chair where he sat, and took another Bottle that then stood upon the Table, and threw it at Mawgridge, which did hit and break his Head; That Mr. Cope had no Sword in his Hand drawn all the while; and that after Mawgridge had thrown the Bottle, Mr. Cope spake not. And whether this be Murder or Manslaughter, the Jury pray the Advice of the Court.

A Day being appointed for the Resolution of the Court, and the Marshal required to bring the Prisoner to the Bar, returned he was escaped; which being recorded, the Chief-Justice gave the Opinion of the Judges in this Manner:

This Record being removed into this Court, the Case hath been argued before all the Judges; and all of us, except my Lord Chief-Justice Trevor, are of Opinion that Mawgridge is guilty of Murder.

This hath been a Case of great Expectation.

This Distinction between Murder and Manslaughter only, is occasioned by the Statute of 23 H. VIII. and other Statutes that took away the Benefit of Clergy from Murder committed by Malice premeditated, which Statutes have been the Occasion of many nice Speculations.

The Word Murder is known to be a Term or a Description of Homicide committed in the worst Manner, which is no where used but in this Island, and is a Word framed by our Saxon Ancestors in the Reign of Canutus upon a particular Occasion, which appears by an uncontested Authority, Lamb. 141. In the Laws of Edward the Confessor: *Murdrum quidem inventa fuerunt in diebus Canuti Regis, qui post acquisitionem Angliam & pacificationem, regatu Baronum Angliam remisit in Daciam exercitum suum.* Thereupon a Law was made, That if any Englishman should kill any of the Danes that he had left behind, if he were apprehended, he should be bound to undergo the Ordeal Trial to clear himself; and if the Murderer were not found within eight Days, and after that a Month was given, then if he could not be found, the Ville should pay forty-six Marks, which if not able to pay, it should be levied upon the Hundred. Bracton 120. agrees with this Account.

Though this Law ceased upon the Expulsion of the Danes, yet William the Conqueror revived it for the Security of his Normans, as appears by his Laws, after he had confirmed King Edward the Confessor's Laws. And Henry I. Anno primo Regni, afterwards by his Law (as appears in the Addition to Lambert) establishes, "That if a Man be found slain, he should be taken to be a Frenchman, if it was not proved that he was an Englishman, and the Country was bound to enquire whether the Person slain was an Englishman or a Frenchman." These Inquisitions were taken before the Coroner, and returned to the Justices in Eyre, and if the Jury found him an Englishman, then the Country was to be discharged, which Law was called Englishire, and the Justices in Eyre were also bound to enquire thereof, until the Statute of 14 E. III. which, as it is mentioned in Stamford, was abolished.

Hereby a Mistake upon the Statute of Marlebridge is rectified, which is cap. 26. *Murdrum de cetero non adjudicatur coram iusticiariis, ubi per infortunium adjectum est, sed licum habeat murdrum de interfectis per se oniam tantum, & non aliter.* This was not made upon a Supposition that he that killed the Person slain by Misfortune should be hanged, but only to explain, or rather to take off the Rigor of the Conqueror's Law, that the Country should not be compelled to find out the Manslayer; or if he were found out, he should not undergo the Penalty of that Law. For as the Law stood, or was interpreted before that Statute, if a Man was found to be slain, it was always intended, 1. That he was a Frenchman. 2. That he

was killed by an Englishman. 3. That Killing was Murder. 4. If any one was apprehended to be the Murderer, he was to be tried by Fire and Water, though he killed him by Misfortune; which was extended beyond Reason and Justice in favour of the Normans: But if an Englishman was killed by Misfortune, he that killed him was not in Danger of Death, because it was not Felony. For, saith Bracton (who wrote the latter End of H. III.) fol. 136. "He that killed a Man by Misfortune, was to be discharged." 5. If the Malefactor was not taken, then the Country was to be amerced. But by the Statute of Marlebridge, if it was known that the Person slain was a Frenchman, and was killed by Misfortune, then the Country should not be amerced if the Manslayer was not taken; or if he were taken, he should not be put to his Ordeal Trial. This seems to be the true Meaning of that Statute.

But, secondly, it will appear to a Demonstration, That before that Statute, he that killed an Englishman per infortunium was never in any Danger of Death; for this Statute of Marlebridge was made 52 H. III. The Statute of Magna Charta was consummate 9 H. III. and that supposes, "That every one imprisoned for the Death of a Man, and not thereof indicted, might of Right pursue the Writ de odio & atia; and if it was found that the Person imprisoned killed him se defendendo, or per infortunium, and not per feloniam, then he was to be bailed." Which shews that he was not in danger of Death; for if he had, he would not have been let to Bail, 2 Inst. 42.

Hereby I have given a true Account of the Sense of the Word Murder; what it was when (first in the Time of Canutus) a Dane, and since (in William the Conqueror) when a Frenchman was killed; for, as it was then supposed in the Time of Canutus, the Englishmen hated the Danes upon the account of their Nation that had subdued them, and would upon all Occasions seek their Destruction, as they did of a considerable Number of them in the Time of Ethelred, the Saxon King that preceded Canutus next save one; so the Conqueror had the same Reason to suspect the Safety of his Normans.

Afterwards, as appears by the Confessor's Laws, Lamb. 141 the secret or insidious killing of any other as well as a Foreigner was declared to be Murder. Bracton 120, 134, 135. Murder is thus defined, *Est occisio hominum extraneorum & notorum occisio manu hominum nequiter perpetrata.* With which agrees the other old Books of Britton and Fleta: Only in case of a Foreigner it was penal to the Country; not of a Native.

Next, it may be necessary to shew what was to be understood by Homicide or Manslaughter. Bracton 128. mentions the worst Part of it, which is a voluntary Homicide, defined in this Manner: *Si quis ex certa scientia & in offultu premeditato, ira, vel odio, vel causa lucri, nequiter & in feloniam, ac contra pacem Domini Regis aliquem interfecerit:* If one knowingly, and by a premeditated Assault, by Anger or Hatred, or for Lucre-Sake, should kill another, this was accounted Manslaughter; If it be done clanculo, saith Bracton, it is Murder: That was all the Difference there was between the one and the other.

It appears, that since that of Bracton the Notion of Murder is much altered, and comprehends all Homicides, whether privately or publicly committed, if done by Malice premeditated. With this agrees Stam. Pl. Cor. 18. b. "At this Day (saith he) a Man may define Murder in another Manner than it is defined by Bracton, Britton and Fleta: If any one of Malice premeditated doth kill another, be he Englishman or Foreigner, if secretly or publicly, that is Murder: This was the Definition long before the making of the Statutes of 4 & 23 H. VIII. and the other Statutes that took away Clergy." To define Murder, there must be malitia premeditata, as also *murdravit*: So that if an Indictment be that the Party *murdravit*, and not *ex malitia premeditata*, it is but Manslaughter, Yel. 204. 2 Cro. 283. 1 Bul. 141. Bradly & Banks. So if it be *ex malitia premeditata*, omitting *murdravit*, it is but Manslaughter, Dyer 261. Pl. 26—304. Pl. 56. Vide Stat. 10 E. III. cap. 2. The Parliament complained that Murderers, &c. were encouraged to offend, because Pardons of Manslaughters were granted so easily; the Act therefore prohibits the granting thereof. 13 R. II. recites the same Mischief, and great Damage by Treasons, Murders, &c. because Pardons have been easily granted: Therefore the Act doth provide, "That if a Charter for the Death of a Man be alledged before any Justice, in which Charter it is not specified that he of whose Death any such is arraigned was murdered or slain by Await, Assault or Malice premeditated, it shall be enquired, whether he was murdered or slain by Assault, Await, or Malice premeditated; and if it be so found, the Charter of Pardon shall be disallowed." This is a plain Description of Murder, as it was taken to be according to the common Understanding of Men.

Ever since the killing of a Man by Assault of Malice premeditated hath been allowed to be Murder, and to comprehend the other two Instances. But because that Way of killing by Poison did not come under the ancient Definition of Bracton, &c. which is said to be *manu hominum perpetrata*, or of this Statute of 13 R. II. Therefore by the Statute of 1 E. VI. c. 12. it was enacted, "That wilful poisoning of any Person should be accounted wilful Murder of Malice premeditated."

One Thing more is fit to be observed, That in all Indictments for Murder a Man is not charged positively, that he did murder the Person slain, but that he *ex malitia premeditata, in ipsum insultum fecit, ac cum quodam gladio*, he gave him a Wound whereof he died: *Et sic ex malitia premeditata ipsum murdravit*, so the Murder is charged upon him by way of Conclusion, and as a Consequence from the antecedent Matter that is positively alledged. To come close to a State of the present Question, It doth appear that Mawgridge threw the Bottle at Mr. Cope without any Provocation given to him; for the Difference was between him and the Woman that was there in Company, and his Behaviour was so rude and distasteful as did induce Captain Cope to desire him to leave the Room, where he was only a Guest to him, and there by his Permission; this Cope might reasonably do, which could be no Cause to provoke Mawgridge to make the least Assault upon him: Therefore I shall maintain these three Positions:

1. That in this Case there is express Malice by the Nature and Manner of Mawgridge's throwing the Bottle, and drawing his Sword immediately thereupon.

2. That Mr. Cope's throwing a Bottle at Mawgridge, whereby he was hit and hurt before he gave Mr. Cope the mortal Wound, cannot make any Alteration in the Offence by reducing it to be of so low a Degree as Manslaughter.

3. I shall consider what is such a Provocation, as will make the Act of killing to be but a Manslaughter only.

1. Here is express Malice, that appears by the Nature of the Action. Some have been led into a Mistake, by not well considering what the Passion of Malice is; they have construed it to be a Rancour of Mind lodged in the Person killing, for some considerable Time before the Commission of the Fact, which is a Mistake arising from the not well distinguishing between Hatred and Malice. Envy, Hatred, and Malice, are three distinct Passions of the Mind.

1st. Envy properly is a repining, or being grieved at the Happiness and Prosperity of another, *Invidius alterius rebus macerescit opimis.*

2dly. Hatred, which is *odium*, is, as Tully saith, *Ira inveterata*, a Rancour fixed and settled in the Mind of one towards another, which admits of several Degrees. It may arrive to so high a Degree, and may carry a Man so far as to wish the Hurt of him, though not to perpetrate it himself.

3dly. Malice is a Design formed of doing Mischief to another; *Cum quis data opera male agit*, he that designs and useth the Means to do ill, is malicious, 2 Inst. 42. *Odium* signifies Hatred, *atque* Malice, because it is eager, sharp, and cruel. He that doth a cruel Act voluntarily, doth it of Malice prepenfed, 3 Inst. 62. By the Statute of 5 Hen. IV. If any one out of Malice prepenfed shall cut out the Tongue, or put out the Eyes of another, he shall incur the Pain of Felony. If one doth such a Mischief on a sudden, that is Malice prepenfed; for, saith my Lord Coke, "If it be voluntarily, the Law will imply Malice." Therefore when a Man shall, without any Provocation, stab another with a Dagger, or knock out his Brains with a Bottle, this is express Malice, for he designedly and purposely did him the Mischief. This is such an Act that is malicious in the Nature of the Act itself, if found by a Jury, though it be sudden, and the Words *ex malitia præcogitata* are not in the Verdict, 1 Cro. 131. *Halloway's Case*, who was Woodward of *Ostlerly-Park*, in *Middlesex*; a Boy came there to cut [steal] Wood, whom by Chance he espied, and the Boy being upon a Tree, he immediately calls to him to descend, which the Boy obeying, *Halloway* tied him to an Horse's Tail with a Cord that the Boy had, then gave him two Blows, the Horse ran away and brake the Boy's Shoulder, whereof he died. This was ruled to be Murder by all the Justices and Barons, except Justice *Hutton*, who only doubted thereof; and that was a stronger Case than this; for there was some Kind of Provocation in the Boy, who was stealing the Wood in the Park, of which *Halloway* had the Care; and it cannot be reasonably thought, that he designed more than the Chastisement of the Boy, and the Horse running away in that Manner was a Surprise to *Halloway*; yet in regard the Boy did not resist him, his tying him to the Horse's Tail was an Act of Cruelty, the Event whereof proving so fatal; it was adjudged to be Malice prepenfed, though of a sudden, and in the Heat of Passion. This Case is reported in *Jones*, 168. *Pal.* 585. And there held, that the Court could determine it to be Malice prepenfed upon the special Matter found, *Crompton* 23. Two playing at Tables fall out in their Game, one upon a sudden kills the other with a Dagger: This was held to be Murder by *Bromley* at *Chester Assizes*, 27 *Eliz.* So in this Case, if the Bottle had killed Mr. *Cope* before he had returned the Bottle upon *Mawgridge*, that would have been Murder without all Manner of Doubt.

In the second Place, I come now to consider whether Mr. *Cope's* returning a Bottle upon *Mawgridge* before he gave him the mortal Wound with the Sword, shall have any Manner of Influence upon the Case: I hold not. First, Because *Mawgridge* by his throwing the Bottle had manifested a malicious Design. Secondly, His Sword was drawn immediately to supply the Mischief which the Bottle might fall short of. Thirdly, The throwing the Bottle by Captain *Cope* was justifiable and lawful; and though he had wounded *Mawgridge*, he might have justified it in an Action of Assault and Battery, and therefore cannot be any Provocation to *Mawgridge* to stab him with his Sword. That the throwing the Bottle is a Demonstration of Malice is not to be controverted; for if upon that violent Act he had killed Mr. *Cope*, it had been Murder. Now it hath been held, That if A. of his Malice prepenfed assaults B. to kill him, and B. draws his Sword and attacks A. and pursues him, then A. for his own Safety gives back, and retreats to a Wall, B. still pursuing him with his drawn Sword, A. in his Defence kills B. This is Murder in A. For A. having Malice against B. and in pursuance thereof endeavouring to kill him, is answerable for all the Consequences, of which he was the original Cause. It is not reasonable for any Man that is dangerously assaulted, and when he perceives his Life in Danger from his Adversary, but to have Liberty for the Security of his own Life, to pursue him that maliciously assaulted him; for "he that hath manifested that he hath Malice against another, is not fit to be trusted with a dangerous Weapon in his Hand *," *Dalt.* 292. *Hale* 42. And so resolved by all the Judges, 18 Car. II. when they met in *Serjeants-Inn*, in Preparation for my Lord *Morley's* Trial, *Dalt.* 272. If A. of Malice prepenfed, discharge a Pistol at B. and then runs away, B. pursues him, and A. turns back, and in his own Defence kills B. It is Murder. This I held to be good Law; for A. had a malicious Intent against B. and his Retreat after he had discharged his Pistol at B. was not because he repented, but for his own Safety.

In a set Duel, there are mutual Passies made between the Combatants, yet if there be original Malice between the Parties, it is not the Interchange of Blows will make an Alteration, or be any Mitigation of the Offence of Killing. Therefore I hold, if *Mawgridge* had thrown the Bottle at Mr. *Cope*, and Mr. *Cope* had returned another upon him, and hit him, and thereupon *Mawgridge* had drawn his Sword and killed Mr. *Cope*, it would have been Murder. Some will say, that there is a Difference between the Cases; for that the Assault by the Pistol, and the fighting a Duel was express Malice, but this is only Malice implied. Surely there is no Difference, for Malice implied is prepenfed, as much as if there had been a Proof of Malice, or Hatred for some considerable time before the Act; for the Stroke given, or an Attempt made by Malice implied, is as dangerous as a Stroke given upon Malice expressed, therefore may be as lawfully resisted. This very Point was also considered by the Twelve Judges at *Serjeants-Inn*, and by them resolved to be Murder upon the Occasion of my Lord *Morley's* Case. When a Man attacks another with a

dangerous Weapon without any Provocation; that is express Malice from the Nature of the Act, which is cruel. The Definition of Malice implied is where it is not express in the Nature of the Act; as where a Man kills an Officer that had Authority to arrest his Person: The Person who kills him in Defence of himself from the Arrest, is guilty of Murder, because the Malice is implied, for properly and naturally it was not Malice, for his Design was only to defend himself from the Arrest.

3. I come now to the third Matter proposed, which is, to consider what is in Law such a Provocation to a Man to commit an Act of Violence upon another, whereby he shall deprive him of his Life, so as to extenuate the Fact, and make it to be a Manslaughter only. First, Negatively, what is not. Secondly, Positively, what is. First, No Words of Reproach or Infamy are sufficient to provoke another to such a Degree of Anger as to strike, or assault the provoking Party with a Sword, or to throw a Bottle at him, or strike him with any other Weapon that may kill him; but if the Person provoking be thereby killed, it is Murder.

In the Assembly of the Judges, 18 Car. II. this was a Point positively resolved.

Therefore I am of Opinion, That if two are in Company together, and one shall give the other contumelious Language (as suppose A. and B.). A. that was so provoked draws his Sword, and makes a Pass at B. B. (then having no Weapon drawn) but misses him. Thereupon B. draws his Sword, and passes at A. And there being an Interchange of Passes between them, A. kills B. I hold this to be Murder in A. for A.'s Pass at B. was malicious, and what B. afterwards did was lawful. But if A. who had been so provoked, draws his Sword, and then before he passes, B.'s Sword is drawn; or A. bids him draw, and B. thereupon drawing, there happen to be mutual Passes: If A. kills B. this will be but Manslaughter, because it was sudden; and A.'s Design was not so absolutely to destroy B. but to combat with him, whereby he run the Hazard of his own Life at the same Time. But if Time was appointed to fight (suppose the next Day), and accordingly they do fight, it is Murder in him that kills the other. But if they go into the Field immediately and fight, then but Manslaughter. Suppose upon provoking Language given by B. to A. A. gives B. a Box on the Ear, or a little Blow with a Stick, which happens to be so unlucky that it kills B. who might have some Impostume in his Head, or other Ailment which proves the Cause of B.'s Death, this Blow, though not justifiable by Law, but is a Wrong, yet it may be but Manslaughter, because it doth not appear that he designed such a Mischief.

2. Secondly, As no Words are a Provocation, so no affronting Gestures are sufficient, though never so reproachful; which Point was adjudged, 3 Cro. 779. *Watts* and *Braim*, in an Appeal of Murder.

There having been a Quarrel between A. and B. and B. was hurt in the Fray; and about two Days after B. came and made a wry Mouth at A. who thereupon struck him upon the Calf of the Leg, of which he instantly died. It was Murder in A. for the affronting him in that Manner was not any Provocation to B. to use that Violence to A.

There hath been another Case, which I fear hath been the Occasion of some Mistake in the Decision of Questions of this Kind, *Jones* 432. *D. Williams's Case*, he being a *Welshman*, upon St. David's Day having a Leek in his Hat, a certain Person pointed to a Jack of Lent that hung up hard by, and said to him, Look upon your Countryman; at which *D. Williams* was much enraged, and took a Hammer that lay upon a Stall hard by, and flung at him, which missed him, but hit another and killed him: He was indicted upon the Statute of Stabbing. Resolved, He was not within that Statute, but guilty of Manslaughter at Common Law. I concur with that Judgment, that it is not within the Statute of Stabbing, for it is not such a Weapon, or Act that is within that Statute, neither could he be found guilty of Murder, but only of Manslaughter, for the Indictment was for no more. But if the Indictment had been for Murder, I do think that the *Welshman* ought to have been convicted thereof, for the Provocation did not amount to that Degree, as to excite him designedly to destroy the Person that gave it him.

3. Thirdly, If one Man be trespassing upon another, breaking his Hedges, or the like, and the Owner, or his Servant, shall upon Sight thereof take up an Hedge-stake, and knock him on the Head; that will be Murder, because it was a violent Act, beyond the Proportion of the Provocation, which is sufficiently justified by *Halloway's Case*, who did not seem to intend so much the Destruction of the young Man that stole the Wood, as that he should endeavour to break his Skull or knock out his Brains, yet using that violent and dangerous Action of tying him to the Horse's Tail, rendered him guilty of Murder.

If a Man shall see another stealing his Wood, he cannot justify beating him, unless it be to hinder from stealing any more; (that is) that notwithstanding he be forbid to take any, doth proceed to take more, and will not part with that which he had taken. But if he desists, and the Owner or Woodward pursues him to beat him so as to kill him, it is Murder.

If a Man goes violently to take another Man's Goods, he may beat him off to rescue his Goods, 9 E. IV. 281. b. 19 Hen. VI. 31. But if a Man hath done a Trespass, and is not continuing in it; and he that hath received the Injury shall thereupon beat him to a Degree of Killing, it is Murder, for it is apparent Malice; for in that Case he ought not to strike him, but is a Trespasser for so doing.

4. Fourthly, If a Parent or a Master be provoked to a Degree of Passion by some Mis carriage of the Child or Servant, and the Parent or Master shall proceed to correct the Child or Servant with a moderate Weapon, and shall by Chance give him an unlucky Stroke, so as to kill him; that is but a Misadventure. But if the Parent or Master shall use an improper Instrument in the Correction; then if he kills the Child or the Servant, it is Murder: And so was it resolved by all the Judges of the King's Bench, with the Concurrence of the Lord Chief Justice *Bridgman*, in a special Verdict in one *Gray's Case*, found at the Old Bailey, 10th October 18 Car. II. and removed into this Court, *Kelyng*, p. 64 *Gray* being a Smith, B. was his Servant; he commanded B. his Servant to mend certain Stamps belonging to his Trade; afterwards he and his Servant being at

* Judge *Foster*, in his Reports, p. 274—5. says, in *Mawgridge's Case*, "He, upon Words of Anger between him and Mr. *Cope*, threw a Bottle with great Violence at the Head of Mr. *Cope*, and immediately drew his Sword, Mr. *Cope* returned the Bottle with equal Violence; it was, saith Lord *Holt*, lawful and justifiable in Mr. *Cope* so to do: For, as he argueth a little afterwards, He that hath shown that he hath Malice against another, is not fit to be trusted with a dangerous Weapon in his Hand."—Upon which the Judge observes, "It was upon this Principle I presume (and possibly, too, upon the Rule laid down touching the Arrest of a Person who had given a dangerous Wound), that the Legislature in that Case of the Marquis *De Guiscard*, who stabbed Mr. *Harley* sitting in Council, (9 Ann. cap. 16.) discharged the Party who was supposed to have given him the mortal Wound, from all Manner of Prosecution on that Account; and declared the Killing to be a lawful and necessary action."

Work at the Anvil, Gray asked his Servant whether he had mended the Stamps, as he had directed him. But B the Servant having neglected his Duty acknowledged it to his Master; upon which the Master was angry, and told him if he would not serve him, he should serve at *Bridewell*; to which the Servant replied, That he had as good serve in *Bridewell* as serve the said Gray; whereupon the said Gray took the Iron-Bar upon which he and his Servant was working, and struck his Servant with it upon the Skull, and thereby brake his Skull, of which the Servant died. This was held to be Murder; yet here was a Provocation on a sudden, as sudden a Resentment, and as speedy putting it in Execution; for though he might correct his Servant both for his Neglect and Unmannerliness, yet exceeding Measure therein, it is malicious. Every one must perceive that this last is a stronger Case than this at Bar.

1. *First*, Gray was working honestly and fairly at his Trade, and justly calling to his Servant for an Account of his Business: This Miscreant was in the actual Violation of all the Rules of Hospitality.

2. *Secondly*, Gray's Action was right, as to the striking his Servant by way of Correction; but the Error was in the Degree, being too violent, and with an improper Weapon. This of *Mawgridge* was with a Resolution to do Mischief.

3. *Thirdly*, He had not the least Provocation from Mr. Cope, until after he had made the first and dangerous Assault, and then pursued it with the drawing his Sword to second it, before Mr. Cope returned the other Bottle. But Gray had a Provocation by the Disappointment his Servant gave him in neglecting his Business, and returning a saucy Answer.

The like in obstinate and perverse Children, they are a great Grief to Parents, and when found in ill Actions, are a great Provocation. But if upon such Provocation the Parent shall exceed the Degree of Moderation, and thereby in chastising kill the Child, it will be Murder. As if a Cudgel in the Correction that is used be of a large Size, or if a Child be thrown down and stamped upon: So said the Lord *Bridgeman* and Justice *Twifden*, and that they ruled it so in their several Circuits.

5. If a Man upon a sudden Disappointment by another shall resort violently to that other Man's House to expostulate with him, and with his Sword shall endeavour to force his Entrance, to compel that other to perform his Promise, or otherwise to comply with his Desire; and the Owner shall set himself in Opposition to him, and he shall pass at him, and kill the Owner of the House, it is Murder, 2 *Roll. Rep.* 460. *Clement* against Sir *Charles Blunt*, in an Appeal of Murder. The Case was, that *Clement* had promised a Dog to Sir *Charles Blunt*; and being requested accordingly to deliver him, refused, and beat the Dog home to his House: At which Sir *Charles Blunt* fetched his Sword, and came to *Clement*'s House for the Dog. *Clement* stood at the Door, and resisted his Entry. *Blunt* thereupon kills *Clement*. The Jury were merciful, and found this Fact in Sir *Charles Blunt* to be but Manslaughter. *Dodderidge* was clearly of Opinion it was Murder. But the Lord Chief-Justice was a little tender in his Direction to the Jury. But *Rolls* makes this Remark, that it was not insisted upon by the Appellant's Counsel, that *Clement* was in the Defence of his House, and that *Blunt* attacked *Clement* to force in: It was without all Question Murder, though of a sudden Heat, for there was no Assault made by *Clement* upon him nor on any of his Friends, but all the Violence and Force was on Sir *Charles Blunt*'s Side.

Having in these Particulars shewn what is not a Provocation sufficient to alleviate the Act of Killing, so as to reduce it to be but a bare Homicide, I will now, *secondly*, give some particular Rules, such as are supported by Authority and general Consent, and shew what are always allowed to be sufficient Provocations.

1. *First*, If one Man upon angry Words shall make an Assault upon another, either by pulling him by the Nose, or fillying upon the Forehead, and he that is so assaulted shall draw his Sword, and immediately run the other through, that is but Manslaughter; for the Peace is broken by the Person killed, and with an Indignity to him that received the Assault. Besides, he that was so affronted might reasonably apprehend, that he that treated him in that Manner might have some further Design upon him.

There is a Case in *Stiles*, 467. *Buckner's Case*. *Buckner* was indebted, and B and C came to his Chamber upon the Account of his Creditor to demand the Money, B took a Sword that hung up, and was in the Scabbard, and stood at the Door with it in his Hand undrawn, to keep the Debtor in until they could send for a Bailiff to arrest him; thereupon the Debtor took out a Dagger which he had in his Pocket and stabbed B. This was a Special Verdict, and adjudged only Manslaughter, for the Debtor was insulted, and imprisoned injuriously without any Process of Law, and though within the Words of the Statute of Stabbing, yet not within the Reason of it.

2. *Secondly*, If a Man's Friend be assaulted by another, or engaged in a Quarrel that comes to Blows, and he, in the Vindication of his Friend, shall on a sudden take up a mischievous Instrument and kill his Friend's Adversary, that is but Manslaughter; so was the Case, 12 *Rep.* 87. If two be fighting together, and a Friend of the one takes up a Bowl on a sudden, and with it breaks the Skull of his Friend's Adversary, of which he died, that is no more than Manslaughter. So it is, if two be fighting a Duel, though upon Malice prepened; and one comes and takes Part with him, that he thinks may have the Disadvantage in the Combat, or it may be that he is most affected to, not knowing of the Malice, that is but Manslaughter, *Pl. Com.* 101. *John Vaughan* and *Salisbury*.

3. *Thirdly*, If a Man perceives another by Force to be injuriously treated, pressed, and restrained of his Liberty, though the Person abused doth not complain, or call for Aid or Assistance; and others out of Compassion shall come to his Rescue, and kill any of those that shall so restrain him, that is Manslaughter, 18 *Car.* II. adjudged in this Court upon a Special Verdict found at the *Old-Bailey*, in the Case of one *Hugett*, 18 *Car.* II. *Kelyng*, p. 59. A and others in the time of the Dutch War without any Warrant impressed B to serve the King at Sea; B quietly submitted and went off with the Press-Masters; *Hugett* and the others pursued them and required a Sight of their Warrant; but they shewed a Piece of Paper, that was not a sufficient Warrant: Thereupon *Hugett* with the others drew their Swords, and the Press-Masters theirs, and so there was a Combat, and those who endeavoured to rescue the pressed Man killed one of the pretended Press-Masters. This was but Manslaughter; for when the Liberty of one Subject is invaded, it affects all the rest: It is a Provocation to all People,

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as being of ill Example and pernicious Consequence. All the Judges of the *King's-Bench*, viz. *Kelyng*, *Twifden*, *Wyndham* and *Morston* were of Opinion, that it was Murder, because he meddled in a Matter in which he was not concerned: But the other Eight Judges of the other Courts conceived it only Manslaughter, to which the Judges of the *King's-Bench* did conform, and gave Judgment accordingly.

4. *Fourthly*, When a Man is taken in Adultery with another Man's Wife, if the Husband shall stab the Adulterer, or knock out his Brains, This is bare Manslaughter; for Jealousy is the Rage of a Man, and Adultery is the highest Invasion of Property, 1 *Vent.* 158. *Raymond* 213. *Manning's Case*.

If a Thief comes to rob another, it is lawful to kill him. And if a Man comes to rob a Man's Posterity and his Family, yet to kill him is Manslaughter; so is the Law, though it may seem hard, that the Killing in the one Case should not be as justifiable as the other, *Leu. xx. Ver.* 10. If one committeth Adultery with his Neighbour's Wife, even he the Adulterer and the Adulteress shall be put to Death. So that a Man cannot receive a higher Provocation. But this Case bears no Proportion with those Cases that have been adjudged to be only Manslaughter, and therefore the Court being so advised doth determine that *Mawgridge* is guilty of Murder. More might be said upon this Occasion; yet this may at present suffice to set the Matter now in question in its true Light, to shew how necessary it is to apply the Law to exterminate such noxious Creatures.

Upon this Conviction the Court did direct that Process should be issued against *Mawgridge*, and so to proceed to Outlawry if he cannot be retaken in the mean time.

The Case was, Mr. Cope (a younger Branch of the *Copes* of *Bransel*, in *Hampshire*, Barts.) having got a Lieutenant's Commission in the Guards, invited some Officers and other Gentlemen to dine with him at the *Dolphin Tavern* in *Tower-Street*, June 17, 1706, in order to wet his Commission; one of the Gentlemen took *Mawgridge* along with him, telling him he would be as welcome to Mr. Cope as any of the Company; upon that he went, and after Dinner was over, and paid for by Mr. Cope, they all staid a while longer, and had more Wine brought in, and paid Half a-Crown each for their Club; then they broke up, and most of them went away; but Mr. *Mawgridge* and the rest being invited by Mr. Cope to the Guard-Room in the *Tower*, went with him, and called for Wine. Two Bottles were accordingly brought; and as they were drinking, a Coach came to the Guard-Room Door with a Woman in it (of no very modest Behaviour); and asked for Capt. Cope; whereupon he and *Mawgridge* went to the Coach-Door, and brought her into the Guard-Room; where having been a-while, she cried, *Who shall pay for my Coach?* Upon this Mr. *Mawgridge* said, *I will*, and so discharged the Coach; then he offered to salute her, but she rejected him, and gave him ill Words; to which he made Returns of the like Kind; on which Lieut. Cope took the Woman's Part; and then *Mawgridge* demanded Satisfaction of Mr. Cope, in order to provoke him to fight, &c. &c. and killed Mr. Cope. Upon this *Mawgridge* was tried at the *Old-Bailey* in July 1706, for the Murder, and a Special Verdict found, wherein all the Particulars are related, as before-mentioned:—But before the arguing the Special Verdict, he made his Escape out of the *Marshalsea*, where he was confined; and that Night went to his Father, Major *Mawgridge*, who with his Wife (*Mawgridge's* Mother-in-Law) washed and rubbed him all over with green Walnut Shucks and Walnut Liquor to disguise him, and then all three set out in the Night, and walked above 30 Miles into *Essex*, where the Father gave One Hundred Guineas to a Master of a Vessel, near *Colchester*, to carry him safe to *Holland*, which he did; there he was concealed above a Year and half; for though he was a very handsome Man, he was so disfigured scarce any one knew him; he spoke *French* and *Spanish* generally and mighty well; but at last being at a Tavern at *Ghent* in *Flanders*, and a little too merry, he spoke *English* so fluently, and by some Expressions he dropt, became suspected, seized (a large Reward having been offered for apprehending him), and on Examination found to be the Man who killed Mr. Cope, was brought over to *England* in March 1707-8, and being brought to the *King's-Bench* Bar, received Sentence of Death, and was executed at *Tyburn*, on Wednesday, April 28, 1708, with *William Gregg*, for High-Treason (whose Case will be inserted in the Appendix). The Ordinary says, *Mawgridge* went in a Coach with him (and *Gregg* in a Sledge) to *Tyburn*; "That he submitted willingly to his Sentence, owning the Justice of it, tho' he declared he had no premeditated Malice against the Gentleman he so unfortunately killed. He said, he heartily repented of it, and prayed that God would wash away the Stain, and deliver him from the Guilt of that Blood which he had so shed. He owned that he had been a very great Sinner, but was sorry that he had any ways offended God and Man, and begged Pardon of both. That he hoped God would shew him Mercy in another World, because he was always grieving for his Sins, and particularly for this, ever since he had made his Escape; and tho' he had no Apprehension of being brought to Condemnation here for it, it was still continually before him, and the Remembrance of it was painful to him. He made strong Resolutions to live otherwise, and was always praying to God to pardon him, and to keep him for the future. He acknowledged the Justice of God had overtaken him, and would not suffer him to live long unpunished for this heinous Crime: He declared his being in charity with all the World, even with those who had brought him to this his Punishment, and prayed for the Conversion of all wicked Persons, desiring they would take Warning by him. He told me, he was about 40 Years of Age, born at *Canterbury* of good Parents, and brought up in the Church of *England*; that both his Father and Ancestors had had the Honour to serve the Crown for above 200 Years as Drum-Major; and that he himself had received a very good Education, and brought up genteelly, tho' he was for a considerable time Kettle-Drummer to the First Troop of Guards, and was a going with a Commission into the Army when this melancholy Accident happened."—Major *Mawgridge*, on his Son's Execution, which had so great an Effect on him, could not be prevailed on either to eat or drink for three Nights and three Days, and raved about like a Madman; he afterwards behaved at times like one distracted, drawing his Sword, and threatening to murder his Wife, obliging her to kneel down for him to stab her, &c. and then relenting. In short, he was never after easy or in his right Senses; moving about from place to place, though he lived to near fourscore Years of Age.

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IV. The

IV. The several Trials of Mr. WILLIAM HALES and Mr. THOMAS KINNERSLEY, Clerk, at the Sessions-House in the Old-Bailey, on Jan. 20 and 21, 1728-9, before the Lord Chief-Baron Pengelly, Mr. Justice Reynolds (afterwards Lord Chief-Baron), Sir William Thomson (afterwards Baron), Serjeant Raby, and several of his Majesty's Justices, for Misdemeanours, in Forging several Notes and Indorsements in the Name of Samuel Edwards, Esq. and Publishing the same, knowing them to be Forged.

Clerk of Arraigns.

OYEZ. All Manner of Persons that have any Thing to do at the Sessions of Oyer and Terminer, held for the City of London and County of Middlesex, draw near, and give your Attendance.

Oyez. You good Men of the City of London, summoned to appear here this Day, upon the Trial between our Sovereign Lord the King and William Hales, answer to your Names, as called upon, &c.

James Filmer.	Thomas Court.	John Sellidge.
Samuel Cranmer.	Ralph Knox.	William Selwyn.
Richard Knollys.	Thomas Ford.	Samuel Craighead.
William Howard.	Cornelius Mason.	Frederick Staunton.
Henry Rogers.	John Pote.	— Hoskyns.
Abraham Fowler.	Richard Chauncy.	John Jenkyns.
Robert Knaplock.	James Coulter.	Nicholas Beresfield.
Robert Kandal.	Henry Spragg.	Edward Tay.
John Heame.	Joseph Jackson.	Peter Crouch.
Thomas Swaine.	Henry Ashhurst.	

Clerk. You shall well and truly try this Issue between our Sovereign Lord the King and William Hales. So help you God.

Samuel Cranmer, sworn.	Thomas Ford, sworn.
Richard Knollys, sworn.	Ralph Knox, sworn.
William Howard, sworn.	Cornelius Mason, sworn.
Abraham Fowler, sworn.	John Pote, sworn.
Robert Knaplock, sworn.	Richard Chauncy, sworn.
Thomas Swaine, sworn.	Joseph Jackson, sworn.

Clerk. Oyez. If any Man can inform our Sovereign Lord the King, the King's Justices, the King's Attorney, the King's Serjeants, in this Cause between our Sovereign Lord the King and William Hales, let him now come forth.

Mr. Attorney-General, Sir Philip York (afterwards Earl of Hardwick). My Lord, we desire that those that were summoned on the Jury, who happened not to be sworn, should stay, lest when Mr. Kinnnersley is arraigned there should be a Defect of Jurymen.

It was ordered accordingly by the Court.

Clerk of Arraigns. Gentlemen of the Jury, William Hales stands indicted, by the Name of William Hales, late of London, Goldsmith, for that he being a Person of evil Fame and Conversation, and endeavouring Samuel Edwards, Esq. and divers others willingly to defraud, on the 1st of June, in the Parish of , had in his Custody a certain Note, bearing date May 17, 1728, by which Note it was supposed, that Mr. Robert Hales * did promise to pay unto Samuel Edwards, Esq. the full Sum of Eight hundred Pounds; and that, on the same Note, with an Intent to defraud, in the Parish aforesaid, he did fraudulently and deceitfully, on the 13th of June, forge and counterfeit a certain Indorsement, to the great Damage of the said Samuel Edwards, Esq. to the Breach of his Majesty's Peace, and the ill Example of his Majesty's Subjects in like Case offending.

Mr. Strange. May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, William Hales, standeth indicted for forging, counterfeiting, and publishing an Indorsement of Samuel Edwards, Esq. on a Promissory Note. The Indictment sets forth, that the Prisoner did endeavour to deceive and defraud Samuel Edwards, Esq. and others his Majesty's Subjects, having in his Possession a certain Promissory Note, under the Hand of Robert Hales, bearing Date May 17, 1728, by which Note, this Robert Hales is supposed to promise to pay to Samuel Edwards, Esq. or Order, a certain Sum of Eight hundred Pounds, having this Note in his Custody, did forge and counterfeit, and caused to be forged counterfeited, a certain Indorsement on the same Note, viz.

Pray pay to for Samuel Edwards.

and having in his Custody the said Note for Eight hundred Pounds, payable to Samuel Edwards, Esq. on which there was so forged an Indorsement in the Name of the said Samuel Edwards, Esq. did publish it to be a true Indorsement, knowing the same to be so forged and counterfeited. This is laid to be to the great Damage of the said Samuel Edwards, Esq. the Breach of his Majesty's Peace, and the ill Example of his Majesty's Subjects in like Case offending. To this the said Defendant hath pleaded, Not Guilty.

Mr. Attorney-General. My Lord, and Gentlemen of the Jury, I am

Counsel on the same Side, for my Lord the King. The Charge against the Defendant, William Hales, is for forging an Indorsement on a Promissory Note to Samuel Edwards, Esq. for the Sum of Eight hundred Pounds. The Note was made in the Name of Robert Hales, for Eight hundred Pounds, payable to Samuel Edwards, Esq. or Order. And, Gentlemen, it will appear, that the Prisoner hath been guilty both of forging this Indorsement, and of publishing of it, knowing it to be so forged. Gentlemen, this Samuel Edwards, Esq. hath a considerable Employment in the Exchequer, and is besides a Member of the House of Commons, and by that hath the Privilege of sending his Post-Letters free. It was his Misfortune to live in the Neighbourhood of Mr. Hales, in Duke-street, in Westminster. The Opportunity for committing of this Fraud seems to have been in this manner: Mr. Hales used frequently to apply to Mr. Edwards, sometimes by himself, sometimes by a Servant, for Frank-Covers of Letters to send News into the Country. The Gentleman's Good-nature induced him to accommodate him according to his Desire with them, supposing that they were only designed to send News to his Friends in the Country. He having possessed himself of several Papers thus subscribed, it will appear, that most probably he made use of one of these Franks to commit this Forgery. The Forgery is an Indorsement on a Note of Robert Hales. The Note is this:

May 17, 1728.

I promise to pay to Samuel Edwards, Esq. or Order, Eight hundred Pounds, three Months after Date, Value Received.

ROBERT HALES.

The Indorsement is thus:

Pray pay the Value of this to , for Value received. SAMUEL EDWARDS.

This Indorsement being thus wrote over the Name Samuel Edwards, Gentlemen, it appears by the Face of this Indorsement, that it is cut off from another Writing. There is the Tail of a Letter, which manifestly appears. The Word *the* is wrote with an Abbreviation *y*. That will appear to be a Word altered from something else. It is difficult to tell whether to read it for *y*, or, which looks like the Truth of the Case, for *ye*. It will appear to be very probable, that the Manner of forging was this: Having possessed himself of these Franks, he cut off a Piece of one of these Franks proper for a Promissory Note to be wrote on it, which would have on the Back of it the Name of Samuel Edwards. When he had done this, he did not think proper to write the Note himself, but got another Gentleman to write a Promissory Note on the Back of this Paper, payable to Samuel Edwards, Esq. or Order. When this was done, the Name Samuel Edwards served for an Indorsement on the Note. And the Alteration seems to have been made in the following manner: There being the Word *Free* wrote over the Name, there is the Letter *e* crowded in between the *f* and the *r*. As to the *ee*'s after the *r*, the Use made of them is this: Out of the one of them is drawn the stroke for the Letter *y*, the latter *e* stands on one Side, or rather above the *y*, and makes *y*. Having done this, it appears, that here is a Promissory Note, in the Name of Robert Hales, to Samuel Edwards, Esq. and here is an Indorsement of Mr. Samuel Edwards, which, by Virtue of an Act of Parliament, which makes these Notes current, and the Indorser liable, Mr. Edwards is made liable to the Payment of this Note. The Use made of this Note is this, to raise Money upon it, and stake the Credit of Mr. Edwards as a Security for this Money. Gentlemen, having done this, he applies to Mr. Harle, to borrow of him a certain Sum of Four hundred and fifty Pounds. He knew very well, that his Credit would not serve for that Purpose, he being a known Bankrupt; but desired that Mr. Harle would lend him Four hundred and fifty Pounds, upon the Credit of this Note. Mr. Harle knew that Mr. Edwards was a Gentleman of great Credit: It was a Promissory Note of Eight hundred Pounds, payable to Samuel Edwards, Esq. and indorsed by Samuel Edwards: Mr. Harle made therefore no doubt of advancing the Money desired upon it. The Manner of advancing this Money was by Mr. Harle's making a Draught upon his Goldsmiths, Mess. Caswall and Mount, where Mr. Hales received this Money. Gentlemen, there will be Evidence to charge this upon Mr. Hales. Gentlemen, the Occasion of discovering this Forgery was this, Mr. Hales having been taken up in September last, on another Discovery of forging a Note of Mr. Gibson's, for which he was convicted last Sessions †, that caused a pretty deal of Noise.

And,

† William Hales, for Forgery, at the Old-Bailey, Dec. 7, 1728.

William Hales was indicted for a Misdemeanour, in forging and counterfeiting a certain Writing, or Note of Hand, in these Words:

August 27, 1728.
I promise to pay to George Watfon, Esq. or Ord.r, the Sum of Six thousand four hundred Pounds, upon Demand, the like Value received, For myself and Partners, THOMAS GIBSON.

* This Robert Hales, Esq. Jan. 27, 1728-9, was tried at the King's-Bench Bar, Westminster, by a Special Jury of the County of Middlesex, of which Sir George Walters, Knt. was Foreman, on an Indictment for a Misdemeanour, for that the said Robert Hales, Esq. would have defrauded Samuel Edwards, Esq. of Eight hundred Pounds, by means of a Note, drawn by the said Robert Hales, Esq. for Eight hundred Pounds, payable to Samuel Edwards, Esq. or Order. The Paper, on which the said Note was drawn, having the Name of the said Samuel Edwards on the Back thereof, only as a Frank of a Letter to be sent by the Post; he, the said Robert Hales, having no Dealings with the said Samuel Edwards. The Trial lasted seven Hours, when the Jury brought him in Guilty. But in June following, he pleaded his Majesty's most gracious Pardon in the Court of King's-Bench, for the said Offence.

Mich. Term, Geo. II.

Dominus Rex vers. Robertum Hales.

" Mr. Attorney moved for a Trial at Bar on an Information filed by him for Forgery. But it not being carried on at the Expence of the Crown, but of a private Prosecutor, the Court held, that he must make out the usual Requisites to bring it to the Bar: So the Motion was denied. And, at another Day, Mr. Attorney moved, on an Authority from the King, to prosecute, and it was granted as of Right to the King in his own Cause. And in Hil. sequen. it was tried, and the Defendant convicted. And in Trin. sequen. being called to Judgment, he produced a Pardon, which was allowed; and being only for a Misdemeanour, he was not put to go to the Bar, or plead it upon his Knees." Strange, Vol. II. p. 816.

And

And, Gentlemen, such as had Notes of Mr. Hales for their Security were alarmed; Mr. Harle heard of this among others, and the Thing thus coming to be inquired into, it appeared plain Mr. Edwards had no dealing with them, but it was a Forgery and an Imposition both upon Mr. Edwards and Mr. Harle. We will call the Witnesses, and then we apprehend, that the Thing will speak for itself, and will appear a plain Forgery.

Mr. Serjeant Whitaker. My Lord, there are a pretty many Indictments, and Mr. Attorney hath opened the Cause: Therefore we shall immediately call the Witnesses.

Thomas Maddocks called and sworn.

Mr. Serj. Whit. Whom do you live with?—Th. Mad. Mr. Edwards, Sir.
Mr. Serj. Whitaker. Where doth he live?
Th. Maddocks. In Duke-Street, Westminster.
Mr. Serj. Whitaker. Where doth Mr. William Hales live?
Th. Maddocks. Within a few Doors over-against my Master's.
Mr. Serj. Whitaker. Will you give us an Account, whether Mr. Hales hath ever sent for any Franks to your Master?
Th. Maddocks. Yes, Sir, several Times.
Mr. Serj. Whitaker. What manner of Franks were they?
Th. Maddocks. There was always some Superscription.
Mr. Serj. Whitaker. Who had them of you?
Th. Maddocks. His Man had them of me. They were sent by him to Mr. Hales.

Mr. Serj. Whitaker. Will you recollect whether there was ever any Request to you, that there might be some only free without any Superscription?
Th. Maddocks. Yes, Sir; there was in the Beginning of July last.
Mr. Serj. Whitaker. How many were there of them?
Th. Maddocks. There were half a Dozen.
Mr. Serj. Whitaker. What came of them?
Th. Maddocks. I have five of them here. The other, I believe, is torn.
Mr. Serj. Whitaker. Did you give them to Mr. Edwards?
Th. Maddocks. Yes, Sir.
Mr. Serj. Whitaker. What Answer did he give?
Th. Maddocks. He said, when I delivered him that Message, that he never did such a Thing; and that he would not do them without a Superscription.

Mr. Serj. Whitaker. Were there any afterwards sent without a Superscription?
Th. Maddocks. About a Week after he came again, and I told him, that my Master would not do it without a Superscription.

Mr. Serj. Whitaker. Were they afterwards left?
Th. Maddocks. They were left with a young Woman that is now in Court.
Mr. Serj. Whitaker. Are those them that were delivered to you by her?
Th. Maddocks. Yes, Sir: One is, I believe torn. Those are the other five.
Mr. Hungerford. Have you been long acquainted with your Master's Business?—Th. Maddocks. Yes, Sir.

Mr. Hungerford. Have you ever known it to be his Practice to give promissory Notes?—Th. Maddocks. No, Sir.

Lord Chief Baron Piggelly. It is proper you should give an Account where Mr. Edwards lives.—Th. Mad. In Duke-Street, Westminster.

Lord-Chief-Baron. And where doth Mr. Hales live?

Th. Mad. Within a few Doors, almost over-against Mr. Edwards.

Lord-Chief-Baron. How long since was it?

Th. Mad. I believe that it might be three or four Years ago.

Mr. Attorney General. There were (I apprehend you say) several that were franked?—Th. Mad. Yes, Sir, there were frequently.

Mr. At. Gen. How long might this continue?

Th. Mad. I believe several Years. It was since the Time of his living in our Neighbourhood, which I believe, may be about three or four Years.

Mr. At. Gen. Do you know of any other Business transacted between them?—Th. Mad. No, Sir.

Mr. Strange. You say that these Covers were brought, and left with the Maid. Do you?

Th. Mad. Yes, Sir, these are the same that were left with the Maid.

Mr. Strange. You say, you delivered the Franks to Mr. Hales's Servant. Do you not?—Th. Mad. Yes, Sir.

Mr. Strange. What was his Name?

Th. Mad. Robert Hunfdon, Sir.

Mr. Strange. Did you ever deliver any to him himself?

Th. Mad. No, Sir.

Mr. Lacy. Had the Franks that you delivered the whole Superscription?

Th. Mad. Yes, Sir.

Mr. Lacy. They asked you, whether there were any Dealings between your Master and Mr. Hales, besides this of Letters. I would enquire of you, whether your Master acquaints you with his Dealings with any other Persons?—Th. Mad. No, Sir.

Anne Clarke called and sworn.

Mr. Serj. Whitaker. Had you a Note of Directions for Letters to be franked by Mr. Edwards?—Anne Clarke. Yes, Sir.

Mr. Serj. Whit. Who brought it?—Anne Clarke. Mr. Hales's Servant.

Mr. Serj. Whit. What was his Name?

Anne Clarke. Robert, I think they called him.

Mr. Serj. Whit. Do you know whose Writing it was?

Anne Clarke. No, Sir.

Mr. Serj. Whit. We shall, my Lord, call another Witness to prove that it was Mr. Hales's.

Mr. Serj. Whit. When was it?—Anne Clarke. I cannot say.

Mr. Serj. Whit. Was it Summer or Winter?—Anne Clarke. Summer.

Mr. Serj. Whit. In what Month was it?

Anne Clarke. I believe that it was in July last.

Mr. Serj. Whit. Did you deliver them to Mr. Edwards?

Anne Clarke. Yes, Sir.

Mr. Serj. Whit. What did you say to him, or he to you?

Anne Clarke. I told him, that Mr. Hales's Servant had left that Paper of Directions for the Franks that he had desired; and said that his Master understood that he would not frank them without a Superscription, and there-

with an Intent to defraud Thomas Gibson, Esq. and other his Majesty's Subjects; and for publishing the said false and counterfeit Note, as a true Note, he knowing the same to be false and counterfeit, Nov. 7.

The Counsel for the King having opened the Indictment, and the Evidence against the Prisoner, proceeded to call and examine the Witnesses.

Philip Booth, Servant to Mr. Gibson. I have known the Prisoner for some Time. He came to me about a Year and a half ago, and desired me to get my Master (who is a Member of Parliament) to frank two Letters for him; for he said, that the Gentleman, who used to frank his Letters, was gone out of Town. He then gave me two large Sheets of Paper, folded up in a large Size, for Letters, and desired that they might be directed, To Robert Booth, Esq. at Bristol. These were accordingly done by Mr. Gibson; and under the Directions he wrote,

Free,
THO. GIBSON.

Counsel. Are you acquainted with Mr. Gibson's Hand?

Ph. Booth. Yes, very well.

Counsel. Look on that Note.

Ph. Booth. This is a Note for 6400l. signed Tho. Gibson.

Counsel. Do you take it to be all of Mr. Gibson's Writing?

Ph. Booth. I take the Name to be his Writing, but I believe the Body of the Note was writ by another Person; and, that it is Part of one of the Letters that Mr. Gibson franked for the Prisoner, the Note being written in the Space between the Direction, which is cut off, and Mr. Gibson's Name.

Counsel. Why do you think so?

Ph. Booth. For several Reasons.—I am well satisfied, that this Word For, was originally Free; and that the two e's have been taken out; and it is plain, that the o is crowded in between the F and the r; and that the Words, myself and Partners, are added a little below; for over the m, there appears the Bottoms of the two e's; and the o, and these following Words, are writ with Ink of a different Colour from the F, the r, and Mr. Gibson's Name. Indeed the Words, Myself and Partners, are a faint Imagination of Mr. Gibson's Hand: But I am so well acquainted with his Writing, that I could easily distinguish the true from the counterfeit, though I had nothing to judge by but the Form of the Letters. But what is more, this Note is not drawn after Mr. Gibson's Manner: I never knew him write, For myself and Partners, but always, For Self and Co. Nor did I ever remember to have seen a Note of his with such Words in it, as the like Value received. Besides, the Note appears to have been folded like Part of a Letter, and I can never believe, that Mr. Gibson would draw a Note of such Consequence upon such a Scrap of Paper.

Robert Booth of Bristol, Esq. I never received any Letter, either franked or otherwise, from the Prisoner; and there is no Person in Bristol, but myself, who goes by the Name and Title of Robert Booth, Esq.

Thomas Ramsey. I have been acquainted with the Prisoner above a Year,

but more intimately from last June, to the 7th of last September, on which Day I was at his House, in Duke-Street, Westminster. I had then got on a light Coat, a red Waistcoat and Breeches, and a broad open Silver-laced Hat. He bid me change my Dress, and put on a Suit of plain Cloaths that I had by me. I did so, but not having a plain Hat, he bid me put on one of his. When I had thus dressed myself, I went with him into the City; but, by the Way, to make me look the more like a Man of Business, he furnished me with a Letter-Cafe, and, in Middle-Row in Holborn, he bought me a dark Wig, and made me put my light one in my Pocket. When all this was done, we went to John's Coffee-House, in Sheer-Lane, where we had not been long before a Porter came in. The Prisoner asked him, if he did not want Mr. Ramsey? meaning me. The Porter said, Yes, and delivered a Letter to the Prisoner, who immediately gave it to me, and bade me open it, which I did, and found a Note in it for 6400l. signed, Thomas Gibson.

Coun. Is that the Note?

Ramsey. Yes, I know it very well.

Coun. What followed?

Ramsey. In the Body of the Letter there was writ, To the Lady Harriot Elliot, 4300l. and, To Sir John Hind Cotton, 2100l. And, under this last, the Prisoner bade me write, To James Moreton, Esq. or Bearer, 70l. which I did, and the Prisoner gave me three Bank Notes, one for 40l. and two of 25l. each. These Bank Notes, the Letter and the counterfeit Note for 6400l. the Prisoner put into my Letter-Cafe, and bade me go to Mr. Snow, the Banker's, and desire them to change those Notes for Notes of their own, for such Sums, and payable to such Persons as were mentioned in the Letter. The Prisoner shewed me the Shop, and stood within Sight of it. I went in, and first produced Bank Notes, and desired Mr. Pollock to change them according to my Directions. He did it very readily. Then I pulled out the 6400l. and prayed him to change that too, but he refused; for he said it was not all of Mr. Gibson's Hand-Writing, and therefore he would not meddle with it.

I returned to the Prisoner, and told him what had been done: And then he went again to John's Coffee-House in Sheer-Lane, where he ordered me to write on a Piece of Paper, To Sir Richard Grosvenor, 4300l. and To Sir John Hind Cotton, 2100l. And, when I had done so, he went out with me again, and shewed me Mr. Hoare's Shop, and bid me, if I could, to change that Note of 6400l. for Hoare and Company's Notes, payable to Sir Richard Grosvenor, and Sir John Hind Cotton, for the Sums I had set down. He likewise gave me another Note of about 70l. to change there, and ordered me, if any Body should ask my Name, to say, that my Name was Fowler. So I went into Mr. Hoare's Shop, and got all the Notes changed, and then, going to the Prisoner, who waited for me at a Fruit-Stall hard by; we took Coach, and drove to the Royal-Exchange, and thence we went to Janeway's Coffee-House, where the Prisoner bade me write, 3100l. and 1200l. payable to Samuel Palmer,

therefore he had sent that Paper of Directions. He said then that he did not care to frank them, because Mr. Hales had both a Brother and a Nephew that were Members of Parliament, and therefore had no need to apply to him for Franks.

Mr. Serj. Whit. My Lord, we shall now prove the Paper of Directions to be Mr. Hales's Hand-Writing.

Mr. Booth called and sworn.

Mr. Serj. Whit. Sir, Are you acquainted with Mr. William Hales's Hand-Writing?—Mr. Booth. Yes, Sir.

Mr. Serj. Whit. Whose Writing do you take that Paper of Directions to be?—Mr. Booth. I verily believe it to be Mr. William Hales's.

Mr. Serj. Whit. My Lord, there is something very worthy of Observation as to these directions and Covers. The Covers are very large. The Directions are extremely short, e. g. for John Pratt, Esq. Bristol. The whole Direction is but one Line, which would consequently leave a great deal of Room. Another is to Mr. Levett of Huntingdon. And there are two to each of these. The other two to Steven Mitford, Esq. at Exeter. The Man gave an Account of six Covers sent to be franked; there are two to each of these, which very well agree.

Mr. Serj. Whit. You say, Sir, that this is the Hand-Writing of Mr. William Hales?—Mr. Booth. Yes, Sir.

Mr. Serj. Whit. I would ask, whether it is common for a Person that hath a promissory Note to write his Name thereon?

Mr. Booth. I know not, Sir, that it is common.

Note of Directions read.

Two to John Pratt, Esq. Bristol.

Two to Mr. Levett, Huntingdon.

Two to Stephen Mitford, Esq. Exeter.

Mr. Harle, called and sworn.

Mr. Serj. Whit. Let the Gentlemen of the Jury see the Directions and Covers.

Mr. Serj. Whit. Gentlemen, you will observe the Size of the Covers, and the Shortness of the Directions just fitted for the Purpose.

Mr. Serj. Whit. Mr. Harle, please, Sir, to take that Note in your Hand, and give us an Account who you received it from?

Mr. Harle. From Mr. Hales.

Mr. Serj. Whit. When was it?

Mr. Harle. To the best of my Remembrance it was June 13th last.

Mr. Serj. Whit. Will you give us an Account on what Account it was, and what Mr. Hales said to you when he brought that Note?

Mr. Harle. Mr. Hales on the 13th of June last came to me, and brought me that Note from a Gentleman.

Mr. Serj. Whit. Where was you?

Mr. Harle. To the best of my Remembrance, at Baker's Coffee-house in Exchange Alley. He desired to borrow of me four hundred and fifty Pounds upon the Credit of that Note: I accordingly made him a Draught on Mess. Caswall and Mount, with whom I left my Cash for that Sum; for a Security for which he left that Note, and he promised that he would pay it in a few Days.

Mr. Serj. Whit. Did he take any particular Notice of the Indorsement?

Mr. Harle. Not much, Sir.

Mr. Serj. Whit. Was it then indorsed?

Mr. Harle. Yes, Sir, I am sure it was; for I was desired to lend the Money on a Note so indorsed.

Mr. Serj. Whit. The Note then, upon this Occasion, was left in your Hands after that it was so indorsed, Was it not?—Mr. Harle. Yes, Sir.

Mr. Serj. Whit. Upon what Occasion did it happen to be suspected or discovered? Did you pay it yourself, or your Goldsmith?

Mr. Harle. Mess. Caswall and Mount, on whom I made a Draught.

Mr. Serj. Whit. Have you that Draught?—Mr. Harle. Yes, Sir.

Mr. Serj. Whit. It hath been delivered up, hath it?

Mr. Harle. Yes, Sir, and cancelled.

Mr. Serj. Whit. On what Occasion?—Mr. Harle. When I settle my Accounts with my Goldsmiths, I take up my Notes.

Mr. Strange. You was going to give us an Account how you came to suspect this Note?

Mr. Harle. I think it was on Sept. 9, 1728, I was in Exchange Alley all the Morning, my Business calling me thither. At Two I went home

Palmer, Esq. or Bearer, and then sent me to Mr. Woodward's, there to change Hoare and Company's Note for 4300 l. payable to Sir Richard Grosvenor, for Woodward's Notes for 3100 l. and 1200 l. to Samuel Palmer, Esq. at the same time the Prisoner ordered me, if any Body enquired who I was, to say, that my Name was Thomas Fowler; and, if they asked any Questions about Samuel Palmer, Esq. I might say, that he lived in Mansell-Street, in Goodman's Fields. I accordingly went to Mr. Woodward's; but his Door being shut, I stepped back to the Prisoner, who thereupon sent me to Mr. Bracy's, and there I got Mr. Bracy's Notes to Samuel Palmer, Esq. in lieu of Hoare's Note to Sir Richard Grosvenor.

This was on Saturday Night, and, it being now too late to do any more such Business, we went Home to the Prisoner's House, where I lodged. He bade me be ready in the same Dress on Monday Morning, which I accordingly was. We went again to Janeway's Coffee-House, from whence the Prisoner sent me to Alderman Hankey's, where I changed the Notes again. From Mr. Hankey's I went to Mr. Halfey, and turned these Notes into South-Sea and India Bonds, and the Bonds were afterwards converted into Bank Notes. The Prisoner employed another Agent to get off some of these Bank Notes, and he had better Luck than I met with: For, unknown to me, Mr. Gibson's Cashier had discovered the Forgery, and traced out the Places where we had been; so that I, going to the Bank with two Notes, each for 200 l. I was stopped. The Prisoner then waiting for me in the Old-Jury, he was presently taken into Custody.

Mr. Maddox. I had Instructions to stop any Person who brought Notes of such a Number to the Bank; and Romfey coming soon after with such Notes, I stopped him. He sent a Letter, directed to Mr. Hales, at Robin's Coffee-House; we went thither, and found the Prisoner, and brought him to the Bank. He confessed there, and likewise before Mr. Alderman Bellamy, that the Note for 6400 l. came from him, but he said he had it of one Samuel Palmer. The Money and Notes that were found upon the Prisoner and Romfey, made up the whole Sum of 6400 l.

as usual. It seems there was a Message left with my Servant by Mr. William Hales, that he had paid to my Goldsmith four hundred and fifty Pounds, Part of the Money which he owed me; for he owed me other Money on Security. He went to them and paid them this Money for which he took a Memorandum that he had paid them so much Money upon Account. Going then to Bethnal Green, when I came home Mr. Caswall told me what had happened. There is (said he) a sad Thing hath happened; Mr. William Hales, with whom you have Transactions, is taken up for Forgery. He hath paid to us To-day four hundred and fifty Pounds upon your Account, which is attached in our Hands. It seems there was found in his Pocket-book a Memorandum which gave an Account of his paying that Sum to them.

Mr. Serj. Whitaker. Was this the first Occasion of your Suspicion?

Mr. Harle. Yes, Sir.

Mr. Serj. Whitaker. What did you do upon that?

Mr. Harle. I had asked a Gentleman, now in Court, some Days before, knowing him well acquainted with Mr. Edwards, and the Affairs of the Exchequer, whether he knew Mr. Edwards's Hand-writing, and whether he knew that to be Mr. Edwards's Hand-writing? He said, he believed that it was. I indeed myself believed that it was. After that Mr. Hales was taken up (I think that it was the Wednesday or Thursday after), I went up to the Exchequer to that Gentleman to get him to go with me to Mr. Edwards. He went up, but Mr. Edwards was not there. We then went into the Hall, where we met with Mr. Edwards, who seemed to be very much surprized. As to the Note (said he) I know nothing of it. As to the Hand-writing, he could not positively say whether it was his own or not; if (said he) it is mine Hand, it is made an ill Use of. We went immediately to the Coffee-house to inquire after Mr. Robert Hales, thence to the Cock-pit, and thence to his House; but met not with him. I then left Mr. Wright and Mr. Edwards. I told them that my Business required me to go into the City. They resolved to meet Mr. Robert Hales, and inquire of him whether it was his Note or not.

Lord Chief Baron. Read the Note distinctly.

Note Read.

May 13, 1728.

I promise to pay to Samuel Edwards, Esq. or Order, the Sum of eight hundred Pounds within three Months after Date, for Value received.

Robert Hales.

Indorsement.] Pray pay to the Order of for the Value received.

Samuel Edwards.

Draught read. 51.] Mess. Caswall and Mount.

June 13, 1728. Pay to Mr. William Hales or Bearer, on Demand, four hundred and fifty Pounds.

Robert Harle.

Lord Chief Baron. Sir, you say that you are acquainted with the Hand-writing of Mr. Edwards, Do you not?—Mr. Harle. No Sir.

Mr. Attorney General. My Lord, we beg that the Gentlemen of the Jury will look upon the Indorsement. But before it be put into their Hands, I would make an Observation thereon. It appeareth by the End of the Paper that it is cut off from something else. It is not straight as it would be naturally, but seems cut off obliquely: And there is the Tail probably of a Letter of the Direction of the Cover whence we presume it cut off. Then the Words, 'Pray pay to the Order of,' at a Distance from the other Words, 'for the Value received.' There is this Material also, that the Words 'for the Value received' are not usual Words in an Indorsement; when the Words 'Value received' are mentioned, still more unusual to put in the Word *the*. But the Word *free* being there, there must be some Way contrived to use those Letters: An *o* is therefore crouded in between the *f* and the *r*: And then the *y* seems to be a much blacker Ink than the rest: And then as to the two *es*'s, the one of them the *y* is drawn from, and the other of them stands for the other Part of the Contraction.

Mr. Serj. Whit. Look on it, Gentlemen, and you will find it as mentioned.

Mr. Att. Gen. Observe, Gentlemen, over it there is a Stroke or Hook.

Mr. John Spicer called and sworn.

Mr. Att. Gen. Mr. Spicer, What Employment are you in under Mr. Edwards?—Mr. Spicer. A Clerk, Sir, in the Exchequer.

Mr. Att. Gen. How long in that Capacity?

Mr. Spicer. About ten Years in that Capacity: But in all I have served him for four-and-twenty Years.

Mr. Pollock, Mr. Richard Hoare, Mr. Turner, Mr. Hankey, Mr. Cole, Servant to Mr. Halfey, and Mr. George Lee, confirmed the Particulars of Romfey's changing the Notes.

Robert Hall. I am the Prisoner's Taylor, and by his Directions I took Notes and Money for him at Mr. Bracy's on Monday Morning, and from thence I went to the Bank, and received Money for the Bank Notes I had taken at Mr. Bracy's.—The Prisoner ordered me, if any Body should ask my Name, to say it was John Roberts, and that I lived in the Hay-Market, —or in any other Place that I could remember.

Counsel for the Prisoner. We will not pretend to prove, that the Note in dispute is not counterfeit; but we shall endeavour to shew, that he received that Note of Samuel Palmer, Esq. with whom he had very considerable Dealings. And, as Mr. Hales has been a Bankrupt for these twenty Years past, and has not been able to obtain his Certificate, he has been obliged to transact his Affairs under other People's Names, or perhaps to make use of fictitious Names, in order to secure his Effects.—Here, Mr. Granper, do you know one Samuel Palmer?

Mr. Granper. I did know such a Man: He was employed by the East-India Company. They sent him abroad, and I remember he came back again, but I don't know where he is now.

Counsel. Had not Mr. Hales considerable Dealings with him?

Granper. Dealings? I never knew they had any Dealings with one another.

The Jury found the Prisoner guilty.

He was a second Time indicted for a Misdemeanor, in fraudulently, and by false Tokens, procuring the Notes of Benjamin Hoare and Henry Hoare, to the great Damage of the said Benjamin and Henry.

The Evidence was to the same Effect, as in the last Trial, and the Jury found him guilty.

But Judgment against him was respited till the next Sessions, there being other Indictments against him.

Mr. Att. Gen. Have you known in all that Time any Money-dealings between Mr. Edwards and Mr. Robert, or Mr. William Hales?

Mr. Spicer. No, Sir.

Mr. Att. Gen. If there had been any, do you think that you should have known it?

Mr. Spicer. Yes, Sir, I believe that I should; for, as to Affairs of that Nature, I believe that I know as much as any except himself.

Mr. Att. Gen. Look upon that Note. Do you take any Part of that Note to be his Hand-writing?

Mr. Spicer. The Name is his; and the *f* I believe is his. As to the other Letters they are so altered that I cannot say. *Value received* is not his.

Mr. Att. Gen. Are you acquainted with his Writing?

Mr. Spicer. Very well, Sir.

Mr. Att. Gen. Have you seen his frank Letters?—Mr. Spicer. Yes, Sir.

Mr. Att. Gen. What is his Method of franking?

Mr. Spicer. Free Samuel Edwards.

Mr. Att. Gen. Doth he write the Word *free*?—Mr. Spicer. Yes, Sir.

Mr. Att. Gen. What Sort of *f* doth he make?

Mr. Spicer. A Sort of double *f* just such as is here.

Mr. Att. Gen. Do you take the Letter *c* to be his Hand-writing?

Mr. Spicer. It is an altered Letter. It was something else turned into an *c*.

Mr. Att. Gen. The *r* what is that, doth it not seem to have been another Letter?

Mr. Spicer. Yes, it seems altered from another Letter; but bunglingly done.

Mr. Serj. Whitaker. We will, my Lord, call one of Mr. Caswall's Apprentices to prove that this Draught hath been complied with.

(Mr. George Branthwait called and sworn.)

Mr. Serj. Whitaker. Do you look upon that Draught. Do you remember whether it was ever brought to you, and by whom?

Mr. Branthwait. I believe it was brought by Mr. Hales.

Mr. Serj. Whitaker. To you?

Mr. Branthwait. Yes, Sir, and it was marked by me.

Mr. Serj. Whitaker. What had he for it?

Mr. Branthwait. He had of me two Notes. One was for 250*l.* the other for 220*l.* which was 470*l.* and he brought besides this Draught two Notes of Wanley's for 20*l.* which made the Balance.

Mr. Serj. Whitaker. Whom were they payable to?

Mr. Branthwait. One to one Calthrops, and the other to himself.

Lord Chief Baron. You say there were two Notes you gave him. Whom was the 250*l.* Note payable to?

Mr. Branthwait. To Mr. William Hales.

Lord Chief Baron. And who was the 220*l.* Note made payable to?

Mr. Branthwait. To one Charlton Thrup. He gave me this Draught of Mr. Harle's for 250*l.* and Notes of twenty Pounds.

Lord Chief Baron. Whom did you say the 220*l.* Note was made payable to?—Mr. Branthwait. To one Charlton Thrup.

Mr. Att. Gen. My Lord, we have done with our Evidence.

Lord Chief Baron. Well, What do you say to this?

Mr. Serj. Darnell. I have nothing material in mine Instructions; therefore, I shall not trouble your Lordship.

Mr. Loay. I take leave to observe, that it doth appear that no Prejudice is done by this Note. The 450*l.* borrowed on it hath been repaid.

Mr. Att. Gen. Mr. Hales owed Mr. Harle Money upon other Accounts, and he had it upon Account: And besides, it is attached in the Goldsmith's Hands, and it was on the very same Day that he was taken.

Lord Chief Baron. Gentlemen of the Jury, This is an Indictment against William Hales, Goldsmith, for a very great Misdemeanour. It is for forging an Indorsement on a promissory Note for eight hundred Pounds; for the charging of the Person indorsing with the Payment of this Sum; and the publishing of this Indorsement as a true one, knowing it to be so forged. It is a very great Offence, a Misdemeanour of the highest Nature; not only as it affects particular Persons, and charges the Person whose Name is made use of with the Payment, but as it is destructive to all Commerce: You are therefore to consider what Account the Defendant can give of it. The Indictment sets forth that the Defendant had in his Custody a certain Note or a Writing, purporting to be a promissory Note, with the Name of Robert Hales; by which Note it was supposed, that Robert Hales promised to pay to Samuel Edwards, Esq. or his Order, the Sum of eight hundred Pounds, within three Months after Date. And upon this, the Charge by the Indictment is, that the Defendant, with an Intention to charge Mr. Edwards with the Payment of the Money contained in this indorsed Note, and to defraud and deceive him and others, on the 13th Day of June did falsely and deceitfully forge and counterfeit a certain Indorsement on this Note in these English Words following:

'Pray pay to the Order of _____ for the Value received,' over the Name of Samuel Edwards, as if subscribed to that Indorsement; and, that knowing the same to be a forged and counterfeit Indorsement, he published the same in order to deceive several Persons, the King's Subjects, as a real Indorsement, as well as to defraud the said Samuel Edwards, Esq. Now in order to prove this, the Counsel gave some Account of the Circumstances of the Defendant, the Character of Mr. Edwards, the Acquaintance between them as Neighbours. And to shew you the Circumstances of the Fact, they have called several Witnesses: First, they called a Servant of Mr. Edwards's, who mentioned that he had lived some considerable Time in Mr. Edwards's Service; during which Time the Defendant, Mr. Hales, hath frequently, for several Years, sent to Mr. Edwards to have Franks delivered him in the Name of Mr. Edwards, who hath for some Years been a Member of Parliament, in order to send these free of the Postage. It appears that this hath been done for several Years; and the usual Way was, when Mr. Edwards had received the Direction of the Name of the Person, he himself wrote the whole Supercription, and then subscribed to frank it Free Samuel Edwards. He tells you, that in the Beginning of July last, several Covers were brought to him for Franks, made up as you may perceive pretty large. The Covers were brought

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over to Mr. Edwards's House by a Servant of Mr. Hales's. The Message was, that Mr. Hales desired some Franks upon these Covers, particularly desiring them to be franked without any Supercription. He saith, that these were left in this Manner, and were all delivered to a Servant of Mr. Edwards with this Desire, that he would only write thereupon Samuel Edwards free; that the rest might be left to be filled up by Mr. Hales as he thought fit. He tells you, that when his Master came home, his Master having, as he observes, always wrote himself the whole Supercription, his Master refused to do this; and therefore these Covers remained without franking: Mr. Edwards would not accommodate the Defendant, Mr. Hales, in that manner with his Hand, and leave the rest blank for another Person to fill up as he thought fit. This was very prudently done; Mr. Edwards, who is a Gentleman in Business, might well apprehend that an Opportunity might be hereby given to serve Purposes that it might not be in his Power to controul. This, Gentlemen, is made use of as Proof of an Attempt by the Defendant, to get such Sort of Franks into his Power to make use of to such a Purpose as this. The next Witness that they called is Anne Clarke, who saith that she is likewise a Servant to Mr. Edwards, and she produceth a Note written by Mr. Hales; and saith, that this was brought to the House of Mr. Edwards, with a Desire to have some Franks directed to each of those Persons, two to each of these three several Persons: She saith, that it was some Time last Summer, she thinks about July. She saith, that when her Master, Mr. Edwards, came home, she shewed it to him; and Mr. Edwards declined giving or accommodating Mr. Hales with Franks to these Persons. The Reason that he gave was this: Mr. Hales (said he) hath both a Brother and a Nephew that are Members of the House of Commons; and therefore he need not send to me for Franks, when he may have them from his own Relations; he therefore declined it at that Time. These were the Directions: Two to Mr. Levett of Huntingdon, two to John Pratt, Esq. at Bristol, two to Stephen Miford, Esq. at Bristol. Gentlemen, to corroborate this Evidence that this Note came from the Defendant, Mr. Hales, Mr. Booth is called. He is asked, Whether he is well acquainted with the Hand-writing of the Defendant Mr. Hales? He saith that he is, and that he verily believes that this Note is his Hand-writing. It hath been observed by Mr. Attorney, that there seems to have been some Design, the Form wherein it is wrote being very proper to give an Opportunity for an Alteration; that each of these Directions is very short, and would take up at most but one Line on the Supercription or Outside of the Cover; that there would have been a considerable Space left, so that when Free, Samuel Edwards, was wrote, there would have been a sufficient Space of Paper to write a Note or any thing over it. This is the Observation that hath been made upon this Note of Directions. After this they produce Mr. Robert Harle, who is Secretary to the Million Bank, to witness to the particular Fact. He saith, that this Note was on the 13th of June last brought and delivered to him by the Defendant Mr. William Hales. He saith, that he was then at Baker's Coffee-house in Exchange Alley; that the Defendant, Mr. Hales, came to him, and produced this very Note of eight hundred Pounds payable to Samuel Edwards, Esq. within three Months, subscribed Robert Hales, and indorsed in the Name of Samuel Edwards, and desired him to advance him four hundred and fifty Pounds upon the Credit of that Note; that seeing a promissory Note made payable to Samuel Edwards, Esq. and indorsed by the said Samuel Edwards, Esq. this appeared to him sufficient Security to lend four hundred and fifty Pounds upon; that he did thereupon comply with the Request of the Defendant, Mr. William Hales, to advance him that Sum; that he drew a Draught for it on Caswall and Mount, who were his Goldsmiths for this Sum, which Draught he took up afterwards, and allowed in his settling of his Accounts with his Goldsmiths; that at that Time when the Defendant brought this Note to him, this very Note was delivered to him, with this very Indorsement that is now upon it,

Pray pay to the Order of

for *Value received*
Samuel Edwards.

He saith, that he is sure that it was thus indorsed when it was left with him, he being desired to lend the Money on a Note so indorsed; that it hath been in his Custody ever since, so that he is sure there hath been no Alteration made thereon since that it was delivered unto him. You may remember that he was particularly asked, Are you sure that it was indorsed when it was delivered you? He saith that he is sure; and indeed the Thing bespeaks itself. 'When a Note is made payable to a particular Person, if any other Person brings it, every one expects that there should be an Indorsement to intitle any Person that is not the very Person to whom it was made payable. I am therefore sure (saith he) that it was so indorsed: And as Mr. Edwards was a Person of very great Dealings and considerable Substance, and so likely to have such a Note made payable to him, I therefore gave Credit to this Note as a sufficient Security to reimburse me the four hundred and fifty Pounds which I advanced thereupon.' This Fact he tells you was thus transacted at that Time; and he is sure that he received it from the Defendant thus indorsed, and that the Defendant hath had the Benefit of the Draught which he gave him on the Credit thereof. Mr. Harle hath allowed this in settling his Accounts with his Goldsmith. Upon this the Note hath been read to shew you the Purport thereof, and the Indorsement thereon. The Note is this,

May 13, 1728.

I promise to pay to Samuel Edwards, Esq. or Order, the Sum of Eight Hundred Pounds, within three Months after Date, for Value received.

Robert Hales.

Then upon the Back of the Note there is this Indorsement,

Pray pay to the Order of _____ received,

for *Value received*
Samuel Edwards.

Mr. Harle goeth on in the Account which he gives you, and saith that this Note was left in his Hands in June; and that on Sept. 9 after, he was in Exchange-Alley all the Morning till about two; that there was a Message left for him at Baker's Coffee-house, but he received it not there; that he went Home,

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Home, and heard that there was a Message left for him by the Defendant, Mr. Hales, at Baker's Coffee-house; that he went out in the Afternoon, and had not a particular Account of the Message till he came Home. The Message was from Mr. Hales, that he had that Morning paid to his Goldsmiths *Casual* and *Mount* Four Hundred and Fifty Pounds on his Account: Mr. Harle tells you that there was more Money due to him on Security. So much Money was then paid in Discharge of so much, Part of Money advanced by him to Mr. Hales, and it was the exact Sum which had been advanced on the 13th of June on the Credit of this Note. He tells you, that in the Evening Mr. *Casual* came to him, and told him there was a melancholy Account, that a sad Accident had happened: For Mr. William Hales, the Person that had paid them this Money on his Account, was taken up for Forgery, and this Money was attached in their Hands for to prevent his issuing it out. Mr. Harle tells you, that this was the first Discovery that he had of the particular Fact, that gave him Occasion to make the more particular Inquiry: He had indeed two or three Days before spoke to a Gentleman of the Exchequer, one Mr. Wright, had shewed him the Indorsement; and having some Suspicion, asked him whether he was acquainted with Mr. Edwards's Hand, and whether he thought that that was his Hand-writing? Mr. Wright thought it was a little odd, was something diffident, but believed that it was Mr. Edwards's Hand, as Mr. Harle himself also thought that it was. He saith, that after that the Defendant was apprehended, he went to Mr. Wright to desire him to go with him, that they might have from Mr. Edwards more particular Satisfaction. They went and met with Mr. Edwards, in Westminster-Hall, shewed him the Note, asked him whether he knew of it, and whether it was his Indorsement? Mr. Edwards was very much startled, and said, that he never gave any such Note, and knew nothing of it. Mr. Harle asked him whether the Name was his Hand-writing? He said that if it was, an ill Use was made of it. Mr. Edwards took a Copy of it, and kept it by him. The Note hath been read to you, and appears to be a promissory Note in the Name of Mr. Robert Hales, for Eight Hundred Pounds, payable in three Months, to Samuel Edwards, Esq. The Indorsement is

Pray pay to the Order of for the Value received,

Samuel Edwards.

Gentlemen, upon the producing and reading of this Note, Mr. Attorney hath made several Observations on the Manner of writing it. You have had the Inspection of it, and something very particular appears to every one's View. It is by the Counsel for the Prosecutor supposed, that this Note must be formed from Part of a Frank Cover signed *free Samuel Edwards, free* being turned into *for ye Value received*; that there is the Remainder of another Letter. And you may observe whether there is a Selvedge, or any Thing of that Nature, that sheweth it to have been the Outside of a Sheet of Paper. All the Edges indeed seem to be smooth and clean as a Paper that is cut. The Indorsement begins, 'Pray pay to the Order of' for then comes *ye*, and then a large Distance between that and 'Value received.' So that it seems pretty extraordinary that if any one was honestly writing, and had a Paper not written on before, that they should write in this Manner that the Word *ye* should be tacked to the Word *for*, and put at such a Distance from 'Value received.' *Received* follows *Value* immediately in a more plain Writing: Besides, it is unusual to make use of the Word *ye* before 'Value received;' but they say it is more generally 'Value received.' You have an Instance in the Note itself; the Conclusion of the Note is 'Value received:' and I believe the Observation is just; that it is not so usual to say 'For ye Value received.' But the Observation of the Counsel was this, that there was a Necessity of this in order to accommodate the Letters to the Forgery; as the Words now stand they exactly suited. And, Gentlemen, the *f* is of a paler Ink than the *or*, and these Letters thicker, and seem of a deeper Ink. If there were two *ee*'s before, the Alteration and making the other Letters must occasion the Thickness of these Letters, and their seeming of a blacker Ink. Other Letters being to be superinduced, they must of Necessity be thicker and deeper than the first Letters. Here is a very strange Sort of an *r*, and the *o* seems very odd. At the End of the *r* is something made use of to assist to make the upper Part of the *y*, which doth not stand cleverly. And you will find that Part which is the Head of the *y* much thicker than the other Part that makes up the *y*. And then on the Side or one Shoulder of the *y* there is a Sort of *e* put. You may see how improperly it stands. It is not an *e* directly over the *y*, which is the Way sometimes of writing the short; but it comes to the Bottom of the Head of the *y*. So that, Gentlemen, these are the Observations that have been made by the Counsel. You have seen this Note, and may observe upon it, whether you think these Observations plain, proper and just? Upon this Occasion, another Servant of Mr. Edwards is called, one Mr. Spicer. He saith, that he hath been a Clerk in the Exchequer above ten Years, but in the whole in Mr. Edwards's Ser-

vice upwards of twenty Years; that he is well acquainted with his public Dealings and private Transactions in Money-Matters: and that he never knew or heard that he had any Money-Dealings with the Defendant, which he believes he should, if there had been any, being his Clerk, and acquainted with his Money-Dealings. And he saith, that as to the Name Samuel Edwards, he believes it to be Mr. Edwards's proper Hand-Writing, being very well acquainted with his Hand. And he saith, that as to the Indorsement, he believes that the *f* is his, but not the other Letters; that he is satisfied that 'Value received' is not Mr. Edwards's Writing. And he saith, that the *o* and *r* he doth not take to be Mr. Edwards's Hand-Writing, but an Alteration from something that Mr. Edwards had wrote before; that the usual Way of Mr. Edwards franking is *free* with a *f* as here *free*; and that the *o* appears to be made out of an altered Letter. So that this is a proper Observation, that there is an Alteration, as they believe upon their Oaths. He saith, that it is bunglingly done; that he apprehends it done as hath been mentioned. Well, another Witness is called, Mr. George Brantwaite, a Servant to Mess. *Casual* and *Mount*. He saith, that this Draught was brought to their Office by the Defendant himself, because he hath put his Mark upon it, as is proper for Persons of such Dealings; that that Mark of his at the Bottom reminds him that the Defendant brought it. Upon the bringing of this Draught, he had two Notes from this Witness on account of his Master; one was for Two Hundred and Fifty Pounds, the other for Two Hundred and Twenty: That came to Four Hundred and Seventy Pounds: Therefore the Deficiency of this Draught was to be supplied with another to make up that Sum complete. Therefore, he saith, that he brought Notes of *Wanley's* for Twenty Pounds, which made up the Balance. The Note for Two Hundred and Fifty Pounds, he saith, was made payable to the Defendant himself; and that for Two Hundred and Twenty Pounds to one *Charlton Thrup*; and that at this Time the Draught and *Wanley's* Notes were delivered to him for these Notes on Account of Mess. *Casual* and *Mount*. This is the Account given by them. The Defendant himself and his Counsel are here. Nothing material is said by them in Defence, only Mr. Lacy mentioned that there is no Damage done by this Note, the Four Hundred and Fifty Pounds borrowed on it being repaid. To this it was replied by Mr. Attorney, that the Money was paid upon Account, there being other Monies due to Mr. Harle on Security; and besides it is attached in Mr. Harle's Goldsmiths Hands, to prevent its being issued out. Gentlemen, you will observe, that if this was a real Indorsement, it would be an Assurance of paying the whole Debt. Whosoever indorseth a Note, whereof no Part is paid, is liable to the whole. Therefore the Question is not, Whether or not this Money was paid? but whether here is not an Engagement to pay the Note, which the Re-payment of the Money borrowed thereon is no Fence against? Therefore if the Money had been repaid, that had been no acquitting of the Crime. That will no more discharge a Person, than if a Felon should say that he is acquitted because the Goods are restored. The Behaviour afterwards is not a sufficient Acquittal of a Crime. And consider when that was. It was not before, but upon the Monday, the very Day that he was apprehended. Then the Message was left, and the Money paid. You are to consider, therefore, whether this did not arise from an Apprehension and Fear of a Discovery, in order to clear Things as well as he could? Gentlemen, as there is sufficient Evidence to fix this upon the Defendant, so hath he not proved how he came by this Note. He hath not called one Witness to shew that he had any Money-Dealings with Mr. Edwards, or that he received it of any other Person; but it is left on the Evidence given by the Prosecutor. Therefore, there can be no Doubt in the Matter. If a Person is silent to the Charge, and cannot give you any Satisfaction as to it, it stands as fully fixed upon him as if any had seen him write the Indorsement. Therefore, Gentlemen, you are to consider, whether any Thing appears to afford the least Presumption that this was a true Indorsement made by Mr. Edwards, for Value received by him? It is, Gentlemen, an Offence of a very heinous Nature, and, if not suppressed, must tend to hinder all Commerce by Bills and Paper-Credit. If this be suffered to increase, none can take such a Note, unless he goeth to the Person himself. It will render it insecure to carry on Commerce by Notes or Bills. As to an Indorsement of this Nature, though it was not mentioned, it is proper for me to take notice, that tho' the Name be not named, it may be made to any Person. The Person, in whose Possession it is, can go and receive the Money. So that the Indorsement is complete Authority to empower the Person in whose Possession the Note is, to receive the Money, and likewise to charge the Person that so indorseth it with the Re-imbursement of the Money. Therefore, Gentlemen, the Crime and Offence seems complete. Upon this Evidence, it doth not seem to me that there can be any doubt with you, whether he be guilty of this Fact or not.

V. WILLIAM HALES was indicted for a Misdemeanour, in obtaining the Sum of Four Hundred and Fifty Pounds, from Mr. William Harle, by false Tokens *.

Jury sworn over again.

Clerk. O Y E Z, Oyez, if any one can inform, &c.

Gentlemen of the Jury, William Hales stands indicted by the Name of William Hales, &c. for falsely and deceitfully obtaining the Sum of Four Hundred and Fifty Pounds of Mr. William Harle by a false Token, to wit, a Promissory Note in the Name of Mr. Robert Hales, whereby the said Robert Hales is supposed to engage to pay within three Months after Date, the Sum of Eight Hundred Pounds to Samuel Edwards, Esq. with a counterfeit Indorsement on this Note to the great Damage, &c. To this Indictment he hath pleaded Not Guilty.

Mr. Strange. This likewise is an Indictment against the Defendant Mr. William Hales, and is for falsely and deceitfully obtaining a Sum of Money of Mr. William Harle by a false Token. And it sets forth, that the Defendant having in his Possession a Promissory Note of Mr. Robert Hales's for Eight Hundred Pounds, payable in three Months after Date to Samuel Edwards, Esq. with a forged Indorsement thereon in the Name of the said Samuel Edwards, Esq. did falsely and deceitfully obtain of one Mr. William Harle, the Sum of Four Hundred and Fifty Pounds on the said Note. This is laid to be the great Damage, &c.

Mr. Hungerford. May it please your Lordship, the Fact charged is the very same as in the former Cause already heard, only upon a different Law, 33 Hen. VIII. There was, it seems, so long ago an abominable Practice of obtaining Money by false Tokens. The Act of Parliament hath prohibited that Practice, and made it penal. There is but one Witness that we shall trouble your Lordship with.

Mr. Harle called and sworn.

Mr. Hungerford. Mr. Harle, pray give an Account to my Lord, and the Jury, when you first saw that Note, and what Money you paid upon it.

Mr. Harle. On the 13th of June, Mr. Hales applied to me, to lend him Four Hundred and Fifty Pounds upon this Note. I accordingly made a Draught on my Goldsmiths, which I suppose was paid the same Day, having taken up the Draught on settling mine Accounts.

Lord Chief Baron Pengelly. Mr. Lacy, do you expect that they should go on further in their Evidence?

Mr. Lacy. No, my Lord.

* These Trials were taken in Short-Hand by Order of Mr. Edwards.

Lord Chief Baron Piggally. This Indictment is against William Hales, Goldsmith. It is for obtaining upon this Note a Draught equivalent to Money, and which afterwards produced Money, by this false Token. If the Note was forged, it was a false Note. He brought this Note as a good Note, to induce Mr. Hales to accommodate him with Four Hundred and Fifty Pounds thereupon. That is the Description of the Act of Parliament, that if any one by a false Token doth obtain or get any Thing or any Goods of another's, corporal Punishment shall be inflicted. If this appear to be a forged Indorsement; this being a false Token, he must be guilty. So that the Evidence is the same as to both these Indictments.

The Officer sworn to keep the Jury.

Clerk. Gentlemen, answer to your Names.

Jury called over.
Clerk. Are you all agreed in your Verdict?

Jury. Agreed.

Clerk. Who shall say for you?

Jury. Our Foreman.

Clerk. How say you, Is William Hales guilty of the Misdemeanour wherewith he is charged, in forging and publishing an Indorsement on a Promissory Note, or not Guilty?

Foreman. Guilty.

Clerk. How say you, Is William Hales guilty of the Misdemeanour wherewith he stands charged in obtaining Money by a false Token, or not Guilty?

Foreman. Guilty.

VI. WILLIAM HALES and THOMAS KINNERSLEY, Clerk, were indicted for Forging and Counterfeiting a Note of Hand, bearing Date Aug. 16, 1727, for Twelve Hundred and Sixty Pounds, payable to Samuel Edwards, Esq. or Order, signed Thomas Kinnerfley, and indorsed Samuel Edwards.

Jury called over again, and sworn.

Crier. OYEZ, Oyez. If any one can inform my Lord the King's Justice, the King's Serjeants, Attorney, &c. in this Cause between our Sovereign Lord the King and William Hales and Thomas Kinnerfley, let them come forth, &c.

Here the Indictment was read.

Mr. Strange. Gentlemen of the Jury. This is an Indictment against the two Prisoners at the Bar, William Hales of London, late Goldsmith, and Thomas Kinnerfley, Clerk. The Indictment sets forth that these two Defendants, being Persons of ill Fame and Reputation, and devising and intending to defraud Samuel Edwards, Esq. and divers other his Majesty's Subjects, in March last had in their Custody a certain Note or a Writing purporting to be a Promissory Note signed by Thomas Kinnerfley, and dated Aug. 16, 1727. In this Note Thomas Kinnerfley is supposed to promise to pay Twelve Hundred and Sixty Pounds to Samuel Edwards, Esq. within three Months after Date, for Value received; that on this Note which they had in their Custody, they forged an Indorsement in these Words, 'Pray pay to the Order of for Value received, Samuel Edwards;' That thus having in their Custody this Note with this forged Indorsement thereupon, and knowing this to be a forged Indorsement, they did afterwards publish it to be a true one. These Offences are laid to be to the great Damage of the said Samuel Edwards, Esq. the Breach of his Majesty's Peace, and the ill Example of other his Majesty's Subjects in like Case offending. To this Indictment they have pleaded Not Guilty.

Mr. Attorney General. My Lord, and Gentlemen of the Jury, I am of Counsel on the same Side for my Lord the King. Gentlemen, the Charge against the Defendant is for forging an Indorsement on a Promissory Note for Twelve Hundred and Sixty Pounds. Likewise they are charged with publishing the said counterfeit Indorsement for a true one, knowing the same to be forged and counterfeit. Gentlemen, this is not the first of several Facts of this Nature that have come to be considered with regard to the Defendant Mr. Hales: But the first that hath come to be examined in this Place charged upon the other Defendant, Mr. Kinnerfley, a Clergyman: And it is a very melancholy Thing that when a Scene of Forgery of this Nature is going on, which as you have been told is of a very pernicious Nature to Trade and Commerce, we should see one charged therewith that hath a Right to appear in that Habit, and thinks fit to appear here in it. But it will appear that there is just Ground to charge not only the Defendant Hales, but the Defendant Kinnerfley. Gentlemen, as to the Fact, it will seem that it took rise in the same manner as the former Fact; that by that Correspondence that Mr. William Hales thought fit to let himself into with Mr. Edwards, by applying for Frank Covers to send News into the Country, he took occasion to make Use of such a Paper; and that there being an Intimacy between him and Mr. Kinnerfley, Mr. Hales having by this Means possessed himself of a Frank Cover with the Name of Samuel Edwards free thereon, that upon a Piece of that Paper cut off from the rest, a Promissory Note is written. I take it that the Note will appear to be the Hand-writing of Mr. Kinnerfley, dated in a different Hand, Aug. 16, 1727. The Words are these:

I promise to pay to Samuel Edwards, Esq. or his Order, three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for the Value received.
THOMAS KINNERSLEY.

On the Back of the Paper these Circumstances will appear: First, The Edge of the Paper on that Side of it where the Indorsement is wrote appears cut off; and as in the former Case, so here there are the Tails of two or three Letters still remaining plainly to be seen. And it will appear that there is an Irregularity and Unevenness in the cutting; the Edge in one Place smoother being turned in, and an Hook or Dent made in the Paper. Under this, pretty near the Top of the Paper, is written 'Pray pay to the Order of,' then there is a wide Blank as in the former Instance; then follow the Words, 'For the Value received, Samuel Edwards.' It appears that the Words for the are written in a stronger and blacker Ink than the former; the f of the former Sort, probably Mr. Edwards's. The Word the is not written in a Contraction as before, but at length. Here, instead of changing Letters, erasing or turning, are Letters written over in a blacker Ink: The other Letters, as the two e's, appear in a paler Ink; so that it will appear to a Demonstration that this was a Frank turned to this Use. Other Observations will likewise appear as to the Manner of penning it: This Note being written, and the Indorsement upon it, it will appear what Use was made of it; and it will appear by strong Circumstances, if not by the Confession of the Defendant Kinnerfley, that the Name of Samuel Edwards was there when he wrote the Note: If so it will appear clear against Kinnerfley. It will thus appear a Circumstance to charge the Defendant; as first, it appears that there never was any Dealing between Kinnerfley and Mr. Samuel Edwards: I know not that it will appear that they were so much as known to each other; and yet here is a Note wrote by Mr. Kinnerfley, whereby he engageth to pay Twelve Hundred and Sixty Pounds, within three Months after Date, to him or his Order. It is very extraordinary that

any Gentleman should write a Promissory Note, especially should write such a Note to pay such a Sum to another, to one with whom he had no Dealings. It is incumbent therefore on Kinnerfley to shew any such Dealings, and upon what fair Occasion it can be made appear to be given. Gentlemen, as this will appear to you to be the Nature of the Note and the Manner of indorsing it, and that there were no Dealings between them, and consequently no Reason for putting it in Mr. Edwards's Name, but that his Name was there, and to make him the Indorser; so the Use made of it was to carry it to Mr. Bird, an Officer to the Hudson's Bay Company. Mr. Hales delivered it to him as a true Note and Indorsement; and desired that Mr. Bird would accommodate him with Seven Hundred and Fifty Pounds upon it. I think that Mr. Hales gave his own Note for that Sum: But as the principal Security this Note of Mr. Edwards's was left with Mr. Bird. It was on the 20th of March 1727 that this Note was left and thus deposited with Mr. Bird. And, Gentlemen, in April following there was the Sum of Four Hundred and Fifty Pounds, as Part of the Seven Hundred and Fifty Pounds paid by Mr. Hales. Gentlemen, the Residue not being paid in such a Time as it was expected, Mr. Bird directed one Mr. Tomkins to write to Kinnerfley to demand the Money, and to threaten to sue for it. After this Mr. Kinnerfley came to him at Fenchurch-Street, the Hudson's Bay House. Mr. Bird told him that there was such a Note which was left with him for a Security for Money borrowed; that there was so much thereof that remained due, and desired the Money. It will appear that at that Place and Time when the Note was shewed to Mr. Kinnerfley, he owned that he had wrote this Note, and said that he was an undone Man, and that Mr. Bird must not expect the Money from him, but apply to Mr. Edwards who indorsed the Note. Gentlemen, after this Declaration had been made by Mr. Kinnerfley, in September there was a Discovery made of Mr. Gibson's Note, upon which Mr. Hales was committed, September 9 last: That gave occasion to every one that had received of Mr. Hales's Notes for their Security to look about them, which produced a particular Inquiry about this Note. Mr. Edwards was informed that such a Note was in the Hands of Mr. Bird; upon his applying to Mr. Bird, it appeared in the manner that I have opened unto you: When that appeared, and that the Note was wrote by Mr. Kinnerfley on a Paper signed by Mr. Edwards, Mr. Kinnerfley was taken up. I think that there was some Difficulty at first for the Constable to apprehend him; but at length he was apprehended, and carried before Sir Richard Hopkins. It will appear that he was then in great Confusion, and appeared to have some Sort of Inclination to make the only Reparation that Guilt of such a Crime could admit of, viz. making a full Discovery. He said, that he would confess every thing, and owned that both the Body of the Note and the Subscription to it was his Hand-writing. He confessed likewise, if my Brief be right, that he knew that Mr. Edwards's Name was on the Back of it; that Mr. Edwards was a Stranger to him, and that he had no Dealings with him. It happened at that Time that there was one Mitford present, something of an Attorney or Solicitor, and a Relation of Mr. Kinnerfley's. He found that Mr. Kinnerfley was on a dangerous Point when he declared, that he knew that Mr. Edwards's Name was there when he wrote the Note. He stopt him short, bade him confess nothing, asked him what he meant? He took his Advice, and, I think, denied his own Hand-writing. Upon that Occasion a Discovery was prevented: He was then committed, and that is the Occasion of the present Prosecution. We shall call the Witnesses. As to Mr. Hales, the Evidence that we shall lay before you in his usual Practice of applying to Mr. Edwards for Franks, the Manner of making this Note and Indorsement, the Use he made of it, his publishing and depositing of it as a true Indorsement, when it appears on the Face of it to be a forged one. It will appear plainly against him that he was concerned in the Forgery, and in the Publication of it. As to the other of the Defendants, Mr. Kinnerfley, the Circumstances that I have mentioned will make it appear to be his, and be as strong Evidence against him as against the other.

Mr. Serj. Whit. I will not take up any of your Lordship's Time, there being more Indictments; but shall immediately call our Witnesses.

Thomas Maddox and Anne Clark were called and sworn.

N. B. Their Examination was in Substance the same as in the former Trial, p. 69, 70. therefore need not be inserted over again.

Mr. John Spicer called and sworn.

Mr. Serj. Whit. Look upon that Note. Are you acquainted with Mr. Edwards's Hand-writing?—Mr. Spicer. Yes, Sir.

Mr. Serj. Whit. How long have you been acquainted with it?

Mr. Spicer. Twenty-four Years, Sir.

Mr. Serj. Whit. How long have you been a Clerk to him?

Mr. Spicer. Between ten and eleven Years, Sir.

Mr. Serj. Whit. How much is his Hand?

Mr. Spicer. Samuel Edwards and the f.

Mr. Serj. Whit. Very well. As to the other Letters, What are they?

Mr. Spicer. Some of them seem to be written over other Letters, which I suppose were Part of the Word free. The r seems visible between the o and r.

Mr. Strange. What was his Method of writing the Word free?

Mr.

Mr. Spicer. With a double f, just as it is here, *ffree*.

Mr. Strange. Did you ever know him use the Word *Frank*?

Mr. Spicer. Never, Sir.

Mr. Serj. Whitaker. You say that you have been concerned as Clerk between ten and eleven Years. Was you concerned before for him?

Mr. Spicer. Yes, Sir.

Mr. Serj. Whitaker. In what Business?

Mr. Spicer. As to his private Affairs in Town, Cash in Town, and many of his Rents.

Mr. Serj. Whitaker. During the Time that you was acquainted with his private Transactions, did you ever understand that there were any Transactions in Money Affairs between him and Mr. Hales?

Mr. Spicer. No, never any whatever. I never so much as heard his Name in the Family.

Mr. Serj. Whitaker. Did you ever know that Mr. Edwards used to make a Practice of indorsing any other Person's Notes, or of giving promissory Notes?—Mr. Spicer. No, Sir.

Mr. Serj. Whitaker. I believe you will all be convinced that it is his Hand-writing.

Mr. Kinnerley. I admit, Sir, the whole Body of the Note to be mine own Hand-writing.

Mr. Strange. Look upon it before you do that. We desire nothing but what is fair.

Mr. Kinnerley. Yes, Sir, I admit both the Figures on the Top, and the whole Note to be mine.

Mr. Serj. Whitaker. Gentlemen, you will observe that there were but three Months mentioned in the Note. The Note is drawn Aug. 16. and was not brought till March 20 after, so that the whole Time was long expired before the Note was left with Mr. Bird for the Money which he lent upon it.

Mr. Strange. I verily believe, my Lord, the Indorsement and Note to be both the same Hand.

(Mrs. William Wright called and sworn.)

Mr. Serj. Whitaker. Sir, was you at any Time with Mr. Kinnerley and Mr. Edwards, and was there any Discourse passed between them about this Note?

Mr. Wright. When Mr. Kinnerley was examined before Sir Richard Hopkins, he there owned it to be his own Hand-writing, both the Note and Indorsement.

Mr. Serj. Whitaker. But give us an Account whether he was going to make a Confession, and what was said upon it?

Mr. Wright. As soon as he said that the Note was all his Hand-writing—

Lord Chief-Baron Pengelly. And what did he say besides?

Mr. Wright. What he said, my Lord, as to the Indorsement was afterwards. As soon as he said that the Note was all his Hand-writing, Mr. Edwards asked him, Why he drew the Note payable to him, when there never had been any Dealings or Negotiations between them?

Mr. Serj. Whitaker. What said Mr. Kinnerley to that?

Mr. Wright. He said that there never had been any Dealings between them, either before or since the making of the Note payable to him; that he did not know Mr. Edwards, nor, except that Time before Sir Richard Hopkins, had not seen him.

Mr. Serj. Whitaker. Pray, Sir, give us an Account how he was prevented going on.

Mr. Wright. He opened himself in this Manner: That he was indebted to Mr. Hales in that Sum, and more, and that Mr. Hales desired him to give a Note of his Hand; that he asked Mr. Hales to whom it should be made payable? I replied, It is very unusual to ask that. It is sure natural for a Man to make it payable to a Person that he oweth the Money to. I said, Sir, you seemed before to declare yourself an unhappy Person, an undone Man. I asked him the Reason; and upon that Mr. Mitford, who was with him, said, You shall not go on to declare any thing further, you may do yourself an Injury.

Mr. Strange. Did he say at that Time, that he saw any thing on the Back of that Note?

Mr. Wright. As soon as he had declared the Note to be his Hand-writing to Mr. Edwards, and Mr. Bird had showed the Note to Mr. Kinnerley, he was asked, Whether he knew of that Indorsement of Mr. Edwards's Hand before he saw the Note? He said, he did know of the Indorsement thereof, but know not how it came there.

Mr. Strange. How did Mr. Edwards ask the Question?

Mr. Wright. He asked Mr. Bird, Did Mr. Kinnerley own the Indorsement before you showed him the Note?

Mr. Strange. Sir, you do not apprehend the Question asked you. What was the Question that Mr. Edwards asked Mr. Kinnerley?

Mr. Wright. Whether he knew of the Indorsement before that Mr. Bird showed him the Note?

Mr. Strange. What did he say?—Mr. Wright. He answered that he did.

Lord Chief Baron. Was that all that he said?

Mr. Wright. He said that he had had several Dealings with Mr. Hales, which was the Cause of his drawing that Note in that Manner.

Lord Chief Baron. But what did he say concerning the Indorsement?

Mr. Wright. Mr. Bird said, That before he showed Mr. Kinnerley the Note, Mr. Kinnerley said that there was such a Note of his Hand, with such an Indorsement.

Lord Chief Baron. But what was the Answer that Mr. Kinnerley gave Mr. Edwards?

Mr. Wright. That he knew of the Indorsement, but knew not how it came there.

Mr. Strange. Did he, Mr. Kinnerley, mention the Indorsement himself? Did he say, whether he saw the Name before his writing the Note?

Mr. Wright. Not at that Time, Sir.

Mr. Strange. Did he at any other in your Hearing?

Mr. Wright. No, Sir.

Mr. Strange. When Mr. Mitford stopt him, was there any Discourse afterwards whose Hand-writing the Note might be; was there any Dispute?

Mr. Wright. Sir, the Company broke up then, when Mr. Mitford had given him that Caution.

(Sir Richard Hopkins sworn.)

Mr. Serj. Whitaker. Sir Richard—

Mr. Lacy. I would beg first to ask Sir Richard, whether this Examination was reduced into Writing?

Sir Richard Hopkins. I always take a Memorandum in my Book of what is said upon an Examination. There was none other Examination in Writing, but my Memorandum of what I thought sufficient to occasion the Commitment that I made.

Mr. Serj. Whitaker. When was it?

Sir Richard Hopkins. It was some time about September. I remember that he was charged before me about two Notes. One was a Note of Twelve Hundred and Sixty, the other was a Note of Sixteen Hundred and Fifty Pounds, which of these you desire me to speak to, I know not.

Mr. Serj. Whitaker. That of Twelve Hundred and Sixty Pounds.

Sir Richard Hopkins. There was such a Note drawn by Thomas Kinnerley, payable within three Months after Date to Samuel Edwards, Esq. and indorsed by Samuel Edwards. I looked upon it; and, turning over the Indorsement, it seemed to me to be an altered and forged Thing. Upon this I examined Mr. Bird, whom they offered as an Evidence. Mr. Bird told me, that he had lent Money upon that Note of Twelve Hundred and Sixty Pounds, and that he had received some Money in Part of Payment of what he had lent: That hearing that Mr. Hales was taken up, he made Application to Mr. Kinnerley for what Money remained due to him; that when he made such Application to Mr. Kinnerley for this Money, Mr. Kinnerley, before he saw the Note, told him, that he had a Note of his for his Twelve Hundred and Sixty Pounds, payable in three Months after Date to Samuel Edwards, Esq. or Order, and indorsed by Samuel Edwards. This I laid my Finger upon before him, thinking it sufficient to commit him, and repeated the Words to Mr. Bird, Are these the Words that you say? If they are, repeat them; which he did. I asked Mr. Kinnerley, whether he had any Dealings with Mr. Edwards? He said, that he had not. I asked then, How he came to make a Note for twelve Hundred and Sixty Pounds payable to him, a Person with whom he had no Dealings. He said, That he did it at the Request of Mr. Hales, to whom he was indebted in that Sum of Money. He said, That as to the Indorsement he knew not how it came there. He seemed ready to make an ample Confession; but there was a Person there, who was (I think) one Way or other related to the Law, who stopt him directly, and had oft interrupted. I said to him, Sir, this is not becoming here: I expect to examine any Person without your interrupting. I will afterwards ask any Question that—

Mr. Serj. Whitaker. Sir, when Mr. Kinnerley had owned the Note, was there afterwards a Denial?

Sir Richard Hopkins. Afterwards, Sir, there was a Denial. It might be as to the other Note; and not that which you are now asking me about. (Mr. Richard Davis, the Constable, called and sworn.)

Mr. Serj. Whitaker. Richard Davis, I think that you was the Constable sent to apprehend Mr. Kinnerley. Will you give us an Account how often you went to apprehend him, whether he was to be met withal, and what past when he was apprehended?

Mr. Richard Davis. My Lord, on September 12, there was a Warrant issued out to take up the Rev. Mr. Kinnerley, and was given to me to execute. Accordingly I went in the Afternoon, and took a Porter with me. We went to the Magpy Tavern without Aldgate. I sent the Porter thence to Mr. Kinnerley's House in Mansel-Street, to tell him, that there was a Gentleman there to speak with him; because, he living in Mansel-Street in Middlesex, I could not there execute my Warrant. When the Porter came back, he told me, that the Daughter came to the Door, and said, that the Reverend Mr. Kinnerley was not in Town. After I had paid for what I had called for, I went from thence to the Clerk of the Parish, and asked him, whether the Rev. Mr. Kinnerley was in Town? He answered, No; and said, that he went out of Town on Tuesday, I think it was, and that he did not know when he would be in Town. He asked me what I wanted with him? I told him that a Couple wanted to be married, and wanted a Licence. Won't (said he) the Curate do? No (said I), the young Gentlewoman will not be married by any but the Doctor, and at his Church: So the Person having no Apprehension, sent me to London-House in Aldersgate-Street, to enquire for Mr. May, who would tell me when the Doctor would be in Town. He told me, that he would be in Town next Thursday Night. Accordingly I went the next Friday Morning, took a Porter with me, went directly to the Doctor's House. When I came there I rung hard at the Gate. Out came the Daughter. I asked to speak with the Doctor; she said that he was not at Home, and enquired what I would have with him. I told her the same about my wanting a Licence that I had told the Clerk before. I will (said she) go and call my Mamma. Accordingly Madam Kinnerley came out: I told her that I wanted a Licence, was informed that the Doctor generally kept Licences by him, or at least could help me to one. She desired me to walk into the Parlour, said that the Doctor had been out of Town, was very much fatigued, which was the Reason that he was denied. Out came the Doctor, Sir, (said he) where is the Gentlewoman? Sir, (said I) she is hard by, at the Magpy Tavern by Aldgate. Who (said he) is she, and who are her Friends? I told him that her Name was Bird. Where (said he) lives she? I said in Fleet-Street. I do not (said he) remember that Name. You do, Sir, (said I) know her Father very well. What Age (said he) is she? I told him her Age. Have her Friends given Consent (said he), without that I would not do it for an hundred Pounds: The Penalty is fifty Pounds; I told him that it had been done to my Knowledge. Aye (said he) it may be at the Fleet. I desired him to go to the Tavern, where her Brother was with her, and he would be satisfied. My Intent was to decoy him into the Liberties of the City. He said, No, he would not go with me: So I had no Opportunity then. But having seen him once, and so knowing him, I afterwards watched for him, and saw him come out, and go through the Minorities. I watched him till he came to Aldgate; I then paid my Respects to him. I think (said he) that you are the Person that came to me about a Marriage. Yes, Sir, (said I) but I have now another Affair to speak to you of. I have a Warrant against you for Forgery of a Note of twelve hundred and sixty Pounds. He said, God forbid. He asked to see my Warrant. He said, had the Gentleman sent to him, he would readily have come. I asked him why he denied himself? He said, that he apprehended an Arrest. I desired him to go with me to the White Hart Tavern in Bishopsgate-Street. He there owned the Note.

Mr.

Mr. Serj. Whitaker. Was it within or without the Bars?

Mr. Davis. It was within.

Mr. Serj. Whitaker. Did you go with him to Sir Richard Hopkins?

Mr. Davis. Yes, Sir.

Mr. Serj. Whitaker. My Lord, there is another Thing that we shall prove; for all is Circumstance. We shall shew that Mr. Kinnersey and Mr. Hales have been often together for four or five Months in a private Manner. As soon as the one hath come in, the other hath gone with him into a private Room, and they have stayed some Time together; and this was about the Time that these Transactions have been. When these Matters are laid together, you will judge that Mr. Kinnersey hath not been so kind to Mr. Edwards as to give him Twelve Hundred and Sixty Pounds; but that there was a plain formed Design to raise this Money upon his Credit. Join this together with his owning, that he knew that Mr. Edwards's Hand was on the Back of the Note before he drew the Note, and that he knew of the Indorsement, though he said he knew not how it came there. Considering these Things, none will doubt but that there was a Contrivance between them. We shall call several Witnesses.

Mr. Lacy. We submit it to my Lord, whether it be proper. It is foreign to this Indictment; and we should have nothing offered but what we may be supposed to come prepared to defend. We cannot be supposed to come prepared to defend this, by shewing how he came there, and upon what Account.

Lord Chief Baron. It is an Indictment against both the Defendants. The Note was indeed subscribed by the Defendant Kinnersey: But then it was delivered out by the other Defendant Hales. Now, they say, that they will shew by several Witnesses that they were very conversant together about that Time, and they are acquainted with the private Manner of their conversing together. You hear what is the Use they make of it. I see not that we can refuse their giving this Account. What Use is to be made of it must be left to the Jury.

Mr. Mather. Are these Things to be proved by Circumstances?

Mr. Serj. Whitaker. Can Forgery be proved any otherwise?

Mr. Bab called and sworn.

Mr. Strange. Pray, where do you live?

Mr. Bab. At Peel's Coffee-house, in Fleet-street.

Mr. Strange. Do you keep that House?

Mr. Bab. Yes, Sir.

Mr. Strange. Have you ever observed that Mr. Hales and Mr. Kinnersey ever frequented that House, and in what Manner?

Mr. Bab. Last Summer, the greatest Part of the Summer, sometimes twice or thrice in a Week, till near the Time that the Gentleman was taken up, Mr. Hales would sometimes come thither, and sometimes be there an Hour or two. Sometimes he would ask whether a Minister had been there to ask for him? We hardly knew the Name of either of them, but knew whom he meant. Mr. Hales would often be in our Room, and see sometimes Mr. Kinnersey coming, out of the Window. Mr. Hales would hardly take any Notice of him; but as soon as he came in Mr. Hales would go into a private Room, and the other afterwards go to him. And sometimes as soon as one came in at one Door, the other went out at the other, and he followed him.

Mr. Serj. Whitaker. How often was this?

Mr. Bab. Twice or thrice in a Week.

Mr. Strange. Do you remember on what Occasion, and how they left off coming to your House?

Mr. Bab. Mr. Kinnersey was not at the House for two or three Weeks or a Month before Mr. Hales was taken up. Mr. Hales was there a few Days before.

Mr. Strange. Do you remember that Mr. Kinnersey passed by?

Mr. Bab. Once he did. He went down Fleet-street: Mr. Hales rose up, went out, and went after him.

Mr. Strange. How long was this before Mr. Hales was apprehended?

Mr. Bab. It was three Weeks or a Month, I believe, before he was apprehended.

Mr. Strange. I ask, Whether at any Time they sat down in the publick Room?

Mr. Bab. Very seldom: They generally went into the private Part.

Mr. Strange. Was that distinct from the rest of the House?

Mr. Bab. Yes, Sir, quite separate.

Mr. John Brooks called and sworn.

Mr. Strange. Where do you live?

Mr. Brooks. I keep a Coffee-house in Downing-street, in Westminster.

Mr. Strange. What Name doth your Coffee-house go by?

Mr. Brooks. My own Name.

Mr. Strange. Do you know that you have ever observed that Mr. Hales and Mr. Kinnersey ever frequented your House, and in what Manner?

Mr. Brooks. Mr. Kinnersey hath sometimes come to the Coffee-house; sent for a Porter; gave him a Note to Mr. Hales, who hath come, and they have gone to a private Part of the Room.

Mr. Strange. Was there any other with them?

Mr. Brooks. No, Sir, never.

Mr. Strange. Was it often that they met thus?

Mr. Brooks. About four or five Times in a Month.

Mr. Strange. How long have they stayed?

Mr. Brooks. Several Hours. When I have asked the Servant why a Candle was not carried them, he hath said, that they refused it.

Mr. Strange. How long was it before Mr. Hales was taken up?

Mr. Brooks. About a Month.

Mr. Strange. Was there any Observation made upon his being taken up?

Mr. Brooks. I observed it the more, having often seen them together.

Thomas Janeway called and sworn.

Mr. Kinnersey. I admit, my Lord, that we have been together at several Coffee-houses.

Lord Chief Baron. Well, now the Man is sworn, we will go on with him.

Mr. Strange. Do you know Mr. Kinnersey and Mr. Hales?

Mr. Janeway. Yes, Sir.

Mr. Strange. Do you keep a Coffee-house?—Mr. Janeway. Yes, Sir.

Mr. Strange. Where?—Mr. Janeway. In Cornhill, Sir.

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Mr. Strange. Do you remember that they have frequented your House together, and in what Manner?

Mr. Janeway. I believe they may have been there together several Times.

Mr. Strange. What Company had they with them?

Mr. Janeway. I take no Notice what Company is there. I observed them not.

Mr. Strange. How often have you observed them retire up Stairs together?

Mr. Janeway. I take no Notice of such Things. They might for an hundred Times, for aught I know.

Mr. Serj. Whitaker. My Lord, we shall rest the Evidence here: We submit it to your Lordship and the Jury, when such a Note is drawn by such a Man upon such a Paper, by which he promiseth to pay such a Sum to a Person with whom he had no Dealings, to what End can it be. Can it be with any other Intention than to charge an innocent Man with it? I think it is a plain Case. It is certain that Mr. Hales carried this Note, and borrowed a Sum of Money upon it; and Mr. Kinnersey made Preparation for it by making a Note for so much Money payable to Mr. Edwards. Doth a Man so easily give Twelve Hundred and Sixty Pounds to a Stranger with whom he hath had no Dealings? To what Purpose could it then be thus drawn? Why, to be indorsed. And this Mr. Kinnersey did, and he owned that the Name was there, and he knew that Mr. Edwards was a rich Man. Well, if Mr. Edwards was a rich Man, and the other not worth a Groat, as he owned himself to be an undone Man, to what Purpose then can it be? Well, I think it clearly appears that this was a Contrivance between them two. If you think not this plain, I think that it is impossible to convict any Man on a stronger Evidence.

Mr. Serj. Darnell. My Lord, I am Counsel for the Prisoner at the Bar, Mr. Hales. And I think it doth appear that there was a Transaction between Mr. Hales and Mr. Kinnersey; and that this Money was due from Mr. Kinnersey to him. And we apprehend, notwithstanding what hath been offered, that the Confession of Mr. Kinnersey, is a proper Justification of Mr. Hales. It is not, my Lord, Mr. Kinnersey's being a Defendant that shall deprive Mr. Hales of the Benefit of this Confession. It appearing that he was indebted to Mr. Hales, this Note was given in Satisfaction: We apprehend that it was given upon this Account to Mr. Hales. In Confirmation of what Mr. Hales saith, we can produce a Person to shew that there was an Account between them, and Mr. Kinnersey acknowledged such a Balance, in Satisfaction of which this Note was given. And we think that it could not be drawn as a Note of Mr. Kinnersey's payable to Mr. Hales, not only because the Account would be as good against Mr. Kinnersey as such a Note of his Hand, but also because of Mr. Hales's own Circumstances. Mr. Hales applied to a Gentleman that recommended him to Mr. Bird to borrow Money upon this Note. And, Gentlemen, it was this Note thus drawn that recommended him. Mr. Hales had the Misfortune to be concerned with Sir Stephen Evance; he could not therefore appear himself; and, therefore, by the Assistance of this Note, borrowed the Money. When Difficulties came upon it, he went and paid Part of the Money, and I believe would have taken care to have paid the whole: It doth not appear that this hath affected Mr. Edwards. His name indeed hath been exposed as a Man would not be willing that it should; Money hath been raised upon the Credit of his Name; but he hath not been affected thereby. This therefore lieth on the unhappy Circumstances of Mr. Hales. We will call one Witness, and then this Confession of Mr. Kinnersey we hope will avail.

Mr. Lacy. My Lord, I apprehend that there is a Circumstance that lessens the Weight of, if it not wholly sets aside what they go upon. What they have gone on was, that Mr. Edwards's Franks were used to this ill Purpose. Maddox, a Servant of Mr. Edwards, is produced, who tells us of a Parcel of Franks that were delivered in July last. Mr. Bird gave an Account that this Note was brought to him in March: So that it was brought him before these Franks were delivered. And though it may be apprehended that there were other Franks, we think that there ought to be a Proof of some Franks that were delivered before.

Mr. Strange. There have been, Mr. Lacy, (as hath been deposed) for several Years. Those that were brought in July last, are those that never were franked, but were only Covers left for that Purpose.

Mr. Robert Burkit called and sworn.

Mr. Serj. Darnell. Do you know, Sir, of any Account stated between Mr. Hales and Mr. Kinnersey?

Mr. Robert Burkit. No, Sir, none at all.

Mr. Serj. Darnell. No! What doth the Man mean?

Mr. Strange. What, none in Newgate, nor no where else? Do you know of none?—Mr. Robert Burkit. No, Sir.

Mr. Strange. Do you know of any Money that was at any Time due from Mr. Hales to Mr. Kinnersey?

Mr. Robert Burkit. No, Sir, none at all.

Lord Chief Baron. Have you any other Witness?

Mr. Serj. Darnell. My Lords, there are two Witnesses to this Account stated.

Mr. Serj. Eyre. My Lord, and Gentlemen of the Jury, I am Counsel for Mr. Kinnersey. I apprehend that he is innocent. I readily agree with Mr. Attorney, that the Affair of Notes, established by Act of Parliament, is of great Moment, and their Security necessary to Commerce; and that the Forgery of such Notes and Indorsements thereupon is very pernicious to the Publick: I therefore apprehend that there ought to be strong Evidence for the convicting of such a Crime. I humbly submit it, that before a Man be convicted of so infamous an Affair, there ought to be strong Evidence; and the rather because he is a Clergyman of the Church of England, and his Capacity of Service depends upon his Credit: And it doth appear that he hath behaved himself with all possible Caution. You see that the Contrivance that the Officer sent to apprehend him made use of, was a Pretence of a Marriage. You see, Gentlemen, and I am glad to see it, and wish that all others used the same Caution, that upon his Inquiry what Age the young Woman was of, understanding that she was not of Age, and her Parents not being there, notwithstanding that he was told that her Brother was there with her, yet he absolutely refused and said, that he would not be concerned for an hundred Pounds without the Parents Consent: That is such a Point in his Favour, that I think that it is a stronger Circumstance

for him, than the other Circumstances are against him. As to the Offence that is charged upon him, it is, I suppose, that he should give out a Note made in his Name payable to Mr. Edwards, and indorse such a Note in Mr. Edwards's Name, in order to charge Mr. Edwards with the Payment of the Money. They lay a great Stress upon this, and say, that Mr. Kinnersley was wholly unacquainted with Mr. Edwards. One of the Witnesses saith, that Mr. Kinnersley himself owned that he had never seen Mr. Edwards before in his Life. How therefore (say they) is it likely, that there should be any fair Reason for a Man to make such a Note payable to one that he had no Dealing nor Acquaintance with, nor had so much as ever seen before in his Life? I submit it to you, whether in the Course of Business it is a material Thing whom a Note is made payable to. If a Man owe a Sum of Money, and give a Note for it, it is natural to enquire to whom it should be made payable. It was the more natural in this Case, as Mr. Hales, having the Misfortune to have a Commission of Bankruptcy standing out against him, could not negotiate Notes in his own Name, but must act in some Friend or Neighbour's Name. And it is no great Wonder that Mr. Kinnersley, whose Character directed his Studies another Way, and who was not acquainted much with these Affairs, should be imposed upon to give such a Note; and the less so for this plain Reason: Sir Stephen Evance and Mr. Hales formerly lived in Mr. Kinnersley's Parish; received him with a great deal of Civility: It can be no Wonder therefore that he afterwards continued an Acquaintance with him. Notwithstanding his Misfortunes, it is plain that Mr. Hales was still acquainted with several very worthy Gentlemen: Mr. Gibson and Mr. Edwards both furnished him with Franks; Sir Biby Lake recommended him to Mr. Bird, to borrow of him a considerable Sum of Money. If such Gentlemen as these thus corresponded with him after his Misfortunes, no Wonder that Mr. Kinnersley, who had been the Minister of the Parish where Mr. Hales had lived, should keep up an Acquaintance with him; and so no Wonder that he should be so imposed on. In fact, we shall shew you that he was indebted for such a Sum to Mr. Hales. It is impossible to give a particular Account of the whole Affair; Mr. Hales being also a Defendant, and therefore no Evidence: But that he was indebted in some such Sums is plain. Gentlemen, it is very innocent if a Man give a Note where there is no Consideration. It is no Injury to the Publick. The Person that gives the Note may injure himself, but not the Publick. There is no Act of Parliament against the giving of such Notes. Well, if the giving of the Note be not culpable, consider how the Fact of the Indorsement comes about. And if you consider how that comes about, no doubt but that he must be cleared of the Fact. How must this be done to affect Mr. Kinnersley? It must be on the Back of the Note when he wrote the Note, and he must know it to be there. Now, with great Submission, have they given any Proof, or Colour of Proof, that it was then there, or, that if it was, he knew it to be there? They have given you the Proof of Mr. Bird and the Constable, who was present when he was examined. According to the first of these, it is plain that he knew not. He said that he knew that the Name was there, but knew not how it came there. This, I think, instead of a Confession, is an avoiding of it, by saying, that he knew nothing at all how it came there: But consider the Nature of the Thing, how it is supposed to be done from a Frank of Mr. Edwards's. Mr. Edwards had never franked a Letter for him, but many for Mr. Hales. Is it not most natural to suppose then that Hales was concerned? How doth it follow, that this being done from a Frank, the Name must be there before the Note was wrote? A Man that is capable of drawing such a Note for such an End, might he not give it to be franked? Is it not easy to conceive, that if I give such a Note on a Quarter of a Sheet of Paper doubled up to a Person to be franked, that he shall do this so as to make the Name stand for an Indorsement? I would make this further Observation, it hath been counted doubtful, whether the making use of a Man's Name to a different Purpose from what he designed it for, shall be counted a Forgery. I think that the Doubt ariseth upon a Distinction of my Lord Couper, on the Statute of 8 Eliz. between forging and making a False Deed. I do not pretend to say but that the Opinion of the King's-Bench was right. It was in the Affair of Ward and Bridge.

Lord Chief Baron. No, Bridge and Dutton: There was an Alteration. The Question was, Whether it could be accounted a Forgery within the Act of Parliament? The Words of the Description in the Act of Parliament are, "If any one forge or erase, &c." whether he could be charged with forging of that Note? I was one of the Counsel. It appeared their Opinion, that he forged it as much as if he had wrote the whole Note.

Mr. Serj. Eyre. My Lord, I agree it to be as your Lordship puts it. I only mention it as a Doubt not settled by the printed Books. My Lord, a Man may alter a Deed, e.g. a Person oweth me Money on Bond; if I alter the Bond to mine own Damage, that is no Forgery; but when he doth it to the Injury of the Person to whom the Money is owing, then it is Forgery: The Forgery therefore lieth in the Design of defrauding another. Now, whose Good is it that this Note was drawn for? It appears that my Client had no Benefit at all by it. The Money was all received by Mr. Hales, and the whole Transaction about paying the Money was by Mr. Hales: He was therefore to receive the Benefit, most likely therefore that the Forgery was his. And as to this Promissory Note, what was the Effect of it? No one will pretend to say, but that if Mr. Edwards was to bring an Action he might recover his Money of Mr. Kinnersley: He hath, therefore, only wrote a Note, which, without Controversy, hath subjected him to the Payment of such a Sum of Money. Mr. Hales hath received the Money, and gained by this Note. We submit it therefore to your Lordship.

Mr. Mather. My Lord, with relation to the Transactions between Mr. Kinnersley and Mr. Hales, we shall call Evidence to shew the Reasons of those private Meetings that were between them.

(Mr. Peter Marth called and sworn.)

Mr. Mather. Sir, do you know the Defendants, Mr. Hales and Mr. Kinnersley?

Mr. Peter Marth. I have, Sir, known Mr. Hales many Years.

Mr. Mather. But have you known Mr. Kinnersley?

Mr. Peter Marth. Not so many Years.

Lord Chief Baron. What is your Business or Employment?

Mr. Peter Marth. I am an Attorney, my Lord.

Mr. Mather. Do you know of any Transactions between Mr. Hales and Mr. Kinnersley?

Mr. Peter Marth. About ten or eleven Years ago, Mr. Hales brought me a Bond of fifty Pounds, payable by Mr. Kinnersley to me. Mr. Kinnersley owed him the Money, and had given him a Bond payable to me. He desired me to get it.

Mr. Serj. Whitaker. This is not Evidence. What signifieth it what the Defendant told him?

Mr. Mather. What was done upon that? What came of the Bond?

Mr. Peter Marth. I delivered it to Mr. Hales again.

Mr. Mather. Did Mr. Hales owe you any Money?

Mr. Peter Marth. No, Sir, none at all.

(Mr. Cropley called and sworn.)

Mr. Lacy. Mr. Cropley, What do you know of any Money-matters between Mr. Hales and Mr. Kinnersley?

Mr. Cropley. I received about sixty Pounds at Janeway's Coffee-house, a Debt which was due to me from Mr. Kinnersley: They were there together; Mr. Kinnersley was the Debtor, Mr. Hales had given me a Note for it. Mr. Kinnersley had prevailed on me to lend him an hundred and odd Pounds upon but a slight Acquaintance: He brought another Gentleman to be Security with him for the paying it me; so I forbore him for six Months. I then enquired of him after it: When he had led me a Dance from Coffee-house to Coffee-house for some Months, I was forced at last to sue for it. He desired me to sue the other Party, and forbore him: I recovered Half from the one, then I came upon him for the other. When I came to serve him with a Notice of a Writ of Enquiry, he met me with Mr. Hales at some Tavern in Holborn, about June or July last was a Twelvemonth. Then Mr. Hales said to me, I am to receive about six or seven hundred Pounds within about three Months Time; and then I shall be ready to pay that Money: Upon that I sapt my Procedure upon the Writ of Enquiry; and, as Mr. Hales requested me, I took Mr. Hales's and Mr. Kinnersley's Note for the Payment of it within three Months. When that Time was expired, or within about four Months, I got it. What was his Part to pay I received at Janeway's Coffee-house: They were together; which paid me I cannot say. The Money was in half and quarter broad Pieces; I refused to take it in those Pieces, being to transact it in the Alley. Upon that he took me to a Banker's about Temple-Bar, and there changed it.

Lord Chief Baron. When was this?

Mr. Cropley. It was in February. Mr. Kinnersley gave me a little Note at the same Time for the Damages that I had sustained in seeking it; about fifty Shillings, or thereabouts.

Mr. Strange. Hath there been any Application made, Sir, to you to appear as a Witness?

Mr. Cropley. Yes, Sir, Mrs. Kinnersley sent to desire me; and Mr. Kinnersley also sent me a Letter, and besides that sent me a Subpoena.

Mr. Strange. Can you produce that Letter?

Mr. Cropley. I have it not here, Sir.

Mr. Strange. You cannot say which paid you the Money, Sir?

Mr. Cropley. No, Sir, but they were both together.

Mr. Kinnersley. Sir, one Word I beg. Did not Mr. Hales give you a Note for it?

Mr. Cropley. Yes, Sir, you and Mr. Hales joined in it.

Mr. Peter Beart was called, but did not appear.

(Mr. John Wells called and sworn.)

Mr. Lacy. What do you know, Sir, of any Money due from Mr. Kinnersley to Mr. Hales?

Mr. John Wells. No, Sir, I know not of any.

Mr. Lacy. Or of any Money lent, particularly an hundred Pound? Was Mr. Kinnersley indebted to you?

Mr. John Wells. Yes, Sir, an hundred Pound.

Mr. Lacy. Who lent him the Money to pay you?

Mr. John Wells. Mr. Hales, as Mr. Kinnersley told me.

Mr. Lacy. Who paid you the Money?

Mr. John Wells. Mr. Kinnersley.

Mr. Lacy. Was Mr. Hales present?

Mr. John Wells. I do not know, Sir. It was paid to my Attorney.

(Mr. John Simpson (Banker) called and sworn.)

Mr. Lacy. Sir, what do you know of Money due from Mr. Kinnersley to Mr. Hales?

Mr. Simpson. I know not Mr. Hales, Sir. I never saw him out of Court.

Mr. Lacy. Was Mr. Kinnersley indebted to you?

Mr. Simpson. Some Months ago he borrowed of me thirty Pounds on some Lottery Tickets.

Mr. Lacy. Who paid it you off?

Mr. Simpson. I was not at the Shop when the Money was paid.

Mr. Lacy. But do you not know how it was discharged, whether by Money or Notes, and by whom?

Mr. Simpson. No, Sir, I cannot say. It doth not appear by our Books.

Mr. Lacy. Do you know or not that Mr. Hales paid it, or gave a Note for it?—Mr. Simpson. I do not know, Sir.

Mr. Lacy. Doth any Note by your Books appear given for it, or by whom paid?

Mr. Simpson. No, Sir; if it had been paid by any other Hand than Mr. Kinnersley's, I believe that it would have appeared by our Books.

(Mr. Fowler (Banker) called and sworn.)

Mr. Kinnersley. Sir, I beg you to say whether you remember that I gave you a Note from some Friend of Mr. Hales's?

Mr. Fowler. You never mentioned his Name. I lent you Money upon Lottery Tickets; but know nothing of that you mention.

Mr. Kinnersley. Did not Mr. Hales come to your Shop, take up the Note, and pay it?

Mr. Fowler. No, Sir, not that I know of. I never saw him there.

(Mr. John Hall called and sworn.)

Mr. Lacy. Did you ever, Sir, give a Note upon Mr. Hales's Account and for his Money?

Mr. Hall. Not that I know of.

Mr. Lacy. Did you at his Desire pay any Money?

Mr. Hall. No, Sir.

Mr. Lacy. Do you know any Person that did?—Mr. Hall. No, Sir.

Mr. Serj. Whitaker. Do you know Mr. William Hales? Will you give us an Account of his paying you a Bill in broad Pieces, and whether he asked

asked you to write his Name *Wells*. He can tell very well I know what this means. Did you give any Note, or set your Name?

Mr. Hall. I set my Name.

Mr. Serj. *Whit*. Do you know your Name again?---Mr. Hall. Yes, Sir.

Mr. Serj. *Whit*. Is that your Name?---Mr. Hall. Yes, Sir, it is.

Mr. Serj. *Whit*. When did they get it of you?

Mr. Hall. On August 17 last.

Mr. Serj. *Darnell*. I see not how my Brother makes this Evidence against Mr. *Hales*. He is not brought for him but for Mr. *Kinnerley*; and they would cross-examine him as to Mr. *Hales*.

Mr. Serj. *Whit*. I agree with you that we could not have called him: But my Brother *Eyre* called him to shew that there was a promissory Note, he denies it. Well, I submit it.

Mr. Serj. *Eyre*. My Lord, we have gone through the Evidence opened: But I would mention this as to the Examination before Sir *Richard Hopkins*. It is suggested that Mr. *Kinnerley* would have confessed, but that he was interrupted by Mr. *Mitford*. It is plain that he had spoke to all that was material both as to the Note and the Indorsement: I think that it is therefore wrong, for them to say that he would have confessed more, but that he was interrupted. But we will call a Gentleman to shew in what a candid Manner he behaved, and that he was not interrupted in the Manner that hath been suggested.

(*Rev. Mr. John Hayes called and sworn.*)

Mr. Serj. *Eyre*. Was you present, Sir, at Sir *Richard Hopkins's*, when Mr. *Kinnerley* was examined?---Mr. *Hayes*. Yes, Sir.

Mr. Serj. *Eyre*. What did you observe about his being stopped, or did he fully speak his Mind?

Mr. *Hayes*. I remember, Sir, that Mr. *Mitford* desired him to be cautious, and not too free in making his Reply.

Mr. Serj. *Eyre*. I only ask you, whether he had not then spoke both as to the Note and the Indorsement?

Mr. *Hayes*. He said that the Note was his. He said that as to the Indorsement, he had heard that it was indorsed by Mr. *Edwards*, but knew not how it came.

Mr. Serj. *Eyre*. Do you apprehend that his being cautioned was to be careful in his Answer, or that referred to the Answers that he had already made?

Mr. *Hayes*. I apprehended that the Caution was to be careful in his Answers.

(*Mr. Grants called and sworn.*)

Mr. Serj. *Eyre*. Was you present at the Examination of Mr. *Kinnerley* before Sir *Richard Hopkins*?

Mr. *Grants*. Yes, Sir, Mr. *Kinnerley* sent for me when he was first taken up. I suppose it was because I married a Relation of his; for I knew nothing of any Transactions between him and Mr. *Hales*.

Mr. Serj. *Eyre*. I ask you, whether he fully spoke his Mind about the Note and the Indorsement, or whether he was interrupted therein?

Mr. *Grants*. Sir *Richard* asked him, whether he knew the Note and the Indorsement? There then passed a Sort of a Squabble between him and Mr. *Mitford*.

Mr. Serj. *Eyre*. Did you observe that any Gentleman interrupted Mr. *Kinnerley*, or cautioned him as to his Answers?

Mr. *Grants*. There was an Interruption: But what it was I could not particularly hear.

Lord Chief-Baron. Have you done?---Mr. Serj. *Eyre*. Yes, my Lord.

Mr. Serj. *Whit*. My Lord, I observe that the Defence that they have made is for one to throw it upon another. Mr. *Kinnerley* thinks that Mr. *Hales* is as deep as he can be, and therefore may bear the Load: But then, my Lord, Mr. *Hales* wants to retort it upon Mr. *Kinnerley*; but the Drift of both is, that Mr. *Kinnerley* may get out as he can. You will observe the Defence: There is a Pretence of mutual Dealings, and that this Note was given in Discharge of the Balance of the Account. I submit whether there hath been any Evidence of any Dealings to any such Sum: If not, to what Purpose was it given? If it was to raise Money, was it for a fraudulent Purpose, or not? If it was, they are both equally guilty. But the Pretence now is this, Mr. *Hales* was a Bankrupt; and it was therefore proper for them to have a third Person, in whose Name to transact. Now how could that be proper, if it was a Person over whom they had no Power? Would any one be willing to take Notes in the Name of a Stranger? Is a Stranger to be trusted with such a Sum? No. If not, how then? Here is one Man to write such a Note for another in Mr. *Edwards's* Name, to what Purpose? Why, in order to charge Mr. *Edwards* with the Money: Else, what signifieth the Indorsement. The Question then is, Was Mr. *Edwards's* Hand there? And did Mr. *Kinnerley* know it? They that would have it that Mr. *Kinnerley* was very innocent, say, that he knew nothing at all that Mr. *Edwards's* Hand was there. Well, when he comes to be called upon and importuned for the Money by Mr. *Bird*, what doth he say? Why, Mr. *Edwards* is a rich Man; I am an undone Man: You must therefore resort unto him. This was said not only upon the Sight of the Note, but before it was shewed to him. He then told Mr. *Bird* that he knew that he had such a Note of his so indorsed. Gentlemen, Things of this Nature are only to be detected by Circumstances. They will not call Persons to be Witnesses to these Transactions. If this was a fair Dealing, it was proper to have called some one honest Man to give an Account that he was present thereat, and privy to this Transaction: But instead of that, which is the wickedest I cannot tell; but it is plain that here is a Contrivance to charge an innocent Person; and such little Things as Evidences of Transactions of a Note of fifty or thirty Pounds, or the like, are not to go against it. Circumstances will not make a plainer Proof than here is of Forgery. A Note drawn on such a little Paper, in so slovenly a Manner, detects itself. Here is a plain Forgery. The Question is, who is guilty of it; and whether there is not sufficient Proof that the Defendants are the Persons guilty of it?

Mr. *Strange*. My Lord, I beg it may be considered, whether it is not criminal to give such a Note. At several Times he declared before he saw the Note, that the Name of Mr. *Edwards* was on the Back of it. If the Jury are of my Mind, as to one Fact, it is a Demonstration that the Name was upon it when the Note was given. If the Jury will look upon the Note, it will appear that something was written upon the Note, and nothing more probable than *free*. Can any imagine, that Mr. *Edwards*,

whose name is there, would ever write a *Frank* upon a Note? If therefore, the Jury is of my Opinion in this Observation, that there was at first *free Samuel Edwards*, it is impossible to imagine but that it was wrote there before the Note was drawn. My Lord, that the Jury will take on their View. My Lord, there have been several Things said as to whose Benefit this should be for, that it is plain that Mr. *Kinnerley* received no Benefit by it, that therefore it could not probably be his Forgery. My Lord, it is plain by the Account that we have given you of their Correspondence, that there was something carrying on between them, which must be of a very private Nature. Doth it not appear for whose Benefit it was? I am (said he) an undone Man; you cannot expect it of me, but must apply to Mr. *Edwards* who indorsed it: And therefore, though he made himself liable, that signified not, as he was at the same Time liable to many more Actions. It appears that they were obliged to give the Note in the Name of another Person who was responsible, having no Credit of their own. As to that Objection, for whose Benefit, we apprehend it of no Consequence; they might probably share it between them. There was another Thing endeavoured to be proved, viz. such a Debt due from Mr. *Kinnerley* to Mr. *Hales*. Since they thought it necessary to attempt a Proof of that Kind, if they have failed in that Proof, I apprehend that their Opinion was that they stood in Need of a Proof of that Kind, which hath failed them. What have they gained? Notwithstanding a Note given of twelve hundred and sixty Pounds (a very great Sum to be due from a Clergyman in his Circumstances), they have pretended to prove nothing but one Bond of fifty Pound, which hath not been proved, but only Mr. *Hales* came to Mr. *Marsh* and told him this, which I apprehend to be no Evidence: Had they brought the Bond, it would have appeared whether true or not: This is no Proof that Mr. *Kinnerley* was indebted to Mr. *Hales*. What Mr. *Cropley* saith, amounteth to no more than about fifty-nine or sixty Pounds. I must submit it, whether they have given a reasonable Account of this Affair. My Lord, it is an Happiness that there are such general Circumstances as tend to detect them.

Mr. *Kinnerley*. My Lord, I desire to speak.

Lord Chief-Baron. You were called on before. You should advise with your Counsel whether it be proper: I would only acquaint you that it is not regular. If you would be heard, or call any Witness, if you have any Thing material for your Defence, it shall be heard: But if you produce any Thing new, the Counsel for the King must have Liberty to answer; or if you bring any Witness, they must have Liberty to cross-examine, or to bring any other Evidence on their Side.

Mr. *Kinnerley*. My Lord, I shall call no other Evidence. I shall leave it to your Justice; and this Gentleman I believe will acquiesce. Mr. *Hales* lent me fifty Pounds; he took it in that Gentleman's Name that was called for a Witness: Next, Mr. *Took* had one hundred and fifty Pound Note: Another Gentleman (Mr. *Burton*) hath Notes of one hundred Pound, which Mr. *Hales* gave him to discharge a Debt.

Lord Chief-Baron. Mr. *Kinnerley*. You intimated that you should bring nothing new.

Mr. *Kinnerley*. My Lord, at a Publick Coffee-House he desired me to lay down twenty-five Pounds, and the Policies are now in Court which were actually insured for so much Money. And as to this Note, I call God to Witness, that this Note I gave him upon no other Account but on settling the Account in Exchange for other Notes which amounted to that Sum. He directed me how to do it; took the Paper out of his Book, and held it double, whence I now apprehend that Mr. *Edwards's* Name was then on the Back. I never was privy to his altering any Letters: I gave him that Note for want of Money, for a Debt which is still due, and call upon him to declare what is true.

Mr. At. Gen. My Lord, whatever Mr. *Kinnerley* hath avowed is without Witness.

Lord Chief-Baron. When Persons are prosecuted capitally, the Law alloweth him not Counsel as to Fact: Therefore, what a Person alleges himself must be taken Notice of. Upon a Charge of Misdemeanour you make your Defence by Counsel, and they state the Case. It doth not avail in Proof what a Person saith himself, and what they say avails not, except supported by Proof. What you say will have no Weight as proved, except proved.

Mr. *Kinnerley*. My Lord, are Policies no Proof? Here is a Certificate from the proper Officer. Sir, I insist upon it that you do me Justice in this Matter. I will be content to suffer Death if this be not so.

Lord Chief-Baron. You are not to be now regarded.

Lord Chief-Baron. Gentlemen of the Jury, this is an Indictment against *Thomas Kinnerley*, Clerk, and *William Hales*, late of *London*, Goldsmith, for forging and publishing an Indorsement on a promissory Note, for the Payment of Twelve Hundred and Fifty Pounds to *Samuel Edwards*, Esq. And the Indictment sets forth, That the Defendants, having in their Custody a promissory Note subscribed by *Thomas Kinnerley*, and bearing Date August 16, 1727, whereby *Kinnerley* promised to pay Twelve Hundred and Sixty Pounds to *Samuel Edwards*, Esq. within three Months; that the Defendants, having this Note in their Custody with an Intention to deceive and defraud the same *Samuel Edwards*, Esq. and being Persons of evil Fame and Reputation, did falsely and fraudulently forge and counterfeit on this Note for Twelve Hundred and Fifty Pounds, payable within three Months after Date to *Samuel Edwards*, Esq. or his Order, an Indorsement to this Effect,

Pray pay to the Order of

for the Value received,
SAMUEL EDWARDS.

thereby intending to charge Mr. *Edwards* as the Indorser of that Note with the Payment of the Twelve Hundred and Sixty Pounds contained in the Body of the said Note; that after they had forged and counterfeited this Indorsement upon this Note, and knowing it to be a Counterfeit, they did publish the said Note so indorsed. Gentlemen, the Counsel on the Behalf of the Prosecution have acquainted you that they look upon this as a Contrivance of both Defendants to carry on this Forgery upon what they suppose at first merely a *Frank*; that the Name of Mr. *Edwards* upon the Cover of a Letter with the Word *free*; that the Word *free* hath been at the Time of the Indorsement altered and made for *the*, and the Word *Value received* added to that, and made the Indorsement to this Note. For the corroborating of this they have called

called several Witnesses. First, *Thomas Maddox* was called a Servant to Mr. *Edwards*. He tells you that Mr. *Edwards* lives in *Duke-street, Westminster*, and that the Defendant *Hales* lived near over-against him; that the Defendant *Hales* frequently sent Covers over, upon which he had several Franks directed to several Persons; that this hath been the Custom for several Years; that Mr. *Edwards* used to send them over indorsed with his Name *Samuel Edwards, Esq.* He saith, that his usual Way was to indorse the whole Supercription; but that last Summer, some Time about *July*, there were six Covers sent over by the Defendant to Mr. *Edwards's* House by the Defendant *Hales*, desiring that they might be franked with only *Samuel Edwards Esq.* without writing the whole Supercription; that Mr. *Edwards* declined that, saying that he never did it: He therefore refused him, and those Covers were not indorsed, but were produced here. He hath been asked, Whether he knew of any Correspondence besides this of franking Letters between Mr. *Edwards* and Mr. *Hales*; and whether he knew of any between Mr. *Edwards* and Mr. *Kinnerley*? He answered, That he doth not know of any whatsoever. Another Servant, one *Anne Clarke*, comes and produceth a Paper of Names that was brought over from the Defendant *Hales* to Mr. *Samuel Edwards's* House, in order for him to frank Letters to those Persons, and write the whole Supercription as at other Times. She produced the Paper in Court, which she said that she received from Mr. *Hales's* Servant. And Mr. *Booth* being examined thereto declares it to be the proper Hand of the Defendant *Hales*, with whose Writing he hath been well acquainted, especially since his Bankruptcy, he being a Clerk in that Commission. In this Paper is wrote,

Two to *John Pratt, Esq; Bristol.*

Two to Mr. *Levett, Huntington.*

Two to *Stephen Mitford, Esq; Exeter.*

They make use of this Evidence to shew that there was a Sort of an Attempt to get Covers with these Names franked, hoping or supposing that there might be a Space left sufficient to write a Note of this Nature. Mr. *Booth* who was called to prove the Hand-writing of Mr. *Hales*, was cross-examined by the Counsel for the Defendant, whether he knew of any Traffick of Mr. *Hales* since his Bankruptcy. He saith, That he doth not know of any, but that he was well acquainted with his Hand-writing, being employed in the Affair of the Commission of Bankruptcy. Mr. *Thomas Bird* was next called and examined as to the Circumstances of the Publication of this Note. He tells you that this Note, dated *Aug. 16, 1727*, for the forged Indorsement whereof both the Defendants are prosecuted, was brought to him, in order to take up Money upon this Note, and further Security, which Mr. *Hales* gave in *March* last; that it was brought in the Manner that it now is, and no Alteration made either in the Body of the Note or in the Indorsement, but it stands and remains in the same Manner as when he first received it; that when Mr. *Hales* came to him, he proposed to borrow of him seven hundred and fifty Pounds upon the Credit of this Note for his Security, and likewise upon his own Note for the Payment of this Money; that he had been requested by a Friend of his in the Morning before to accommodate Mr. *Hales* with this Money upon the Credit of a Note which the Person had in his Hand, and which was the same Note; and that on the Afternoon of the same Day [*March 20*], while he was at the *Hudson's-Bay* House, in *Fenchurch-Street*, Mr. *Hales* came to him with the Note, and he then lent him the Money for fourteen Days; that he then desired Mr. *Hales* to write some Paper to testify the Receipt of the Money, and be a further Security to him; and that the said Mr. *Hales* thereupon wrote a promissory Note dated the same Day, wherein he promised the Repayment of this Seven Hundred and Fifty Pounds in fourteen Days, which Note was subscribed by the Defendant *Hales* himself; that the Sum of Money was made up in several Bank Notes; that he delivered these to the said Defendant *Hales*, and took this Note and Mr. *Hales's* own Note, as a Security for the said Money; that *April 3* following Mr. *Hales* brought four hundred Pounds, which he indorsed upon his own Note; and that the rest of the Money remains due. He tells you, that when he heard that the Defendant *Hales* was apprehended in *September* last, he sent to one *Tomkins*, an Attorney, delivered this Note to him to go to Mr. *Kinnerley*, to get this Money for him. The Account that he received was, that Mr. *Kinnerley* was out of Town, so that he could not meet with him. At length Mr. *Tomkins* intimated that Mr. *Kinnerley* cared not to see him, but would come the next Day to Mr. *Bird* himself upon this Affair. Accordingly on or about the 16th of *September*, the Defendant, *Kinnerley*, came to Mr. *Bird* at his Compting-house: Mr. *Bird*, not knowing who he was, seeing a Clergyman come in his Gown, and looking a little at him, he said his Name was *Kinnerley*. He hereupon said that he had a Note of his Hand left with him for a Security; to which he replied, I know, Sir, that you have, and it is for Twelve Hundred and Sixty Pounds, payable in three Months to Mr. *Edwards* or his Order; that he said that the Note was of his own Hand-writing; but immediately added, How it came to be indorsed by Mr. *Edwards* I know not. This, Gentlemen, you must take particular Notice of, because this was the first Mention of Mr. *Edwards's* Indorsement: At that Time Mr. *Bird* had not mentioned that, nor shewed him the Note; when Mr. *Kinnerley* having owned the Note to be his Hand-writing, immediately added, but how it came to be indorsed by Mr. *Edwards* I know not; naming thus the particular Person who was the Indorser of this Note. He saith, that Mr. *Kinnerley* was in a great Consternation at that Time, and said that he was an undone Man, among other Expressions. And he said likewise, that Mr. *Edwards* was a Gentleman of Substance; and this he declared, tho' Mr. *Bird* had not shewn him the Note at that Time: I am (said he) an undone Man; Mr. *Edwards* is a Man of Substance. This he said before that the Note was shewn to him, or any Declaration was made by Mr. *Bird* relating to Mr. *Edwards's* being the Indorser of this Note. He said further that he was not in a Capacity to pay this Money; and that they must apply to Mr. *Edwards*, who was a substantial Man, for it. Gentlemen, this was made use of as a Sort of Defence at this Time to avoid this Thing, to put it off from himself by this Argument, why *Bird* should not come upon *Kinnerley* himself, who was incapable of paying him, but take his Remedy against Mr. *Edwards*, who was a substantial Man. He was cross-examined: The Counsel for the Defendant asked who was the Person that recommended Mr. *Hales* to him as the Borrower of this Money?

It was answered, That it was Sir *Bibb Lake*. He was asked on whose Credit he lent the Money, Mr. *Hales's* or Mr. *Edwards's*? It was answered both, as it must be in such a Case. Gentlemen, upon this the Note was read; for it being received directly from the Hands of the Defendant *Hales*, that was sufficient Cause to read the Note, and lay it before you. Accordingly it appears to bear Date *Aug. 16, 1727*, and is a promissory Note, running thus:

I promise to pay to Samuel Edwards, Esq; or his Order, within three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for Value received, £. 1260.

Thomas Kinnerley.

Then comes the Indorsement: And there, there is wrote on the Top, 'Pray pay to the Order of,' then there is a large Blank, then comes 'for Value received', and then there is the Subscription 'Samuel Edwards.' Gentlemen, upon this it is proper to take notice of the Observations made by the Counsel for the Prosecution on the Manner of the writing of this Indorsement. They observe that this must be a Subscription by Mr. *Edwards* of his Name for a Frank for the passing of a Letter free: It appears very probable from the Manner of his writing a Frank. Free and not Frank is the Word that he makes use of: And upon what appears by what remains in this Note, they say, that by the Top it appears that it must be cut off from some other Note, and that there is an Indenture where they suppose that some other Letters were; that there is the Appearance of something not a Blot, but the Appearance of the Remainder of a Letter or Figure on this Place, and some Appearance of a little Dash from it. But they say that for the is substituted for the Word free; that it appears by the Thickness of the Letters, by the Ink, and by the Manner wherein the Letters are put there, and by the Form of the ff which Mr. *Edwards* makes in the Word free; and that there is still the Appearance of the Remainder of one or both the e's. Upon this, Gentlemen, you will consider whether the o and the r have not the Appearance of some other Letters under them, and between the f and the r. It is plain upon Sight whether the other Letters seem wrote of the same Strength and Thickness with the f and r. The ff seems paler and thinner, and of a different Ink from the other Letters. And then, Gentlemen, the Word the is here written at Length. You will consider whether this seems not to have been from a Necessity to put some other Word to fill the whole Compass of the Word free. Now the seems not wrote at the same Time, and with the same Ink with Value received. If this had been wrote all at the same Time, it is pretty extraordinary that it should not have been wrote even. The f is wrote in a straight Line even with Value received, but the o sinks a little, and the r comes under. You will consider, Gentlemen, whether there was sufficient Room, and whether this was the Cause of putting it so. These Considerations are made use of to make it probable that it was wrote at different Times: If so, it is most probable that it was at first free, and that the other Words were substituted afterwards. So that these are the Observations as to the Manner of writing it, which you are to consider whether they are true, and there be a Foundation for them or not. Mr. *Spicer* then was called, who hath been a Clerk to Mr. *Edwards* in the *Exchequer* between ten and eleven Years, but hath been in his Service about twenty-four Years. The Note was shewn to him, and he tells you, that as to the Name, he takes it to be the proper Hand-writing of Mr. *Samuel Edwards*, his Master: The f he also counts to be his. Upon his Observation and Oath, which is Evidence to be left to you, the Word for is wrote over other Letters, and he believes, upon his Oath, that the first Word was free. He saith, that Mr. *Edwards*, when he maketh a Frank, makes use of a ff as in the Manner that it here stands. If it was made for Value received at first, it is pretty extraordinary that a ff should be written, and not a single f as usual. Why (saith he) it is my Master's usual Way of Writing free. And then he saith that he always wrote free and not frank; which is material, as the Word frank might not so well correspond with this Alteration. He saith that the r seems visible, and to stand between the o and r. You will see whether there be the Remainder of any such Letter or no; since he saith that he doth think that the r is visible. He tells you, that as he is Clerk to Mr. *Edwards*, so he is acquainted with his private Affairs, relating to his Estate and the like, and that he doth not know of any Money Transactions between his Master and either of the Defendants; that he is so well acquainted with his Affairs, and the Nature of his Employment under Mr. *Edwards* such, that he believes that if any such Dealings had been, it would have come to his Cognizance. He tells you, likewise, that Mr. *Edwards* is not a Person that useth to deal this Way: It was very proper to ask him this, because it is common for many Persons to indorse Notes in this Manner. He saith that it is not his usual Custom: It cometh not into his public Business; and, as to his private Transactions, he never knew him to do it. They were then going to call a Witness to prove the Body of the Note to be Mr. *Kinnerley's* Hand-writing. Upon this, Mr. *Kinnerley* took upon him to admit that it was all his own Hand-writing. So then it is to be taken for confessed, that the Body of the Note was his writing. It is written in this Manner,

August 16, 1727.

I promise to pay to Samuel Edwards, Esq; or his Order, three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for Value received, £. 1260.

Thomas Kinnerley.

Well, Gentlemen, after this, the Counsel for the Prosecution say, that Mr. *Kinnerley* hath in effect confessed as much as amounts to what they stand in need of to convict him of this Forgery. First, They call Mr. *Wright*, who was present at the Examination of Mr. *Kinnerley* before Sir *Richard Hopkins*. Mr. *Wright* tells you, that at that Time the Defendant *Kinnerley* owned that the Note was all his own Hand-writing; that Mr. *Edwards* thereupon asked him why he drew the Note payable to him, when there never had been any Dealings between them. Mr. *Wright* saith, That the Defendant *Kinnerley* owned at that Time that there never had been any Dealings between them, and likewise that he did not know Mr. *Edwards*, nor had, to the best of his Knowledge ever, seen him till then before Sir *Richard*. But he said, that the Reason of his doing it was this: That he was indebted to the other Defendant *Hales* in a Sum of such an Amount and more; and that *Hales* desired him, the Defendant *Kinnerley*, to write him a promissory Note for that Sum; that he asked Mr. *Hales* whom he should make the Note payable to, and Mr. *Hales* said to *Samuel Edwards, Esq;* and that

that accordingly he wrote the Note in that Manner that it now appears in to you upon the Request of Mr. Hales. Mr. Wright tells you, that at that Time he had heard what had past relating to the Discourse with Bird; and he told him, Why you have expressed yourself as if you was a ruined and undone Man; why did you say that, if Mr. Hales requested your writing, him a Note for such a Sum as Twelve Hundred and Sixty Pounds? Upon this, one Mitford said to Mr. Kinnerley, 'You shall not go on to declare yourself any further, you may do yourself an Injury.' This is made use of as a Circumstance by the King's Counsel, that Mr. Kinnerley was going to explain himself further if he had not been prevented by his Friend or Solicitor, who knew the Consequence of a Confession of this Nature. Mr. Wright tells you, that at this Time when Mr. Bird was examined, and said that he had not at that Time shewed the Note to Kinnerley, when he said, that how it came to be indorsed by Mr. Edwards he could not tell. Mr. Edwards hereupon asked him whether he knew of this Indorsement before Mr. Bird shewed him the Note? That he answered that he did, but that how it came there he could not tell. So that that is the Substance of his Confession in that Respect, that he did know of it, though he said he knew not how it came there. Sir Richard Hopkins likewise was called to give an Account of what passed before him: He saith, that he took Minutes of what passed; that it was in the latter end of September that he was brought before him charged with Forgery of two Notes, this of Twelve Hundred and Sixty Pounds, and another of Sixteen Hundred Pounds; that as to this Note, it seemed to him an altered Note, which was the Occasion of his more strict Examination of the Matter. He saith, that he examined Mr. Bird, who advanced this Money, who said that before he had shewn this Note to Mr. Kinnerley, when he had only told him that he had a Note of his Hand left with him for a Security, he answered, I know that you have: It is for Twelve Hundred and Sixty Pounds, payable in three Months to Samuel Edwards, Esq. or his Order, and is indorsed by Samuel Edwards. Sir Richard hereupon asked Mr. Edwards if he had had any Dealings with Mr. Kinnerley? Who said that he had not. Kinnerley also said the same, but said that he drew this Note payable to Mr. Edwards at the Request of the other Defendant Hales, to whom he was indebted in that Sum, and more; but that he did not know Mr. Edwards, nor to the best of his Knowledge had ever seen him before that Time. He saith, that upon his observing that it was very strange that he should make such a Note payable to a Person with whom he owned that he had no Dealings, and who was an utter Stranger to him, Kinnerley was going further to open his Mind, but one Mitford stood and prevented him from going on. Richard Davis, who is the Constable that apprehended him, was next called to give an Account of what passed when the Warrant was issued out, and given him to be executed. He tells you, that because Mr. Kinnerley lived out of the City, he went to a publick House within the Jurisdiction of the City, and sent a Porter to desire to speak with him; but received Answer that he was not in Town. He inquired when he would be in Town, and went himself, and made a Pretence of a Couple wanting to be married. At first came out the Daughter, and then the Mother, whom he acquainted with his Business: At first they seemed to say that he was not at Home, or did not readily say where he was; but after that he had given an Account of his Business, he was carried into the Parlour, and then Mr. Kinnerley came to him. He told him the Business of the Marriage: The Defendant thereupon asked him several Questions; and, among the rest, how old the Lady to be married was? This is necessary to be mentioned, because they have insisted upon it as a Proof of his Honesty, that he asked whether she was of Age or not? And being told that she was not, then asked whether there was Consent of Relations or not? If (said he) there be not, I will not be concerned in a Thing of this Nature for an hundred Pound. He was told that the Brother was with her at the Magpye Tavern, and asked to go thither for Satisfaction, but would not go. Upon this the Constable saith, that he went away, and made it his Business to watch and see when Mr. Kinnerley came out. In an Hour or two he came out, he dogged him up the Minories, then when he was come within Aldgate, he told him that he had a Warrant against him for Forgery of a Note of Twelve Hundred and Sixty Pounds. He then desired him to go into a House with him, where he asked to see the Warrant: Upon seeing it, he said, that if the Gentleman had sent for him he should readily have come to him. Being asked why he denied himself? He answered, that he was afraid of being arrested for Debt, and that was the Reason of his denying himself when the Constable came to inquire for him. He then owned that the Note was his own Hand-writing; but said that he knew not how the Indorsement came there. This agrees with what was said by the Counsel, and proved by the Witnesses, concerning what was said by him upon his Examination before Sir Richard Hopkins, and to Mr. Bird at his Counting-house when he came to him. This is the Evidence, as to the Fact. The Counsel for the Prosecution go on and say, that there hath been a private Correspondence carried on between these two Defendants, which they insist on as a Circumstance to make it likely that they joined herein. They called to this, first, Mr. Thomas Bab, who saith, that both the Defendants used to meet frequently at his House; that Mr. Hales frequently came there early in the Morning, would sometimes walk about a considerable Time, would ask sometimes if the Minister had been there without naming him, but they knew whom he meant, having frequently seen them together; that some Time before Kinnerley came in, Hales sitting by the Window, saw him go by and went to him; sometimes Kinnerley came in and went through the Coffee-room into a back Room, and Hales would follow after him, and they would stay there together; Kinnerley sometimes would go out at one Door, and Hales immediately go out at the other; that this continued for about a Month or three Weeks before Mr. Hales's Apprehension; that one Time particularly, Mr. Kinnerley passed by and went down Fleet-street, and Mr. Hales seeing him, rose up and went out after him: This, he saith, was about a Month before the Defendant Hales was taken up. He saith, that they seldom sat down in the publick Room, but went into a private Room. John Brooks was next called, who saith, that he keeps a Coffee-house in Downing-street, in Westminster. He said, that Mr. Kinnerley used to come sometimes to his Coffee-house, send for a Porter, and give him a Note for Mr. Hales, who

hath come to him, and they have gone into a private Part of the Room, and there they have staid for three or four Hours together; that it being in the Evening he hath thought them in the dark, and asked the Servant why a Candle was not carried them? Who hath answered, that he had carried them one but they refused it, not caring to be interrupted; that they met thus about three or four Times in a Month, a little while before Mr. Hales was apprehended. Mr. Janeway also was called, who saith, that he hath seen the two Defendants several Times retire up Stairs together at his Coffee-house. This, Gentlemen, is relied upon, and given in Evidence, to shew that there was a Correspondence between them about some Affairs not so proper to be managed in Publick. This is the Substance of the Evidence on the Side of the Prosecution: And the Counsel for the King tell you, that as to Things of this Nature, they must be done in a very private Way in order to prevent a Discovery; it cannot be expected that they would call Persons to see such a Thing done; that the only Evidence, therefore, that can be given is Circumstance. Well, Gentlemen, the Defendants come upon their Defence: They appear by different Counsel, and make a separate Defence. The Counsel on the Behalf of the Defendant Hales insist that there was a Debt due from Kinnerley to Hales, for which this Note was given; that this doth appear from the several Declarations made by Mr. Kinnerley from time to time. They rely upon this as Evidence of such a Debt for Money advanced to him, and that this Note was given by the Defendant Kinnerley for such a Debt. They tell you, that Mr. Hales being a Bankrupt, and therefore it not being proper to have such a Note in his own Name, because it would be liable to be claimed by the Assignees in the Commission of Bankruptcy against him, that therefore it was proper to make use of the Name of another Person; that Mr. Edwards was never affected or injured hereby; that Part of the Money hath been paid, and if they had had a little Patience, as Four Hundred Pounds was paid, so the rest would have been paid: And though they admit that the making of such a Note in the Name of another to advance Credit without his Leave was criminal, yet it did not, they say, really affect or injure him. And then to shew that there was a Reason or Foundation for the giving of this Note, they said that they would call Witnesses that there was an Account stated, upon which this Money appeared to be due. They called Robert Burkit to it: But he saith that he knoweth of no such Account, it is all Imagination; that his Name was made use of without his Knowledge; that he knew nothing of any Money ever due between them: So that it is plain, that that Witness is lost in the Examination as to any Benefit to them. They said that they had another Witness who happened not to be here: This is the Substance of the Defence of the Defendant Hales. Kinnerley then comes on his Defence. His Counsel insist that he is not evidenced to be concerned and knowing of this Forgery; that as this is a Crime of a very heinous Nature, and deserves the greatest Punishment, so it is necessary that the clearest Proof should be given you before you convict him. They say that his Character likewise requires stronger Evidence than others; that his Credit is more concerned than others, because the very Exercise of his Function depends upon his Credit, without which he will be of no Use in the Parish where he doth or may minister. And they say, that it appears by the Evidence on the Side of the Prosecution, that he is very careful in the Discharge of his Function, which they insist on from his Refusal to be concerned in a Marriage without a Licence and Consent of Friends, it being contrary to Acts of Parliament and to the Canons of the Church, and that they suppose him as cautious in other Things. They say, that the Thing itself is usual, and that it is an innocent and harmless Thing; that no Person is hurt by another's engaging to pay him a Sum of Money by such a Note; that the Person, indeed, who gives such a Note is liable to an Action for the Money, but that there is no Injury done to the Person to whom it is made payable; that therefore as to Mr. Kinnerley's subscribing a Note for so much Money payable to Samuel Edwards, Esq. especially when it was done upon the Request of the Defendant Hales, upon account of a Debt which was due from him to Hales, and for the Convenience of Hales, it was an innocent Thing; that Kinnerley was to pay Hales so much Money, and Hales himself desired a Note for it in this Name. They say that Kinnerley might be induced to do this from the Credit and Character of Hales, and from their former Acquaintance; that he was the Minister in his Parish when the Partnership was between him and Sir Stephen Evance; that notwithstanding his Misfortunes since that first Acquaintance, it is plain that he hath been corresponded with by Persons of Credit, therefore there can be no Reflection on that Head on Mr. Kinnerley. And they say, that as there was nothing culpable in giving of the Note, so nothing amiss hath happened thereupon; that if Mr. Hales hath done any thing amiss, it does not affect Mr. Kinnerley. Though they raise Mr. Hales's Credit at first, yet afterward they link it, and seem to throw the Blame upon him. They plead also, that there is no Evidence that the Indorsement was upon the Note when it was subscribed by Mr. Kinnerley. If it was afterwards (say they) indorsed with or without Authority from Mr. Edwards, it will not affect Kinnerley, except there be express Proof that he did it. They say also, that there is no Proof of any Franks delivered to Kinnerley but only to Hales; that he had not therefore the Opportunity that Hales might have; that therefore he is not involved in that Circumstance of the Inducement hereto, that Proof or Evidence given is nothing against him. And then (say they) to what Purpose should the Note be contrived to be indorsed with the Privy of Kinnerley, when he hath no manner of Benefit thereby, Hales having received the Money? They ask the Question *qui bono*, and thence infer that Kinnerley could not do this. And they insist upon it in point of Law, that the writing of this Note can be no Fraud in him, he having done what renders him liable to an Action: And to shew that the Money was due from Kinnerley to Hales, they have called several Witnesses to shew that there was a Foundation for this Note. Mr. Peter Marsh was called. He saith, that about ten or eleven Years ago he brought a Bond of Fifty Pounds to him made by Mr. Kinnerley payable to him. Mr. Hales told him, that Mr. Kinnerley owed him this Money, and had given him this Note made payable to him, which he desired him therefore to get for him. He knew nothing of the Matter, was surprised that his Name was made use of, and so returned the Bond again. This is insisted upon, Gentlemen, to shew that there

were Transactions between *Kinnerley* and *Hales*. Now whether this proves a Debt due from the one to the other, or proves an extraordinary Method of taking Bonds in the Names of Persons without their Consent, you are to consider; especially when you must know that if this Bond had been put in suit by *Peter Marsh*, he would have been liable to recover the Money. Well, then *William Cropley* is next called. He saith, that he received at *Janeway's* Coffee-house about Sixty Pounds, a Debt that was due from *Kinnerley* to him. He received it of the Defendant *Hales*, and *Kinnerley* was there with him at that Time. He saith, that *Kinnerley* was the original Debtor for the Money, and that *Hales* gave him his Note for it. He saith, that *Kinnerley* had borrowed of him an Hundred and odd Pounds; that he brought another Gentleman to be Security with him for it; that at the End of six Months he could not get his Money; that he enquired of *Kinnerley* for it, who led him a Dance from Place to Place after him for a considerable Time; that at last he was forced to sue for the Money; and recovered half from the other Gentleman; that he then prosecuted *Kinnerley* for the rest; that then *Kinnerley* met him with Mr. *Hales* at some Tavern, and then *Hales* told him that he was to receive about six or seven hundred Pound within about three Months Time, and then he would pay him. He saith, that upon that Offer of *Hales* he took a Note of *Hales*, and a new one of *Kinnerley* for the Money; and that in February last he got the Money as before-mentioned, and received it at *Janeway's* Coffee-house. And he saith, that some little Matter (about fifty Shillings or thereabouts) was due for the Charges, for which he gave him his Note. *Hales* gave his Note for the Payment of a Debt of *Kinnerley's*, a Debt of Fifty Pounds, and he gave this Reason for it, that he was to receive within six Months about Six or Seven Hundred Pounds for him, and therefore he could venture being Security for *Kinnerley*. This is a Transaction of quite another Nature. It is so far from proving a Debt from *Kinnerley* to *Hales*, that it rather proves *Hales* indebted and becoming Security for the other. Well, then *John Wells* is called. He saith, that he knoweth not of any Money due from *Kinnerley* to *Hales*, but that *Kinnerley* owed him an Hundred Pound; that afterwards this Money was paid to his Attorney, by whom or how he could not tell. Mr. *Simpson*, who is a Partner with Mr. *Fowler*, is then asked concerning Thirty Pounds borrowed upon some Lottery Tickets of Mr. *Fowler*, and is asked concerning this Money, how, where, and by whom it was discharged? He saith, that he was not at the Shop, and knoweth not by whom and how it was discharged. Mr. *Kinnerley*, upon this, applies himself to one of the Gentlemen of the Jury, and interrogates him how this Money was paid. Mr. *Fowler* was here-upon sworn to give Evidence. Upon his Oath, he saith, that he never knew of any Transaction in the Name of *Hales*; that he never saw him at his Shop. That as to *Kinnerley* there was a Transaction of Money borrowed on Lottery Tickets, but he knoweth nothing of *Hales's* being concerned. Another Person is examined whether he ever gave a Note on Mr. *Hales's* Account, or at his Request paid any Money? He saith, that he never did, nor knoweth that any other did. They tell you also, that the Witnesses for the Prosecution have in a great measure proved the Denial of Mr. *Kinnerley* of his knowing of the Indorsement: But they call themselves for further Proof, Evidence of it. They call Mr. *John Hayes*, who saith that he was present at the Examination of Mr. *Kinnerley* before Sir *Richard Hopkins*; that at that Time the Defendant *Kinnerley* owned his writing the Body of the Note, but at the same time said, that how the Indorsement came there he could not tell. He tells you that the Caution that was given to the Defendant *Kinnerley*, was after this Declaration made by him; that then there was an Admonition that he should be cautious in the Answers that he gave. One *Andrew Grants* likewise was present at that Examination. He saith, that that was all that passed at that Time, and that he was not stopped by Mr. *Mitford*, but only a reasonable Caution given him that he should not be too much in an Hurry, or the like. This is the Substance of the Defence made by the Counsel for both the Defendants. It is the Right of the Counsel for the King to reply. They say, that there hath been no Evidence of Transactions between *Kinnerley* and *Hales* to the Amount of any such Sum as the Note is for; that if the Note was given with a Design to defraud, both must be equally guilty; and that it is a very extraordinary Thing that this Note should be written by Mr. *Kinnerley* as a Promissory Note for such a Sum payable to *Samuel Edwards*, Esq. when it doth not appear, on the Defendant's Part, that there was any Correspondence between *Edwards* and *Kinnerley*, and on their Side it hath been proved that there was no such Correspondence; that it was very extraordinary if this Note was given for a Debt due, that it should be taken in the Name of one with whom they had no Money-dealings whatsoever, and over whom they could not be supposed to have any Power; that this therefore seems to be only to give a Credit to the Note; that it could not be of any Use whatsoever without having the Name of some Person of Circumstance and Condition to it who would be obliged to pay the Note; that this Note must have been thrown upon Mr. *Edwards*, appears (they say) from the Declaration of *Kinnerley*, that he was an undone Man. If then it was of any Use to borrow Money upon or in any other Way, it must be from the Substance of Mr. *Edwards*, and not from the Poverty and Deficiency of *Kinnerley*. They insist upon that Circumstance, and the Declaration of *Kinnerley*, that he knew of that Indorsement, though how it came there, he said that he knew not. And further they say, that as the Name was Mr. *Edwards's* own Hand-writing, if that the Word *free* was wrote upon the Paper, it must be before the writing of the Body of the Note. It cannot be imagined that the Words were not there before. It cannot be supposed that Mr. *Edwards* would set his Name to the Word *free*, or to any other Word on the Back of a Note promising the Payment of Twelve Hundred and Sixty Pounds, within six Months, to him or his Order. They insist, therefore, that this Name and the Word *free* were upon the Paper before the Note was wrote, and that this is a strong and reasonable Evidence that *Kinnerley* must be privy to the Name *Edwards*, and the Indorsement at that Time. After that, Mr. *Kinnerley* desired to be heard, and he was indulged: But as to that you have been informed, that in Indictments for Misdemeanours, whatever the Defendant saith for himself, it will have no further Validity than as the Counsel insist, and Evidence is brought for him. The Circumstance, therefore, is very different from what is allowed when Persons

are prosecuted in capital Cases. However, you have heard how he hath declared in the most solemn Manner his Innocence. You are to consider whether that is of any Validity, unless there was Evidence of such a Debt due from the Defendant *Kinnerley* to *Hales* the other Defendant, whether you will take it upon his Word. This being the Evidence on both Sides, the first Question is, whether the Indorsement is forged, because, till you determine that it is a forged Indorsement, there can be no Prosecution for the Publication of it. If it be a true Indorsement, no Person can be guilty of the Publication, much less can Mr. *Kinnerley*, who did not deliver the Note: That therefore lieth upon the Defence of Mr. *Hales*, which is not made but by the Defence of *Kinnerley*. You are to consider then the Opportunity that the Defendant might take hold of from the receiving of Franks for several Years from Mr. *Edwards*; and you will consider whether there is any clear Proof, or so much as the Colour of it, that Mr. *Edwards* was privy to an Indorsement of this Nature, or there was any Occasion for such an Indorsement. If no such Money was indeed due, to what Purpose should the Note be indorsed? Upon the best Observations that I can make, I see not any Evidence to raise a reasonable Presumption from, that this was a fair and justifiable Indorsement. If it was not an Imposition on Mr. *Edwards*, because it makes him liable as an Indorser for the Sum mentioned in the Note, if you should find that, yet you are to consider whether it is fair to make use of another's Name in a Note; for Mr. *Kinnerley*, who by his own Confession is a poor, undone Man, and whose Living is under a Sequestration, to make a Note indorsed by another Person who can never be reimbursed by this Person who subscribed the Note, it is a very extraordinary Way; though they say that it is an innocent Way of raising Money, for a Person in Custody, or liable to it, to make use of the Name of a substantial Person in such a Note, whose Credit must be at Stake for the Money. And then as to the Nature of the Note: If it was only a Promissory Note for so much Money payable to *Samuel Edwards*, Esq. it was not of such Consequence, for then he was not liable: But he is liable to the Payment only upon the Indorsement of such a Note. Why then, Gentlemen, you are to consider, whether this Note, when Mr. *Kinnerley* had wrote it, could be of any Use in the World unless it was indorsed afterwards. Why then this Note is either a Preparation to obtain Mr. *Edwards's* voluntary Indorsement for a Security, or an Imposition upon him. Hath any Evidence been produced to shew a Probability that Mr. *Edwards* would give him that Liberty to transfer his own Insufficiency and Poverty upon him, and make him liable to Mr. *Edwards*, which can have no Effect but by an Indorsement; doth not Mr. *Kinnerley* put it into the Power of *Hales* to negotiate this Note? Therefore I must inform you, if two Persons contrive together to draw such a Note, and make use of it, both Persons concerned in the Transaction, in my Opinion, will be guilty. Forgery is an intire Fact. Though one Person doth one Part, and another the other, both are equally guilty. Gentlemen, it is material, as hath been observed, to consider when this Indorsement was made; and if it was a forged Indorsement, you will consider when it will appear to have been indorsed. You have been truly told that this can be only known by Circumstances: Therefore you are to consider, whether the Name of *Samuel Edwards* can be supposed to be set there after the Note was wrote. Well then, what is the proper and natural Way of understanding this Transaction? If there be the Name of a Person on any Paper, where there is Room for making an Alteration, what is natural? Why, to transact on the other Side what is necessary to supply and make that complete, without which the Name would be to no Purpose. Therefore, that is a material Consideration; if it is impossible that the Name could be wrote after the making of the Note, whether that be not a reasonable Presumption that he saw this Indorsement when he wrote this Note. Suppose the Words only *free Samuel Edwards*, it was not proper to write this Note on the Back of it. If this Indorsement was made without his Privy, how came he to know of it when he came to Mr. *Bird*? And upon Mr. *Bird's* telling him that he had a Note of his left with him, immediately answer'd, 'I know that you have; it is for so much, payable in three Months to Mr. *Edwards*, but how it came indorsed by him I know not;' when Mr. *Bird* swears that he had not then acquainted him with the Indorsement, nor shewed him the Note at that Time. No Evidence hath been produced to shew how he came to know that it was indorsed. He declared, indeed, that he knew not how it came to be indorsed: But you are to consider, whether that Part wherein he declares his Knowledge is to be regarded, or what he declares he knows not of. A Declaration of this Nature will be taken most strongly against him. Consider, therefore, whether this latter Part of his Declaration be sufficient to discharge him. If he knew that it was indorsed, you should have some Evidence upon what Account it was. As to the rest, as to the Character, his Coat, or the like, you are to try him upon the same Law with *Hales*. I know not why the Habit he wears should exempt him from the common Rules of Proof. As to the particular Circumstance of his Usefulness depending on his Credit, that is left to you. But the same Law is made for one that is for another: You are therefore to consider of it. If this be a fair Indorsement you must acquit both. If you are satisfied that it is not, but the Indorsement is a forged Indorsement, whether either, and which of the Defendants seems to be guilty. You are to consider the Nature and Circumstances of the Transaction, and whether there appears any thing to distinguish the one from the other, and accordingly give your Verdict against the one or the other. If you desire it, the Note will be given to you.

Jury. My Lord, If your Lordship please, we will take the Note up with us. Mr. *Kinnerley*. I desire to be heard —

L. C. Baron. Not in case of a Misdemeanour. I know not any Instance in which it hath been allowed.

Mr. *Kinn*. I beg leave, my Lord. I take the Lord to witness —

L. C. Baron. All I can say is, if you have a mind to aver or affirm any thing, the Court would rather be irregular than abridge you of any thing.

Mr. *Serj. Whitaker*. My Lord, it never was allowed; after your Lordship has summed up the Evidence, and the Jury going out; it is strange Mr. *Kinnerley* will behave so.

Mr. *Att. Gen.* Is it, my Lord, to be allowed?

L. C. Baron. The Gentlemen have insisted upon it. You cannot be heard. Mr.

Mr. *Kinnersley*. By the living God, I know nothing of it!
 Clerk of *Assize*. [Calling over the Jury] Are you all agreed in your Verdict?—*Jury*. All.
 Clerk. Who shall speak for you?—*Jury*. Our Foreman.
 Clerk. How say you, Is *William Hales* Guilty of the Misdemeanour wherewith he stands charged, in forging an Indorsement on a Promissory

Note for Twelve Hundred and Sixty Pounds in the Name of *Samuel Edwards*, Esq. and publishing the same knowing it to be forged; or Not Guilty?—*Foreman*. Guilty.
 Clerk. How say you, Is *Thomas Kinnersley* Guilty of the said Misdemeanour wherewith he stands charged, or Not Guilty?
Foreman. Guilty.

VII. The Trial of WILLIAM HALES, for a Misdemeanour, in obtaining from *Thomas Bird* the Sum of Seven Hundred and Fifty Pounds by false Tokens, &c.

The Jury called over again.
 Clerk. OYEZ, OYEZ. If any one can inform, &c. &c.
 Indictment.] *William Hales* stands indicted by the Name of *William Hales*, &c. for falsely and deceitfully obtaining the Sum of Seven Hundred and Fifty Pounds of *Thomas Bird* by a false Token, viz. a Promissory Note, in these Words following:

Aug. 16, 1727.
 I promise to pay to *Samuel Edwards*, Esq. or his Order, within three Months after Date, the Sum of Twelve Hundred and Sixty Pounds, for Value received,
 THOMAS KINNERSLEY.
 On which Note there is the following Indorsement,
 Pay pay to the Order of for Value received,
 SAMUEL EDWARDS.

to the great Damage of *Samuel Edwards*, Esq. &c. To this Indictment he hath pleaded Not Guilty.

Mr. *Strange*. May it please your Lordship, this is an Indictment against the Prisoner *William Hales* only. It sets forth that he, having in his Possession a certain Writing purporting to be a Promissory Note made in the Name of *Thomas Kinnersley*, wherein the said *Thomas Kinnersley* is supposed to promise to pay the Sum of Twelve Hundred and Sixty Pounds to *Samuel Edwards*, Esq. within three Months, with a forged Indorsement of Mr. *Edwards* on that Note, did, in *Marib* last, falsely and deceitfully obtain of Mr. *Thomas Bird*, the Sum of Seven Hundred and Fifty Pounds by that false Token. This is laid to be contrary to the Statute in that Case made, to the Damage of *Samuel Edwards*, Esq. &c. to the Breach of his Majesty's Peace, and to the ill Example of his Majesty's Subjects in like Case offending.

Mr. *At. Gen.* My Lord, this is an Indictment against Mr. *William Hales*, for obtaining a Sum of Money by the false Token of this Note. For this we will only call Mr. *Bird*.

Mr. *Bird* called and sworn.

Mr. *At. Gen.* Mr. *Bird*, look upon the Note, and give an Account who brought it to you, and what Money you paid upon it?

Mr. *Bird*. Mr. *William Hales* brought it to me on *March* 20th, last.

Mr. *At. Gen.* What did he say?

Mr. *Bird*. He said, that at the Request of a Gentleman, I was to lend him Seven Hundred and Fifty Pounds upon that Note.

Mr. *At. Gen.* Did he produce the Note?

Mr. *Bird*. Yes, Sir, I had it then of him.

Mr. *At. Gen.* Was it then indorsed as it is now?

Mr. *Bird*. Yes, Sir, in the Manner as now.

Mr. *At. Gen.* How much Money did you deliver him upon it?

Mr. *Bird*. Seven Hundred and Fifty Pounds.

Lord Chief-Baron *Pengelly*. Did you deliver it, when he delivered you this Note?—Mr. *Bird*. Yes, my Lord.

Mr. *At. Gen.* Should you have let him have this Money if he had not produced this Note?—Mr. *Bird*. No, Sir.

Mr. *At. Gen.* What was it paid in?—Mr. *Bird*. In one or more Bank Notes.

Mr. *Serj. Eyre*. I submit this, my Lord: They have laid this Indictment but singly for obtaining Money, whereas in the former they layed doubly for obtaining Money, or other valuable Things: It lieth therefore upon them to prove that this Mr. *Hales* did receive in Money. Though I know that generally Bank Notes are received as so much Money, yet I know not that according to Law they are reckoned Money. They should therefore have laid it for Money or other valuable Things, it being two Bank Notes, and not Money: And in this manner, I sup-

pose, in case of a Tender of Money, it is not, as I apprehend, thought that a Tender of Bank Notes is a sufficient Plea: The Consequence then is, that the giving of Seven Hundred and Fifty Pounds, and the giving of such Notes is not tantamount. They ought to indict him as the Fact really was.

Mr. *At. Gen.* Do you know, Mr. *Bird*, of the receiving of this Money? Did he complain of his not receiving of this Money?—Mr. *Bird*. No, Sir.

Mr. *Serj. Whit*. Did he pay back any of the Money?

Mr. *Bird*. Yes, Sir, Four Hundred Pounds.

Mr. *Serj. Whit*. Was it upon the Account of those Bank Notes?

Mr. *Bird*. Yes, Sir.

Lord Chief-Baron. Then when he paid you back that Money, did he complain that he had not received it?—Mr. *Bird*. No, my Lord.

Mr. *Serj. Eyre*. Pray, Sir, did he say that he had received it?

Mr. *Bird*. Yes, Sir.

Lord Chief-Baron. Mr. *Serjeant Eyre*, I suppose you do not insist upon it as necessary that he should receive so much Money of Mr. *Bird*. If he received the Produce of those Notes it was sufficient.

Mr. *Serj. Eyre*. My Lord, I apprehend that though he did receive the Money from the Bank for those Notes, he received not the Money from the Hands of Mr. *Bird*. He received, indeed, what I should have taken for Money. Especially as the Act of Parliament hath added, or any valuable Thing, as Jewels or the like. I think it should have been so laid. I observe the Words used are, by Colour or Means of a false Token. I would ask, Suppose Mr. *Bird* had ordered him to receive it of his Cashier, or sent the Note to his Goldsmith, whose Payment would it have been? Suppose he had sent him to the Bank to receive that Money before he delivered up the Note, certainly he had obtained the Money by Colour or Means of that Note.

My Lord, I admit that if it had been paid by his Servant or by his Cashier upon a Note drawn upon him for it, I take it that it might have been laid either Way.

Mr. *Serj. Whit*. The Bank in that Respect are but Cashiers for the Gentlemen that have their Notes.

Mr. *Serj. Eyre*. The other Indictment laid it doubly.

Judge *Reynolds*. Though they might do that by Way of Caution, yet it might have been laid the other Way as this is.

Lord Chief-Baron. Gentlemen of the Jury, you are to consider whether the Indorsement on this Note was a forged Indorsement: For if it was not forged, the Defendant cannot be said to obtain the Money by a false Token. And further you are to consider, as he obtained this of Mr. *Bird* by this false Token, whether it ever came to his Hands or not. You are to consider upon the Evidence that he never complained that he had not received the Money for those Bills, but, on the contrary, paid back Four Hundred Pounds, Part of the Money, whether he would have paid it if he had not received the Money. Therefore, if you apprehend that Indorsement of the Note was not a forged Indorsement, or that the Money was not paid, you are to acquit him. But if you judge that the Indorsement upon the Note was forged, and the Money paid, whether it was paid by Mr. *Bird* in Money, or in Bills upon which he afterwards received Money, I think that that makes no Difference.

Jury called over.

Clerk. Are you all agreed in your Verdict?—*Jury*. Agreed.

Clerk. Who shall speak for you?—*Jury*. Our Foreman.

Clerk. How say you, Is *William Hales* Guilty of the Misdemeanour whereof he stands indicted in obtaining a Sum of Money by this false Token, or Not Guilty?—*Foreman*. Guilty.

VIII. WILLIAM HALES and THOMAS KINNERSLEY, Clerk, were indicted for a Misdemeanour, for fraudulently Forging a Promissory Note, &c. in the Name of *Samuel Edwards*, Esq. for Sixteen Hundred and Fifty Pounds, and publishing the said Note, knowing the same to be forged.

Jury called and sworn over again.

Clerk. OYEZ! Oyez! If any Man can inform, &c.

Indictment.] Gentlemen of the Jury, *William Hales* and *Thomas Kinnersley* stand indicted by the Name, &c. for fraudulently forging a Note or a Writing, purporting to be a Promissory Note, on the second of *March*, in the first Year of his Majesty's Reign, in the Words following:

I promise to pay to Mr. *Thomas Kinnersley*, or his Order, within six Months after Date, the Sum of Sixteen Hundred and Fifty Pounds, for the Value received,
 SAMUEL EDWARDS.

and knowingly and wittingly publishing of this as a true Writing, knowing it to be so forged and counterfeited.

Mr. *Strange*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the two Prisoners *William Hales* and *Thomas Kinnersley*. This Indictment sets forth, that they being Persons of ill Fame, and intending to deceive Mr. *Edwards*, &c. on the second of *March*, in the first Year of his Majesty's Reign, did forge a Writing purporting to be a Promissory Note, &c. The Indictment further sets forth, that the Defendants did likewise produce and publish this Promissory Note of Mr. *Edwards*'s for Sixteen Hundred and Fifty Pounds; that knowing this to be a forged Note, they did publish the said Note for a true one. It is laid in other Words, that they forged a Note of *Samuel*

Edwards's, whereby he is supposed to promise to pay to *Thomas Kinnersley*, within six Months, the Sum of Sixteen Hundred and Fifty Pounds, &c. To all these Facts they both have pleaded Not guilty.

Mr. *At. Gen.* My Lord and Gentlemen of the Jury, I am Counsel for the King. Gentlemen, this is an Indictment against both the Defendants, for forging a Promissory Note in the Name of *Samuel Edwards*, Esq. for Sixteen Hundred and Fifty Pounds, payable to *Thomas Kinnersley*, or Order, within six Months after Date, and also for publishing the same. And, Gentlemen, though it is laid several Ways in the Indictment, the Note is one and the same. There are not several Notes. Gentlemen, it will appear to you that this Forgery of this Note was by the same Opportunity taken by Mr. *Hales*, in conjunction with Mr. *Kinnersley*, that the former was. It hath been observed already, that in Cases of this Kind Facts are to be proved only by Circumstances. Plain and positive Proof is not to be expected: But such Circumstances speak the Truth often more plainly than the other Way of Proof doth. As to Mr. *Hales*, Mr. *Edwards* being too obliging to him, he made use of it to much the same Purpose as in the former Case. But it was not now to indorse, but to make a Promissory Note for Sixteen Hundred and Fifty Pounds, payable by Mr. *Edwards* to Mr. *Kinnersley*, within six Months after Date, and dated *March* 30, 1728. And, Gentlemen, this Note is signed on the Back with the Hand-writing of *Thomas Kinnersley*. The Manner

Manner of this Forgery will appear to have been like the other: But it will appear on the very Face of it manifestly a Forgery. Gentlemen, the Note is wrote on a very small Piece of Paper, which appears plainly to have been cut off from another Paper. And, Gentlemen, the Words, *for the Value received*, are not wrote upon the Line with the other Words, but a little below the Line. The Words *for the* appear done in the same Manner as in the former Note that before came under your Consideration. Here is a *ff* such as before, and as Mr. Edwards always useth, then an *r* which appears to be of the same Hand, then an *e* crowded in between them which seems not of the original Writing. One of the *ee*'s is made to serve for the first Stroke of the *y*, and a long Stroke between the two *ee*'s, then the other *e* makes up the Word *ye*. Then *Value received* is wrote in another manner of Hand. This seems to be the Nature of the Forgery; and none can doubt it a Forgery that inspects it. This appears to be done from a Frank Cover obtained from Mr. Edwards. And this is something remarkable: It is something odd that *for the Value received* should be wrote on another Line. It is plain that the Words are set thus odd because of the Word wrote before, and that the *ff* beginning another Line may make the better Appearance. This Note is made payable to Mr. Kinnersley. He was an absolute Stranger to Mr. Edwards as it appeared in the former Cafe. There was no Dealing between Mr. Edwards and Mr. Kinnersley, nor no Colour of any such Dealing, by which a Debt of such a Sum as this should become due from Mr. Edwards to Kinnersley. But, Gentlemen, this Note thus made for Sixteen Hundred and Fifty Pounds, payable within Six Months from Mr. Edwards to Kinnersley, without any Dealings between them to give a Foundation for it, in the manner I have shewed you, which is sufficient to make it appear to any a Forgery, is indorsed by Mr. Kinnersley. That will appear a clear Evidence of the Forgery being by Mr. Kinnersley. No Man in his Senses would do this. If a forged Note for Sixteen Hundred and Fifty Pounds, was made in the Name of any Person, and appeared in all these Circumstances of a plain Forgery, no Man in his Senses, and designing to act a fair Part, would make an Indorsement thereto. No other Purpose, therefore, seems aimed at in the indorsing but to set the Note a-going. If such a Note was offered to a fair and honest Man to indorse would he not startle at it? Would he ever have indorsed it? Therefore, this Indorsement is a strong Evidence against him. The Use made of this Note, thus forged and indorsed, was this: It being in the Hands of Mr. Hales, Mr. Hales wanting a Sum of Money applied to one Mr. Thrup, desiring him to lend him his Note of Four Hundred Pounds. Upon his doing this with Difficulty, Mr. Hales deposited this Note as a Security for his Money, and hereupon this Note continued in the Hands of Mr. Thrup. Gentlemen, upon the Discovery that was made of another Forgery, whereupon Mr. Hales was apprehended, there was a Suspicion: Hereupon Mr. Edwards, being informed that this Note was in the Hands of Mr. Thrup, inquired of him about it. The Thing upon this appeared, and Mr. Kinnersley thereupon was apprehended and carried before Sir Richard Hopkins. At first he seemed willing to make a Discovery; afterwards he went back, and denied (I think) what he seemed before to have owned: That will be proved to you. I think that this will appear plainly to have been a Forgery, and to have been done by Mr. Hales and Mr. Kinnersley.

Mr. Serj. Whit. My Lord, we will go on in the same Method as before, by calling two or three Witnesses.

Thomas Maddox and Anne Clarke were called, sworn, and deposed as before. As also Mr. Booth. Vide p. 78.

Mr. Charlton Thrup called and sworn.

Mr. At. Gen. Look, Sir, on that Note, and tell us when you first saw it before.

Mr. Thrup. On May the 22d.

Mr. At. Gen. Who brought it to you?

Mr. Thrup. Mr. Hales.

Mr. At. Gen. What did he say to you?

Mr. Thrup. He brought it to me, and desired me that I would give him on it three Notes of five hundred Pounds. I refused him at first, alledging that it was not for my Credit. At length I put into his Hand a promissory Note for four hundred Pounds payable within six Months.

Mr. At. Gen. Look on that Note, and see whether it now is in the same Case that it then was. Was the Indorsement then upon it?

Mr. Thrup. I cannot say: For I took no Notice of the Indorsement till I delivered it to Mr. Booth at the Request of Mr. Edwards.

Mr. At. Gen. In whose Custody was it till you delivered it to Mr. Booth?

Mr. Thrup. In mine, Sir.

Mr. At. Gen. Did you make any Alteration in it?

Mr. Thrup. No, Sir.

Mr. At. Gen. And when you gave it to Mr. Booth you minded the Indorsement. Did you not?

Mr. Thrup. Yes, Sir.

Mr. At. Gen. How came you not to mind it before? What Security was Mr. Edwards's Note if it had not been indorsed?

Mr. Thrup. I had such an Opinion of Mr. Hales that I suspected nothing, and therefore gave him the Note; I did not think he would have been guilty of so vile an Action.

Mr. At. Gen. When was it that you delivered this Note to Mr. Booth?

Mr. Thrup. It was in September last.

Mr. At. Gen. How much had you lent upon it?

Mr. Thrup. Four Hundred Pounds, Sir.

Mr. Lacy. What is become of that Note?

Mr. Thrup. I know not, Sir. I am not yet possessed of it: But I believe it to be in the Hands of Mr. Maddox of the Bank.

Mr. John Spicer sworn.

Mr. At. Gen. Do you know Mr. Edwards's Hand-writing?

Mr. Spicer. Yes, Sir.

Mr. At. Gen. Look on that Note, and tell us what of it you take to be his Hand-writing?

Mr. Spicer. The Name is his and the *ff*. And I think the plainest *ff* that I have seen is remaining.

Mr. At. Gen. Is the *e* Mr. Edwards's?

Mr. Spicer. No, Sir; it hath been something else.

Mr. At. Gen. Was it Part of the original Word?

Mr. Spicer. No, Sir, to the best of my Judgment it is altered. It is so crowded between the Letters, that it seems as if it was Part of them.

Mr. At. Gen. Look on the *r*. Whose is that?

Mr. Spicer. I believe it to be Mr. Edwards's.

Mr. At. Gen. And you observe two *ee*'s. Do you not?

Mr. Spicer. Yes, Sir. One of the *ee*'s is brought to make Part of the *y*, which with the other *e* makes the *y*.

Mr. At. Gen. How doth Mr. Edwards write his Franks?

Mr. Spicer. Free with a double *f*, as it is here *free Samuel Edwards*.

Mr. At. Gen. In what manner are you concerned for Mr. Edwards?

Mr. Spicer. I am a Clerk in his Office.

Mr. At. Gen. How many Years in his Service?

Mr. Spicer. I have been his Clerk between ten and eleven Years: But I have been in all in his Service about twenty-four Years.

Mr. At. Gen. Do you know that he had any Money Transactions with either Mr. Hales or Mr. Kinnersley?

Mr. Spicer. No, Sir, none at all.

Mr. At. Gen. Did you ever know him give such Notes?

Mr. Spicer. No, Sir. I never knew him give any Notes for Time, nor ever give any Note but when he wrote himself the whole Note.

Mr. John Williams called and sworn.

Mr. At. Gen. Mr. Williams, look upon the Hand at the Bottom of that Paper. Whose do you take that to be?

Mr. Williams. It is very like Mr. Kinnersley's.

Mr. At. Gen. Have you ever seen him write?

Mr. Williams. Yes, Sir, I have his Writing here.

Mr. At. Gen. What are you?

Mr. Williams. I am his Church-warden.

Mr. At. Gen. Have you seen him write? Look upon that Paper, and tell us whether you believe it his Hand-writing or not?

Mr. Williams. The Letters have a certain Cut very like his Hand-writing.

Judge Reynolds. Upon your Oath, Do you or do you not believe it to be his Hand-writing?

Mr. Williams. I think that it is very like his Hand, my Lord.

Judge Reynolds. Is it so like that you believe it to be his Hand?

Mr. Williams. Yes, my Lord, I believe it to be his.

Judge Reynolds. You are not called to swear, whether you saw him write it, or can say positively whether it is his Hand-writing; but whether from his Manner of Writing that you have seen, you believe, or do not, that it is his Hand-writing?

Mr. Williams. Yes, to the best of my Belief it is his.

Mr. Serj. Eyre. Pray, Sir, how often have you seen him write?

Mr. Williams. Three or four Times.

Mr. Serj. Eyre. How long since?

Mr. Williams. Last Year.

Mr. Serj. Eyre. Do you remember his Hand for the Compass of a Year, so as to take it upon you, upon your Oath, to say that you judge it his Hand?

Mr. Williams. Doth it depend upon my Judgment?

Judge Reynolds. Yes, it doth. Look on it.

Mr. Williams. It is more like his Hand than any other's that I ever saw.

Judge Reynolds. But is it so like that you really believe it to be his Hand?

Mr. Williams. Yes, my Lord.

Mr. John Lincoln called and sworn.

Mr. Serj. Whitaker. Sir, please to look on that Paper. Have you ever seen Mr. Kinnersley write his Name?

Mr. Lincoln. Yes, Sir.

Mr. Serj. Eyre. Frequently, or only once?

Mr. Lincoln. Several Times, Sir.

Mr. Serj. Whitaker. You say that you have seen him write several Times. Upon your Oath, according to the best of your Judgment, do you take that to be his Hand or not?

Mr. Lincoln. There is a great deal to be said on that Subject.

Judge Reynolds. Yes. But little needs to be said about it. Is it so like that you believe it to be his Hand?

Mr. Lincoln. Yes, my Lord it is.

Mr. Serj. Whitaker. Then, my Lord, having proved that this is his Hand-writing, we desire that it may be read against both the Defendants.

Note read.] *I Promise to pay to Mr. Thomas Kinnersley, or his Order, within six Months after Date, the Sum of Sixteen Hundred and Fifty Pounds, for ye Value received.*

March 30, 1728.

Samuel Edwards.

Indorsement. Thomas Kinnersley.

Mr. Serj. Whitaker. The Gentlemen of the Jury should see it now.

Mr. At. Gen. My Lord, we desire that the Jury may see it now. And, Gentlemen, you will observe, if you cast your Eye upon the Note, that there is this one Observation that may be added to the others that were made, that the Note is all written with a Secretary *e*, but the *e* in for *ye*, which plainly seems to answer to Mr. Edwards's Hand, and shew that that is an old *e*.

Mr. Thomas Bird sworn.

Mr. At. Gen. Sir, whose Hand is that?

Mr. Bird. Mr. Kinnersley, Sir, owned that to be his Hand-writing?

Mr. At. Gen. Was it shewed by you to Mr. Kinnersley at that Time when he owned it?

Mr. Bird. Yes, Sir.

Mr. Kinnersley. And did I own it, Sir?

Mr. At. Gen. Why you owned it in Court. This is the old Note.

Mr. Kinnersley. I beg your Pardon, Sir; I did not understand that.

Mr. At. Gen. Give that Note to the Jury to compare it with the other Note that is now before them.

Mr. Serj. Whitaker. Mr. Lincoln, those Receipts which you produced, did Mr. Kinnersley actually write them?

Mr. Lincoln. I saw him write them all.

Mr. Serj. Whitaker. Shew them to the Jury.

Judge Reynolds. Gentlemen of the Jury, in that Book you will find some Receipts wrote by Mr. Kinnersley, which Mr. Lincoln swears that they are his Hand; that he saw him write them all.

Mr. At. Gen. The next Witness that we will call is Thomas Bab.

Bab

Bab not appearing nor Thomas Brooks, who was next called, Sir Richard Hopkins was sworn.

Mr. Att. Gen. Sir Richard, we must trouble you to give an Account upon what Account Mr. Kinnersley was brought before you, and what he said? Sir Richard Hopkins. He was brought before me about two Notes, one of Twelve hundred and sixty Pounds, and this Note.

Mr. Att. Gen. When he was before you, was there any particular Mention made of this Note of sixteen hundred and fifty Pounds?

Sir Richard Hopkins. It was given to me to examine Mr. Kinnersley about it.

Mr. Att. Gen. Sir Richard, can you recollect whether that is the Note?

Sir Richard Hopkins. I made no Mark upon it: But I verily believe that this was the Note.

Mr. Att. Gen. Was it shewed to Mr. Kinnersley?

Sir Richard Hopkins. This Note was put into my Hand to examine Mr. Kinnersley upon. I looked upon it, and it seemed to me to be a Forgery. Before I could say any thing to Mr. Kinnersley about it, I saw one Mitford there. Before Mr. Kinnersley could answer what I had not fully asked him, 'Hold, Sir (said he), say nothing; this is not your Hand.' I thought this very odd Treatment of a Justice of Peace. I said then to Mr. Kinnersley, Is this your Hand or not? He said, No; I had the other Note in my Hand, I desired him therefore to recollect himself; for I thought that they seemed clearly to be the same Hand.

Mr. Strange. I think he owned the one to be his Hand-writing, and the other not. I ask, Whether that which he did own, was owned before that Mr. Mitford interrupted him, or after?

Sir Richard Hopkins. It was before. Upon that Mr. Mitford interrupted him.

Mr. Serj. Whitaker. Upon the Question, when Inquiry was made whether he had had any Dealings with Mr. Edwards, what did he say?

Sir Richard Hopkins. Both Mr. Edwards and I asked him, whether he ever had had any Dealings with Mr. Edwards? To which he replied No, he never had had any, nor ever to the best of his Knowledge had seen him before. I then asked him how he came to draw that Note payable to Mr. Edwards, when there never had been any Dealings between him and Mr. Edwards? He answered, That he did it at the Request of Mr. Hales, to whom he was indebted in that Sum, and more.

Judge Reynolds. The first Question I suppose was general, whether there had been any Dealings between them? Afterwards, when the Notes were shewn him, he owned the one, and denied the other. Was it not so?

Sir Richard Hopkins. Yes, my Lord.

Mr. Att. Gen. The next Witness that we shall call is Thomas Bab, to shew that there was a private Correspondence and several Meetings between Kinnersley and Hales.

Thomas Babb was called and sworn, and deposed as before.

Mr. Kinnersley. Sir, did we ever call for Pen, Ink and Paper?

Mr. Bab. No, Sir, never.

Mr. Brooks called and sworn, deposed as before.

Mr. Kinnersley. There could not be much done at Night without a Candle. Mr. Brooks. No, Sir; but you had been there a considerable Time before.

Mr. Wright called and sworn.

Mr. Serj. Whitaker. Was you present, Sir, at the Examination of Mr. Kinnersley before Sir Richard Hopkins?---Mr. Wright. Yes, Sir.

Mr. Serj. Whitaker. When Mr. Edwards asked him, whether there had been any Dealings between them, what did he reply?

Mr. Wright. He replied, that there never had been any Dealings between them, and that he never had seen him till that Time.

Mr. Serj. Whitaker. Did you observe any Interruption?

Mr. Wright. Mr. Kinnersley was saying, I will tell you all if you will give me leave. Mr. Mitford laid his Hand upon him and said, Hold your Tongue, be careful what you say.

Mr. Serj. Whitaker. I ask whether he had there related any thing as to the Note now in question before the Interruption?

Mr. Wright. He had declared that that Note was not his.

Mr. Kinnersley I beg leave to speak, my Lord. Both Sir Richard Hopkins and that Gentleman have made a Mistake. Mr. Edwards asked me, How oft have you visited Mr. Hales in Newgate? Upon this it was that he said, Hold your Peace.

Mr. Serj. Whitaker. What was the Question that was asked Mr. Kinnersley, when you say that Mr Mitford interposed?

Mr. Wright. I cannot say what was the Question that was asked immediately before.

Mr. Serj. Whitaker. But you say, that it was after that he had denied this Note?---Mr. Wright. Yes, Sir.

Mr. Kinnersley. I would only ask, Sir, whether Sir Richard Hopkins desired me to hold my Tongue as well as Mr. Mitford?

Judge Reynolds. Did he bid Mr. Kinnersley make no Discovery?

Mr. Wright. No, my Lord.

Mr. Kinnersley. No, my Lord: But he bade me take the Gentleman's Advice. I appeal to Sir Richard.

Sir Richard Hopkins. The Gentleman hath appealed to me. I take it that the Question is, Whether I advised him to take the Gentleman's Advice? It would be very strange that I should reprove Mr. Mitford for Misbehaviour, and yet should at the same Time advise you to take his Advice.

Mr. Wright. Sir Richard asked Mr. Bird, whether Mr. Kinnersley owned that he knew of the Notes being indorsed that was in his Hands? He said that he did. Then he was asked when and how he knew this? This was before Mr. Mitford interposed.

Judge Reynolds. You have appealed to Sir Richard Hopkins, that he advised you to take the Gentleman's Advice. Sir Richard denies this.

Mr. Kinnersley. But he cannot deny that he said, Take your Friend's Advice.

Mr. John March called and sworn.

Mr. Serj. Whitaker. Was you present, Sir, at the Examination of Mr. Kinnersley before Sir Richard Hopkins?---Mr. March. Yes, Sir.

Mr. Serj. Whitaker. Pray, will you give us an Account of all that past there at that Time.

Mr. March. My Lord, I was attending upon Mr. Richard Hopkins as his Clerk, when Mr. Kinnersley was brought before him with relation to these Notes. When the first Note was produced, he was asked, whether that Note was his Hand-writing or not? To which he answered, That it

was. When that was gone through, the second Note was produced, being a promissory Note made in the Name of Mr. Edwards payable to Mr. Kinnersley. When that Note in the Name of Mr. Edwards was produced; we perceived on the Back of it the Name of Mr. Kinnersley wrote. Mr. Kinnersley having denied this Note, Sir Richard, upon comparing the Name on the Back of this Note, with the other Note which he had owned to be his own Hand-writing, said to him, 'I would have you, Sir, consider very well whether you did not write that too; for it is very like that which you have owned.' Upon that Mr. Mitford interposed.

Mr. Serj. Whitaker. What was it that Mr. Mitford did say?

Mr. March. Mr. Mitford upon that said, 'Mr. Kinnersley, I would not have you answer that Question; or to that Purpose.'

Mr. Att. Gen. Did Sir Richard Hopkins advise him to take his Friend's Advice?---Mr. March. No, Sir.

Mr. Att. Gen. Did he reprove Mr. Mitford for interposing?

Mr. March. Yes, Sir. He desired him to be quiet, and told him that he would ask whatever Questions were desired, but desired that he would not interrupt.

Mr. Att. Gen. Was his denying of the Note before or after the Interruption?

Mr. March. He had first interrupted during the Examination on the first Note, and he afterwards interposed during that on the second Note.

Mr. Att. Gen. Well. But I ask you as to the second Interruption, whether it was before or after his denying his Hand?

Mr. March. It was after.

Mr. Serj. Eyre. You was saying, Sir, that Sir Richard bade him recollect himself, and consider well whether this was not his Hand too, for that it was very like that Note which he had owned to be his own Hand-writing: Had not Mr. Kinnersley before that said, that he did not sign that Note?

Mr. March. Yes, Sir.

Mr. Att. Gen. We rest it here, my Lord, and leave the Consideration hereof to the Jury.

Mr. Mather. I would ask, whether Mr. Mitford's Advice was not that he should not speak too fast?

Mr. March. No, Sir; it was that he should not answer to that Question.

Mr. Kinnersley. They contradict one another; and Mr. Bird will swear any thing.

Judge Reynolds. You may prove that to be his Character if you can: But without that you ought not to aver it.

Mr. Bird. It is well known, my Lord, what my Character is. I have Persons of good Credit that have known me these twenty-six Years: I have never falsified my Word.

Mr. Lacy. My Lord, I have nothing material in my Instructions; and therefore I shall not trouble your Lordship.

Mr. Serj. Eyre. My Lord, I am Counsel for Mr. Kinnersley. I admit that they have proved that there was an Intimacy between them. It is detrimental to my Client that there was such an Acquaintance when the one was Pariahonier formerly to the other, and that this Acquaintance was kept up to the last: But it doth not follow that they are to be considered as one: If Mr. Hales be never so guilty, it doth not appear that Mr. Kinnersley is guilty. As to this Indictment, the Charge is forging a Note in the Name of Mr. Edwards, and indorsing the same. It is admitted that Mr. Kinnersley had no Acquaintance with Mr. Edwards: But on the other hand it is pretty plain, by the Evidence that hath been given, that there was an Acquaintance between Mr. Edwards and Mr. Hales. They were near Neighbours: Mr. Edwards hath indulged him with Franks for several Years. Mr. Hales is a Man under Misfortunes for many Years, hath had a Commission of Bankruptcy awarded against him: It is very natural for such Persons to deal rather in another Person's Name than in his own; if therefore there be an Intimacy between Mr. Hales and Mr. Edwards, Mr. Hales should apply to Mr. Edwards, and he upon his Request should give him such a Note, I do not wonder that any Gentleman of Character should indorse such a Note signed by a Person of such Figure. It doth not seem very unnatural, that after their long Acquaintance a Note payable to Mr. Kinnersley, in Trust for Mr. Hales, should be indorsed by Mr. Kinnersley: This may be supposed the Case, if actually he did indorse the Note. I do not see why he may not be supposed as easily imposed upon as the other Gentleman, viz. Mr. Thrup. It is not so plain a Fallacy as that Mr. Thrup, who is a Gentleman in Business, could discern it? Why must we suppose then that Mr. Kinnersley must discern it? If then Mr. Hales is guilty of the Forgery, it doth not follow that Mr. Kinnersley must be so. As to the other Point, it is no Wonder that there should be the Name of Mr. Kinnersley on the Back of the Note: Any that would forge a Note will not scruple to forge an Indorsement. It is as like as possible, that the Man that would forge a Note in Mr. Edwards's Name for such a Sum, may be as easily supposed to forge an Indorsement on this Note. How have they proved that it was indorsed by Mr. Kinnersley? Two or three Gentlemen have been produced as Witnesses, that have seen his Hand several Times, and from the Similitude of the Letters they believe it to be his Hand: But there is such Evidence to be every Day given of one Man's writing like another, that a Similitude of Hands is not to be wondered at. It is not to be wondered at that he that would be guilty of forging the whole Note would indorse it: Whether there is any Difference in the Hand between the Writings that have been produced and this Note and Indorsement, must be left to the Jury.

Judge Reynolds. Have you any Witnesses?

Mr. Kinnersley. I beg a Word, my Lord.

Judge Reynolds. Not till we have heard the whole that the Counsel say.

Mr. Mather. I take Notice, my Lord, that there hath been a Variance among the Witnesses as to what past at his Examination before Sir Richard Hopkins. The only Caution that was given him was, that he should not be too rash in his Answers, as your Lordship hath (I believe) thought him very rash in his Conduct here. We shall only call Witness as to this.

Rev. Mr. John Hayes called and sworn

Mr. Mather. Mr. Hayes, please to give my Lord and the Jury an Account what passed as to this Note of Sixteen hundred and fifty Pounds?

Mr. Hayes. When this Note was produced before Sir Richard Hopkins, and shewed to Mr. Kinnersley, upon shewing him the Name on the Back of the Note, he absolutely denied it to be his Hand.

Mr. Mather. Did you hear Mr. Mitford interrupt?
 Mr. Hayes. I remember that there was a Dispute between Sir Richard Hopkins and Mr. Mitford. There were Minutes taken of Mr. Bird's Examination: Upon the reading of these Minutes, Mr. Mitford apprehended them not to be rightly taken according to the Evidence that was given. Upon this Mr. Bird was re-examined, and then there was another Question proposed concerning Mr. Kinnersley's going to Newgate to visit Mr. Hales. Then Mr. Mitford again interposed.
 Mr. Mather. Was that the Reason of the Interruption?
 Mr. Hayes. Yes, Sir, I believe it was.
 Mr. Mather. Was there some other Part in which he had also interposed?—Mr. Hayes. Yes, Sir.

Mr. Ward called and sworn.

Mr. Mather. Sir, was you present at the Examination of Mr. Kinnersley before Sir Richard Hopkins?
 Mr. Ward. Yes, Sir.

Mr. Mather. Give us an Account of the Interruption by Mr. Mitford.
 Mr. Ward. Mr. Kinnersley was examined as to the Note of twelve hundred and sixty Pounds: Mr. Kinnersley being examined as to that, there happened some Words to pass between him and Mr. Bird: After some Hesitation and Dispute, he having acknowledged that Note, it was put down in the Minutes. After that he was examined as to this Note of sixteen hundred and fifty Pounds: Upon his denying that it was his Hand, Mr. Kinnersley was asked some Question by Sir Richard Hopkins concerning somewhat that he had formerly said; whereupon he desired to be examined in the Court of Aldermen. Mr. Mitford hereupon desired him not to desire this.

Mr. Mather. My Lord, the Reason that we bring this Witness is to shew, that he had confessed all that he could at that Time, and there was Reason therefore for Mr. Mitford to interpose for the preventing Mr. Kinnersley's making a Discovery.

Mr. Kinnersley. My Lord, when this Note was shewed me before Sir Richard Hopkins, it was the first Time that I ever saw it: I therefore denied it to be my Hand; but by looking upon it more closely, I own that it is like my Hand. Though none can oblige me to say any Thing, I would be content to be examined; and therefore have, though not regarded, solemnly averred that I was not privy to his getting of that Note or Money. As to the other Note, I owed him at that Time the twelve hundred and sixty Pounds; I gave him that Note for it, and would not with that Solemnity say that it is not mine. He hath got it some other Way indorsed: But as to this Note it is not my Hand. Had Mr. Hales brought Mr. Edwards's Note to me, and desired me to indorse it; though I own that I think that it hath the Marks of Forgery, yet if Mr. Thrup and others were imposed upon, why might not I? Why should I suspect him more than others? I own that I had a great Confidence in him. Supposing this, will you condemn me for an unjust Thing? I take God to witness, that I never set my Hand to that Note, nor never took any Money. I beg Pardon, I will say one Word more: The Gentleman hath taken notice rightly that I have spoken rashly; it is an Oppression, and the Wise Man saith, that *Oppression will make a wise Man mad*, which is worse than rash.

Mr. Att. Gen. My Lord, he hath intimated that this is an unjust and oppressive Prosecution: I submit it. Proper Evidence hath been given, and he hath replied to it by his Counsel. The Counsel suppose, that if the whole Note was Mr. Hales's Hand-writing, it was very likely that he would not scruple the Indorsement. Mr. Kinnersley himself seems to admit, that for aught he knows he might have indorsed such a Note; but the Turn that he gives it is this: If such a Note was wrote in the Name of Mr. Edwards payable to him, he might indorse it, being brought by a creditable and honest Person. If a Note was made payable to him by a Gentleman of such Figure and Character, and so brought to him, he thinks that he might indorse it, and would so have done: But it is impossible that it could be fairly done; there must be something fraudulent in it. The Evidence on the Side of the King shews, that there must have been a Conspiracy between these two Persons to defraud several Persons: As the other Note was, without any Colour for it, made payable to Mr. Edwards, his Name being indorsed upon it, he being a Person of Ability to credit the Note: So this second, on the other hand, without any Foundation also, because no Colour of Dealings between them, is made in the Name of Mr. Edwards, payable to Mr. Kinnersley, and Mr. Kinnersley's Name indorsed. Why should Mr. Kinnersley's Name be put to it, but only to give a Currency to this Note? When a Note is made payable to any Person, it cannot be negotiated by any other without his Hand being put to it: His Hand therefore was not so much to give a Credit to the Note, he being a Man of no Substance, as to give a Currency to the Note, it being in his Name. When that appears to you, it is (I think) sufficient to convince your Judgments that Mr. Kinnersley is a Partner in this Forgery, otherwise would not have indorsed this Note in these Circumstances.

Mr. Serj. Whitaker. My Lord, it is very extraordinary for a Person to pretend such a Note belonging to him, that never had had any Dealings with Mr. Edwards. What Proof hath he given that he did not indorse it? What Colour is there to say that this is a rash Prosecution?

Mr. Kinnersley. My Lord, I beg a Word. I say not that it is rash, as to the whole Prosecution; but I never was privy to any Wickedness in this Note, nor in any other: If I had, I would never have appeared here in my Gown. My Character ought not to exempt me if I am guilty; I ought to abstain from all Appearance of Evil: When I have forfeited that Character, I desire to live no longer among Mankind. I asked Mr. Hales on what Account I was sent for, and whether there were any Note of mine? He said, Yes; there was a Note of Sixteen Hundred and Fifty Pounds

payable by Mr. Edwards. Is it (said I) a true Note? Is it wrote by Mr. Edwards? He shook his Head and said, just as true as the other. I asked him whether it was indorsed? To which he replied, Yes. Had I known, my Lord, that the Note was indorsed, I need not have asked Mr. Hales. He is ready to do me Justice, though he must thereby take it upon himself. Your Lordship knows that I have no such Character in Suffolk.

Judge Reynolds. We shall not need, Mr. Kinnersley, to go to Suffolk for your Character.

Judge Reynolds. Gentlemen of the Jury, William Hales, late of London, Goldsmith, and Thomas Kinnersley, Clerk, stand indicted for forging a Note under the Hand of Mr. Samuel Edwards, for Sixteen Hundred and Fifty Pounds, payable within three Months to Thomas Kinnersley, or Order, after the Date thereof, for Value received: And another Part of the Indictment chargeth them with publishing the same. To this Indictment they have pleaded Not Guilty: The Question you are now to determine. Gentlemen, the Foundation of this which hath been insisted on by the Counsel on the Side of the Prosecution is, that these Gentlemen, or rather the one of them, Mr. Hales, having an Acquaintance with Mr. Edwards, and being indulged by him the Liberty of applying to him for Franks, they have made a wrong Use of this, and by converting some of the Letters of the Word *free* into *for*, and by adding some other Words, they have now formed it into a negociable Note for the Sum of Sixteen Hundred and Fifty Pounds, payable within six Months to Mr. Kinnersley, or his Order: And then Mr. Kinnersley, to give a Circulation to the Note, and make it negociable, hath, in Combination with Mr. Hales, indorsed his Name: Mr. Edwards is responsible to any body to whom this Note is transferred over. Gentlemen, to make out this to be the Case, they have first endeavoured to shew that Mr. Hales, for some Time, on several Pretences, procured a Number of Supercriptions to be written for Franks by Mr. Edwards, who is a Member of Parliament, and particularly some Supercriptions in such Circumstances as were most accommodated to serve a Design of this Nature. And to this End they have produced Thomas Maddox, a Servant of Mr. Edwards's. He saith, that Mr. Hales, living near Mr. Edwards in Duke-street, in Westminster, hath several Times applied to him for Frank Covers to send News into the Country; that Mr. Edwards hath given him several for that Purpose, but generally wrote the whole Supercription himself, pursuant to the Directions that were given him; that in July last there came a Parcel of Franks, six of them, whereof five have been produced, to be franked, but without any Direction to whom to superscribe them. Mr. Edwards was desired to frank them without any Supercription: Mr. Edwards refused to frank them, unless directed to whom to superscribe them: Thus these Covers, upon that, were not done at that Time. But then to shew you what past afterwards upon Occasion of these Blanks sent to be franked, Anne Clarke, a Servant also to Mr. Edwards was called. She saith, that some time after this, Mr. Hales's Servant came again over to Mr. Edwards's House, and told her that Mr. Edwards having refused to frank his Master's Covers without Supercriptions, he had brought from his Master a Paper of Directions what Supercriptions he desired Mr. Edwards to put to them. That Paper of Directions hath been produced, and hath been sworn by Mr. Booth to be Mr. Hales's own Hand-writing. They were very short Directions:

Two to Mr. Levitt, of Huntington.

Two to John Pratt, Esq. at Bristol.

Two to Stephen Mitford, Esq. Exeter.

And they would infer, that as these Supercriptions were very short, and so would not take up much Room, a vacant Space would have been left sufficient to write any thing of this Nature. That is the Reason of their producing an Account of this Transaction, which doth not immediately affect this Cause, but only as they are inclinable to believe that some such Frank may have been made use of to such an End as these seem to have been designed for. And then, Gentlemen, to shew you the Use which they made hereof, the Note upon which this Indictment is immediately founded. The Note is in these Words,

I promise to pay to Mr. Thomas Kinnersley, or his Order, within six Months after Date, the Sum of Sixteen Hundred and Fifty Pounds, for the Value received,

March 30, 1728.

Samuel Edwards.

And on the Back it is indorsed with the Name Thomas Kinnersley. Gentlemen, they have insisted upon it that the Note itself carries the evident Marks of Forgery upon it. They say that this is so plainly derived from the frank Cover of a Letter, that the Word *free* is not wholly covered, but that still some of it appears; that the Stile is unusual for the Value received. The in a large Hand, and then afterwards *Value received*, the *ee's* of a Round Hand, whereas all the other *ee's* are of a quite different Figure, in a Secretary Hand. Other Observations they have also made, which you that have viewed the Note can easily judge of. They then apply themselves to bring Evidence as to Mr. Hales, the one of the Defendants: And for that Purpose they have produced Mr. Charlton Thrup. He saith, that on May 22d last this Defendant, Mr. Hales, brought this Note to him, desiring him to lend him three Five Hundred Pound Notes upon it; that he, not caring to have his Credit engaged to such a Degree, refused to do it; but upon his Importunity, did at last consent to give him a promissory Note of Four Hundred Pounds upon the Security of this Note, which Mr. Hales thereupon then deposited in his Hands; that it was a Note for Sixteen Hundred and Fifty Pounds, signed by Mr. Edwards, payable to Kinnersley, and indorsed. He saith, indeed, that he did not then observe the Indorsement. Seeing this Note signed with Mr. Edwards's Hand, and knowing him to be a Man of great Sufficiency, he was not so attentive to the other. He saith, that he kept this Note in his Hand till after that Mr. Hales was taken up, and then he delivered it by the Direction of Mr. Edwards to Mr. Booth; that before it

* In Trinity Term 5 Geo. there was an Information against this Mr. Kinnersley and one Moore, as being evil-disposed Persons, in order to extort Money from my Lord Sunderland, did conspire together to charge my Lord with endeavouring to commit Sodomy with the said Moore; and that in Execution of this Conspiracy, they did, in the Presence and Hearing of several Persons, falsely and maliciously accuse my Lord, that he *conatus fuit rem veneream habere* with the Defendant Moore, and so to commit Sodomy. Kinnersley only appeared, and pleads to Issue, and is found Guilty; and several Exceptions were taken in Arrest of Judgment, see *Strange's Reports*, Vol. I. p. 195. but the Court over-ruled them all. Whereupon Judgment was given for the King, and afterwards the Court proceeded to Sentence, and told the Defendant Kinnersley, nothing but his being a Clergyman protected him from a Corporal Punishment; they fined him 500*l.* a Year's Imprisonment, and to find Sureties for his good Behaviour for seven Years. In Easter Term, 5 Geo. Moore was convicted and sentenced to stand in the Pillory, suffer a Year's Imprisonment, and to find Sureties for seven Years. And this Term, Kinnersley, on Affidavits of his being indisposed, moved the Court that he might be admitted to the Benefit of the Rules. *Sed per Curiam*, we never do it for one in Execution, which differs from the Case of a Person committed for High Treason, who have been bailed on account of Illness. *Ibid.* 196.

went out of his Hands, he observed the Indorsement. He swears also, that it received no Alteration in the intermediate Space between its coming into his Hands and its going out: It must be therefore indorsed before. He saith, that as to his own Note, he knoweth not what is come of it, but believes that it is in the Hands of Mr. Madden, at the Bank. To shew that this is a forged Note they have called Mr. Spicer, who hath been above twenty Years concerned for Mr. Edwards; about ten or twelve as his Clerk. He saith that the Name is Mr. Edwards's, and that the *ff* is also his; that it is his Master's constant Custom, when he franks a Letter, to write the Word *ffree*, and not *frank* over his Name, in the Manner wherein this originally stood, and that always with a *ff*. He saith, that he likewise thinks that the *r* is his Master's Hand-writing, but that the *s* is since crowded in between those Letters. He thinks, that there are plain Footsteps, which shew that the first of the two *ss*'s, which joined to form the Word *ffree*, hath been made use of to form the first Part of the Head of the *y*, and the other Stroke being drawn between that and the other *s* it forms the Word *y*, but then it doth not stand as usual over the *y*. And then he observes that he the rather believes this to be his Master's *s*, for that he always writes such an Hand, and all the rest here are in quite another Hand. And he saith, that he believes, that being acquainted with his Master's Affairs, he should have known of it, if that there had been any such Transaction of his Master's, and that this Note too is of a quite different Form from any that his Master ever delivered, and in a Manner wherein his Master doth not usually transact his Affairs: For that, as he is a Man of great Credit, he never knew him give a Note for Time; and in the next Place he is so very cautious, that he never knew him give a Note but that he wrote the whole Body of it with his own Hand, whereas the Body of this Note is not his own Hand, and therefore contrary to the Method that he usually observes. Thus far the Evidence is produced, in order to charge Mr. Hales, the one of the Defendants: But then in order to prove Mr. Kinnersley a Partner in this Transaction, they have afterwards observed upon the Indorsement, that this Note being made payable to Mr. Kinnersley, it could be of no Use till indorsed by him to give it a Currency. They have shewed the Hand upon the Back, and in order to prove his Name wrote there to be his Hand, as in Cases of this Nature nothing but an Observation of the Similitude of Hands can be expected, they have called on those that have seen his Hand, to give their Opinion thereof. The first Man expresseth himself with a great deal of Caution, seeming to apprehend at first that he was called to swear positively that it was his Hand: He saith, that he hath seen him write several Times, particularly at least three or four Times the last Year; that this is so like that he verily believes this to be his Hand, and cannot alter his Judgment as to it. To the same Purpose they have also produced another Person, one Mr. John Lincoln: He saith, that he hath seen him write several Times, and put his Name to Receipts in a Book; and that he cannot believe but that this is his Hand-writing. Some of you having desired to see and compare with this Note the other Note which was formerly proved, it hath been again proved; and as the Person aforementioned produced several Receipts which he saw him write, you have had them also to look upon: Which how far it will help you in forming a Judgment you are to judge. Further, they say, that Mr. Kinnersley was a Stranger to, and had no Transactions with Mr. Edwards. They have called several Persons that were present at the Examination of Mr. Kinnersley before Sir Richard Hopkins, as well as Sir Richard himself, who all say that Mr. Kinnersley himself owned this, and was going to say something further, had he not been interrupted by Mr. Mitford. Sir Richard Hopkins hath been produced. He saith, that in the latter End of September last, Mr. Kinnersley was brought before him, charged with two Notes, viz. one of Twelve Hundred and Sixty Pounds, and this Note of Sixteen Hundred and Fifty Pounds; that they entered into the Examination of the first Note, which he owned very frankly to be his Note, written with his own Hand; that they then entered upon the other Note, which he verily believes to be the same that hath been here produced; that Mr. Kinnersley having denied this Indorsement to be his Hand, he desired him to recollect whether this Indorsement was not his Hand too, for that he observed a very great Likeness of the Hand between that and the Note which he had owned to be his Hand-writing, and delivered the Note to the Defendant Kinnersley to look upon; that upon this Mr. Mitford came up to him, and said, 'Answer nothing: This not your Hand-writing.' He saith, that upon this Mr. Kinnersley said the same Thing, that this was not his Hand-writing. He saith, that he asked him, whether he had had any Dealings with Mr. Edwards? That he replied that he had not, and that till this Time he was an utter Stranger to his Person. He saith, that Mr. Mitford and he had some high Words upon this Occasion; he reproving him for interposing when he apprehended that a further Discovery might have been made. They next endeavour to shew, that there was a Correspondence carried on in a private Manner between the two Defendants. In order to shew this, they have produced several Persons at whose Houses they have met: One of them is Thomas Bab; he saith that he keeps Peel's Coffee-house, in Fleet-street; that the latter End of last Summer Mr. Hales very frequently came thither, and would sometimes be there for an Hour or two; that he often asked whether the Minister had been there to ask for him, not asking for Mr. Kinnersley by Name, they knowing whom he meant, having often seen them there together; that when Mr. Kinnersley came in, they used to retire into a private Room, and stay there together for some Time; that one Time Mr. Hales observed Mr. Kinnersley going down Fleet-street, went out and went after him; that sometimes they went away together, sometimes asunder; sometimes one went out at the one Door into Fleet-street, and the other at the other into the Passage to Fetter-lane. He saith, that this their Resort to his House was till about a Month before that Mr. Hales was taken up, and was then discontinued. Mr. Kinnersley asking him, whether they ever called for Pen, Ink and Paper? To this he replied, No. Of the same Nature is the Evidence of Thomas Brooks; he saith, that he keeps a Coffee-house at Downing-street, in Westminster; that Mr. Kinnersley used to come to his House, send for a Porter, and give him a Note to Mr. Hales, who thereupon hath come thither to him, and they have gone together by themselves to the further End of the Room; that this they did several Times, and stayed together sometimes several Hours. He saith, that once particularly they staid there

till it was so dark that he asked his Servant why he had not carried the Gentlemen a Candle; who said that he had carried them one; but they refused it. Gentlemen, they have then again had Resort to the Examination before Sir Richard Hopkins: They have, as to this, called Mr. Wright. He saith, that he was present at that Examination; and that Mr. Kinnersley, being pressed to answer several Questions put to him, was in some Emotion, and said; I will tell you all, give me leave; seeming desirous to take Time to digest his Thoughts: That then one Mr. Mitford came up to him; and bade him hold his Tongue, or he would do himself some Mischief, or Words to that Effect. He being examined as to some Particulars that Mr. Kinnersley affirmed to have passed between Sir Richard Hopkins and Mr. Mitford, and that Sir Richard advised him to take his Friend's Advice, he denieth this, as doth also Sir Richard Hopkins himself, to whom Mr. Kinnersley hereupon appealed. He saith, that he thinks that this Interruption was after that having owned the other Note to be his Hand-writing, he had denied this Indorsement to be his, whereas Sir Richard thought it before, and designed to prevent his answering him on that Head. They have also produced Mr. March, who is Sir Richard Hopkins's Clerk; he gives you much the same Account. He saith, that Mr. Kinnersley having owned the other Note, and denied this Indorsement to be his Hand, Sir Richard observing the Likeness of the Hand, advised him to recollect himself, and consider well whether that Indorsement was not his Hand too as well as the other Note, for that the Hands were very like; that Mr. Mitford upon that interposed, and said, 'I would have you cautious, and not answer that Question.' He denies that Sir Richard advised Mr. Kinnersley to take his Friend's Advice; but on the contrary saith, that Sir Richard was a little warm, and reprehended him for his interposing, as being an Interruption of Justice. This is the Evidence that hath been laid before you as to this Note, both to prove the Forgery of this Note, and to shew the Use that was made of it both by Mr. Hales and Mr. Kinnersley, who is charged with the indorsing this Note in order to make it current. They are called upon to make their Defence: Mr. Hales stands mute, and saith nothing. The Facts bear very hard upon him, he being supposed to procure these Franks: It behoved him therefore to give some Account how he came by this Note. So as to that I apprehend that there is no Difficulty, Mr. Hales making no Defence. But the Question is, How far Mr. Kinnersley is proved to be concerned? His Counsel have endeavoured to soften the Evidence, of make it not applicable to Mr. Kinnersley. They own that there was a Familiarity between him and Mr. Hales: But then they say, that there was also a Familiarity between Mr. Hales and Mr. Edwards: They say therefore, that Familiarity with Mr. Hales is not a criminal Thing. In itself it is not: But the Question is, Whether a criminal Use hath been made of it? They suppose it to be a forged Indorsement; but say, that the same Person that forged the Note might also forge the Indorsement: And they say, that supposing it to be Mr. Kinnersley's Hand-writing, it may be well supposed that he was easily imposed upon. And they would also have it believed, that this is an usual Thing for one Person to indorse another's Notes among common Acquaintance. But how were they common Acquaintance, when Mr. Kinnersley hath acknowledged that he had never seen Mr. Edwards in his Life till after this? They say, that it may be the easier supposed that Mr. Kinnersley did thus give Credit to this as a true Note, and not take it to be a Forgery, since Mr. Thrup, who is a Man in Business, was imposed upon by it, and lent Four Hundred Pound upon it. They have called also some Evidence, not directly to controvert the Fact, but to contradict some Things given in Evidence, relating to the Examination taken before Sir Richard Hopkins. To this Purpose they have called Mr. John Hayes. He saith, that whether this Indorsement was his Writing was not the Question proposed to Mr. Kinnersley; when Mr. Mitford interposed, he having before denied that; but that there was another Question, that was then proposed to him to answer; Whether and how often he had been to visit Mr. Hales in Newgate? And he saith, that as to that it was that Mr. Mitford interposed, and advised him not to answer to that Question. They have called also Mr. Ward, who was present at the same Time, and gives you much the same Account. He apprehends that there was a Dispute about the Minutes that were taken of what had passed, and that Mr. Kinnersley was in a Passion, and desired to be examined in the Court of Aldermen; and that then Mr. Mitford interposed, and advised him not to desire this; that the Interruption was upon that extravagant Offer of his, and that upon that possibly Sir Richard might advise him to take his Friend's Advice, that is, to be clear and not so rash in answering the Questions put to him. Mr. Kinnersley himself hath laid before you what he thought proper. The Witnesses that were called (you have doubtless observed) as to that Examination, both of them say, that he had denied it before the Interposure. Mr. Kinnersley speaks himself and seems to say, that he doth not know but that it may be his Hand, though how it came to be obtained he cannot well tell. Indeed it is an extraordinary Thing how his Name should be obtained on the Back of a Note signed by Mr. Edwards. Gentlemen, if any other Particulars, material for their Defence, have slipped me, you have heard them, and they ought to have their Weight. The Question is, Whether and how far he is a Party in this Transaction? If he be a Party, though he doth but the one Part, he is equally guilty: Every Man that takes Part of these Things is equally guilty of the whole, and stands undefended. The Note then must be taken for a forged Note, and probably in the Manner that they have shewn. The Thing in Question is, How far Mr. Kinnersley is concerned? The Name Kinnersley, you see, is upon it: If his Name had not been upon it, the Note had been of no Avail; for there having been no Transactions between them, he could not have demanded the Money. But the main Business was to indorse it, that other Persons that knew not but there might have been such Transactions between them, might credit it, and lend Money upon it. Whether the Proof that is given you that this is his Hand, coupled with his own Apprehension that it is very like his Hand, will satisfy you of it, you must judge. If you judge that it is his Hand, the next Question before you will be, How far it could be put to a Note of Mr. Edwards's? It is plain that there could be no Foundation for it: If then you think it satisfactorily proved that his Hand was put on the Back of this Paper by him, knowing it to be a Note of such Value, and there be no Reason given you for it, you must look on him

him as a Party; but if you suppose it put to the Back of the Note without his Privy, in that View of the Thing you must acquit him.

(Jury called over.)

Clerk. Are you all agreed in your Verdict?—Jury. Agreed.

Clerk. Who shall speak for you?—Jury. Our Foreman.

Clerk. How say you. Is *William Hales* guilty of the Misdemeanour wherewith he stands charged, in forging a Note for Sixteen Hundred and Fifty Pounds, and indorsing the same, and in publishing the same as a true Note and Indorsement, knowing it to be so forged and counterfeited, or not guilty?

Foreman. Guilty.

Clerk. How say you, Is *Thomas Kinnerley*, Sec.

Foreman. Guilty.

Mr. *Strange*. My Lord, we desire that Mr. *Kinnerley*, may be now committed.

Judge *Reynolds*. Whence was he brought hither?

Mr. *Strange*. From the Compter.

Judge *Reynolds*. Well, now that he is convicted, he must be committed.

Mr. *Kinnerley*. Whither, my Lord?—Judge *Reynolds*. To *Newgate*.

Mr. *Kinnerley*. But, my Lord, there are two Writs against me which fix me to the Compter.

Judge *Reynolds*. They will follow you doubtless to *Newgate*.

Mr. *Kinnerley*. But, my Lord, the Order of the Lord Chief-Justice was, that I should be committed to the Compter till discharged.

Judge *Reynolds*. Your being ordered to *Newgate*, is a Discharge from the Compter.

Mr. *Kinnerley*. I bless God that I go back innocent of the Charge against me.

Judge *Reynolds*. If you do in your own Apprehension, it is not so in the Apprehension of the Jury.

Mr. *Kinnerley*. My Lord, I thought I had cleared that Matter. If Mr. *Hales* had brought me that Note to sign, I believe that I should have signed it: But I should not have done it, if I had known that Mr. *Edwards*'s Name was fraudulently obtained to it. May I never see the Face of Almighty God, if I was ever privy to any of Mr. *Hales*'s Forgeries! If your Lordship please to direct me to *Newgate*, I desire it may be immediately, for I am ill, having been here so long.

Judge *Reynolds*. It will be presently, for the Court is going to adjourn.

IX. The Trial of WILLIAM HALES, for fraudulently forging and counterfeiting a Writing, purporting to be a Promissory Note of Samuel Edwards, Esq. to Samuel Lee, for Four Thousand Seven Hundred Pounds.

The Jury called over and sworn.

Clerk. OYEZ. OYEZ. If any one can inform, &c.

Indictment.] Gentlemen of the Jury, *William Hales* stands indicted by the Name of *William Hales*, of London, late Goldsmith; for that on the first of August, in the second Year of his Majesty's Reign, he did fraudulently forge and counterfeit a Writing, purporting to be a promissory Note, in these Words following,

March 30, 1728.

Six Months after Date, I promise to pay to Samuel Lee, or his Order, the Sum of Four Thousand Seven Hundred Pounds, for ye Value received,

Samuel Edwards.

and that he did knowingly and wittingly publish the same as a true Note, knowing the same to be so forged and counterfeited.

Mr. *Strange*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against Mr. *William Hales*, for forging a Note in the Name of *Samuel Edwards*, Esq. and publishing the same. It sets forth, that on the first of August, in the second Year of his Majesty's Reign, he forged a Note in these Words following, &c.

And it further sets forth, that the Defendant published the said forged Note as a true Note of Mr. *Edwards*'s, knowing the same to be forged and counterfeited.

Mr. Serj. *Whitaker*. May it please your Lordship, I am Counsel in this Cause for the King. Gentlemen, this Matter is of the same Nature with some former Indictments: I shall therefore take up but little of your Time. It appears, Gentlemen, to us, that this is the Effect of some Frank Covers, that Mr. *Hales* hath fraudulently obtained of Mr. *Edwards*. I need not now acquaint you, that Mr. *Edwards* did for some Time indulge Mr. *Hales* with Frank Covers, which Mr. *Hales* pretended that they were designed for sending News into the Country. This Note, Gentlemen, is even a grosser Forgery than the others can be supposed to be. Here is a Sum of Four Thousand Seven Hundred Pounds, which Mr. *Edwards* is supposed to promise to pay within six Months after Date to Samuel Lee. This Lee we have inquired into the Character of. He is one that is worth nothing: He is a sea-faring Man, and his Wife was Nurse to Mr. *Hales*'s Children: This Man is not very likely to have a promissory Note for Four Thousand Seven Hundred Pounds. Gentlemen, when you come to look upon this Note, you will see on it the plainest Marks of Forgery that can be. When you come to look upon it, you will plainly see that free *Samuel Edwards* still remains visible. There is the double *f* which Mr. *Edwards* generally useth, which we shall prove by Witness. And then between the *ff* and the *r* there is an *o* struck in, which you will plainly see is not the same Writing with the *ff*, nor the same with *Samuel Edwards*. And then to make out the *ye* you will see the two *ee*'s are contrived to make a *y* with a Stroke at the Bottom of the *e*, but that still the two *ee*'s seem visible, and to be wrote by the same Party that wrote the *ff*. I will appeal herein to your own Eye-sight. Then there is a Dot at the End of the *y*, and then *Value received*. You will see a considerable Depth beneath, and that it must be cut off from something else. How it was, it concerns Mr. *Hales* to shew. As to the Method wherein this came to be discovered, it is sufficient to tell you, that this had been occasioned by the Discovery of a Note forged in the Name of Mr. *Gibson*, an Apprehension and Commitment of Mr. *Hales*; that this gave occasion for several Persons to inquire into the Validity of those Notes which they had received from Mr. *Hales*. As upon Inquiry several other Notes that have been before you were discovered, so at length it came to be discovered, that Mr. *Hales* had delivered to Sir *Biby Lake* this promissory Note, made in the Name of *Samuel Edwards*, Esq. payable within six Months after Date to Samuel Lee, for Four Thousand Seven hundred Pounds. It was upon this Occasion that it came to be delivered to Sir *Biby Lake*: Mr. *Hales* had been harrassed with several Judgments against him: To keep off the evil Day as long as possible, it was necessary to procure some substantial Person to be Bail for him; Sir *Biby Lake* was applied to, being a very substantial Gentleman. It being on a Writ of Error, and for a considerable Sum, that he was desired to be Bail for Mr. *Hales*, he made a Scruple, and refused it at first: At length to induce him to it, Mr. *Hales* said to him, Sir, you shall be at no manner of Risk; I have a promissory Note for Four Thousand and Seven Hundred Pounds, which is made by Mr. *Edwards*, who is a substantial Man, payable within six Months: This will be an ample Security, if an Execution should come upon you for the affirming of this Judgment. Upon this Sir *Biby Lake* was induced to be his Security; thus he came to have this Note delivered to him. Gentlemen, when we shew you, as we must, it being a fresh Case, how he had Franks from Mr. *Edwards*, the Method wherein he hath made this Use thereof, and then that this Note was thus delivered to Sir *Biby Lake*; and you have

considered the several Circumstances of the Case, it will appear both that this is a forged Note, and by whom it was forged; that Mr. *Hales* was the Person on whom it must be charged.

Mr. *Strange*. Gentlemen, I would observe to you, which you will plainly see, that here is Mr. *Edwards*'s double *ff*, and then an *o* crouded in between that and the *r*; and that there not being sufficient Room, therefore the Word *Pound* is crouded in, in a narrow Manner, and then follows the *ff*, so that it is not possible to suppose that if any Gentleman had wrote it before the *ff* was wrote, he would have crouded the Word *Pound* into so narrow a Room. But there was then a Necessity for it.

Thomas Maddox, Anne Clarke, and Mr. Booth were called, sworn, and deposed as before; and the Note of Directions was again read.

(Mr. Spicer sworn.)

Mr. *Strange*. Please to look on that Note, and tell us how much thereof you take to be Mr. *Edwards*'s?

Mr. *Spicer*. The Name is his, the *ff* and the *r* is also his. The *o* seems not to be of the same Ink, and is afterwards crouded in. The *y* is not his.

Mr. *Strange*. What is Mr. *Edwards*'s Way of franking?

Mr. *Spicer*. Free *Samuel Edwards*. Free he usually writes with a *ff*.

Mr. *Strange*. Did you ever know him in franking, make use of the Word *Frank*?

Mr. *Spicer*. No, Sir.

Mr. *Strange*. How long have you been acquainted with him?

Mr. *Spicer*. About twenty-four Years, Sir.

Mr. *Strange*. Did you ever know him any ways concerned with *Samuel Lee*?

Mr. *Spicer*. No, Sir.

Mr. *Strange*. Do you know him?—Mr. *Spicer*. No, Sir.

Mr. *Strange*. Do you think, that being acquainted with Mr. *Edwards*'s Concerns, you should have known if there had been any Money Concerns between them?

Mr. *Spicer*. Yes, Sir, I believe that I should.

Mr. *Strange*. What further Reasons have you to believe this not to be his Note?

Mr. *Spicer*. I can never believe this to be his Note, for he never gives any promissory Note for Time, nor any Note at all, without writing the whole Note with his own Hand.

(Sir *Biby Lake* called and sworn.)

Mr. Serj. *Whitaker*. Sir, pray please to give us an Account, when you saw that Note first, upon what Occasion it was brought to you, and by whom it was delivered to you?

Sir *Biby Lake*. About this Time Twelvemonth Mr. *William Hales* sent Mr. *Kinnerley* to me at my House in *Crosby Square*, who told me that Mr. *Hales* was arrested upon account of a Bond given by him, and Mr. *Robert Hales*, to Dr. *Mupleton* of *Canterbury*; that the Doctor having arrested Mr. *William Hales*, he desired that I would be Bail for him. I desired Mr. *Kinnerley* to meet me in the Evening: We then went to the Judges Chambers, and gave Bail to the Action. I thought, that there being no Difficulty in the Gentleman's Appearance, there would be no Damage in doing that for a Friend. Afterwards Mr. *Hales* came himself to me, and desired me that I would be Bail again for him. I told him that it was somewhat extraordinary; but that however I would meet him at Mr. *Turner*'s at *Staples Inn*, to consider what to do. He came to me there about Four or Five, and brought a Gentleman with him, who he told me was his Attorney. At first, he told me not: But afterwards, we understood that it was to a Writ of Error that I was desired to be put in Bail. I was then told by Mr. *Turner*, that if I was Bail to that, I must pay the Money if they did not. Upon this, I told Mr. *Hales* that I cared not to be Bail in such a Matter as this, unless he would give me good Security. He told me that he was going to *Peel*'s Coffee-house, desired that I would consider of it, and come to him again. I staid to consult Mr. *Turner*, and told him that I would not be Bail except Mr. *Hales* would give me good Security. I then went to *Peel*'s Coffee-house, and there found Mr. *Hales* and Mr. *Kinnerley* together. I took Mr. *Hales* to another Part of the Room, and told him, that I would not endanger myself and my Family so far as to engage for such a Sum, it being about Fifteen Hundred Pounds, unless he would give me good Security. Upon this he put his Hand in his Pocket, took out his Pocket-Book, and took out of it this Note. He looked upon it, and said, that it was a promissory Note for Four Thousand and odd Pounds, and was payable within two or three Months after. He put it into my Hand: I looked upon it, and thought it was very good Security to me for such a Sum. He desired that I would keep it in my own Hand till the Money that I was Security for was paid; but said, that he would pay the Money long before I could be called upon; I thought I had sufficient Satisfaction,

Satisfaction, and went thereupon before the Lord Chief-Justice *Raymond*, and gave Bail to the Writ of Error.

Mr. Serj. *Whit*. Sir, I would desire you to look on the Note, and on the Back of it, and tell us whether it hath had any Alteration?

Sir *Biby Lake*. None, Sir, that I know of. But I must give you a particular Account of one Thing. It was not all the Time in the same Custody. Before I came there, my Servant went and waited for me with my Horse in *Halborn*, I being going out of Town. Going therefore to Mr. *Turner's*, I desired him to lay it by for me in his Drawer, where he hath other Papers of mine. Accordingly he did lay it up; and from that Time it was (I suppose) in Mr. *Turner's* Custody, till after the Time that Mr. *Hales* was taken up. When that happened, Mr. *Harle* of the *Million Bank* sent me Word thereof. Upon that, when I came in, I went to Mr. *Harle*, and told him that I had such a Note of Mr. *Edwards's* in my Hand; and (said I) hearing that you have a Suspicion that the Note that is in your Hands is a bad Note, I have some Reason to desire you to go to Mr. *Edwards*, and acquaint him, that I have such a Note in Mr. *Turner's* Custody, who is now in *Derbyshire*. All that I could then do, was to desire Mr. *Turner's* Clerk to send to him for the Key, that we might take out the Note and shew it. The Clerk did so; and after some Time had the Key sent him, took out the Note, and I desired him to carry it to Mr. *Edwards*. It was the same Day that the Note became due.

Mr. *Turner* called and sworn.

Mr. Serj. *Whit*. Mr. *Turner*, pray please to look upon that Note, and give us an Account when you first saw it?

Mr. *Turner*. I believe it was one Day in the Beginning of *July* last, about five or six o'Clock in the Afternoon: I cannot be particular as to the Day, but I believe that it was the same Day that Sir *Biby Lake* gave Bail to the Writ of Error. He then brought me the Note to lay by for him. I verily believe this to be the same Note.

Mr. Serj. *Whit*. Hath it had any Alteration since?

Mr. *Turner*. No, Sir. He desired me to put it for him in a Drawer, where I had other of his Papers: Accordingly I did: I went out of Town in *August*. Afterwards my Clerk sent me Word, that Sir *Biby Lake* desired that I would send up the Key of the Drawers, in order to his Notes being taken out. Upon that I sent up the Key to my Clerk, directed him in which Drawer the Note was, desired that he would take it out, and carry it to Sir *Biby Lake*.

Mr. *More* called and sworn.

Mr. *Strange*. Do you remember, Sir, to have received a Key from Mr. *Turner*?—Mr. *More*. Yes, Sir.

Mr. *Strange*. Did you thereupon find this Note in the Drawer?

Mr. *More*. Yes, Sir; in the Drawer of the Desk.

Mr. *Strange*. Did you make any Alterations in it?

Mr. *More*. No, Sir; I took it out, and carried it to Mr. *Edwards*.

Mr. *Strange*. Mr. *Spicer*, you are acquainted with Mr. *Edwards's* Way of Dealing. When he gives a Promissory Note, doth he write the whole Note?

Mr. *Spicer*. Yes, Sir; I never knew him give any but that he wrote the whole Note.

Mr. *Strange*. Doth he use to give Notes for Time?

Mr. *Spicer*. No, Sir, never.

Mr. *Strange*. My Lord, we now desire that the Note may be read.

Note read. March 30, 1728.
Six Months after Date, I promise to pay to Samuel Lee, or his Order, the Sum of Four Thousand Seven Hundred Pounds, for the Value received,
Samuel Edwards.

Indorsed Samuel Lee.

Mr. *Strange*. You will observe, Gentlemen, the Word *free* is legible still, and observe how the Word *Pounds* is crouded in.

Mr. *Bird* called and sworn.

Mr. Serj. *Whit*. Sir, do you know Mr. *Samuel Lee*?

Mr. *Bird*. Yes, Sir.

Mr. Serj. *Whit*. What is he?—Mr. *Bird*. A sea-faring Man.

Mr. Serj. *Whit*. Do you know his Wife?—Mr. *Bird*. Yes, Sir.

Mr. Serj. *Whit*. Did she nurse a Child for Mr. *Hales*?

Mr. *Bird*. Yes, Sir; two for several Years.

Mr. Serj. *Whit*. Is he a Man of Worth?

Mr. *Bird*. No, Sir; he is not worth five Pounds in the World.

Mr. Serj. *Raby*. What say you to this, Mr. *Hales*? You see that they have given an Account of the Method that you took to procure Frank Covers. This Note they say, that you published as a true Note, how should it come to pass, that such a poor Person as this *Lee* is should indorse over such a Note to you?

Mr. *Hales*. Mr. *Lee* gave it me, there being Monies due to me.

Mr. Serj. *Raby*. If you can prove any Transaction between you and that *Lee*, to induce the Jury to believe that it was given you upon that Consideration, it will be proper now to do it.—Mr. *Hales*. He is gone abroad.

Mr. Serj. *Raby*. Is there any Person that can be Witnels of any such Transaction?—Mr. *Hales*. No, Sir.

Mr. Serj. *Raby*. Gentlemen of the Jury, *William Hales* of *London*, late Goldsmith, stands indicted for forging a Note for Four Thousand and Seven Hundred Pounds, payable within six Months after Date to *Samuel Lee*, or Order, in the Name of *Samuel Edwards*, Esq. and for publishing the same as a true Note. You see, Gentlemen, that there have been several Witnelles produced to shew how he got Possession of Frank Covers, on Pretence of sending News into the Country; and that he sent a Paper of Directions for some, which Directions were very short, and so convenient for the writing in the intermediate Space over the Name, such a Note as this. And they have sworn that these Directions are his Hand, which were sent over by his Servant to Mr. *Edwards* for Franks. Now to shew you that this Note was published by this Man as a true Note, and that he is guilty hereof, Sir *Biby Lake* hath appeared. He tells you, that there were two several Applications to him to be Bail for Mr. *Hales*; that he complied readily with the one, but the other he made more Scruple of, because it was more dangerous; it being to a Writ of Error, and for about Fifteen Hundred Pounds. He was therefore more cautious, and

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would not do it without Security. He tells you, that upon this, this Note was offered and deposited in his Hands by the Prisoner. This, if you are satisfied of it, fixed the Note upon the Prisoner. It appears hereby, that it was in the Hands of the Prisoner. He cannot shew you how he came by it: That then is a strong Proof to fix the Charge in this Indictment upon him. Where a forged Note is found in a Person's Possession, and it appears that he offered it as a true one, and cannot give an Account how he came by it, that fixeth the Charge of forging it upon him. This Note was published in the City of *London*, and therefore the Forgery in the Indictment is fixed there: For it is impossible to know certainly where a Note is forged, since no one calls Evidence to see him forge a Note. Thus it appears to have been in his Custody, and it cannot otherwise be proved. Other Witnelles have been produced, to shew that the Note hath not been altered since it was delivered by him. Mr. *Turner* tells you, that he received it from Sir *Biby Lake* the Day that he received it from Mr. *Hales*, and laid it by for him in his Drawer; so that from the Time that it was published, it continueth in the same State that it then was. Other Circumstances have been laid before you, as the Manner of Mr. *Edwards's* making out any Notes. He doth not give out any Promissory Note made for Time, nor doth he ever give out any whatsoever but such as are all of his own Hand-writing. Another Circumstance that hath been laid before you, relates to the Person to whom this Note is made payable. It looks like a Contrivance to have it all in his own Management, in the Hands of his Servant, and within his own reach; that this Note should be made payable to a poor Man, whose Wife was Nurse to Mr. *Hales's* Children, and the Witnel believes him not to be worth five Pounds in the World. How should he be intituled to this Bill for such a Sum, which he might have indorsed to any other Person? No one sure would trust such a Note with such a Person. He could not be possessed of it in his own Right, and no other Person would intrust a Man, not worth five Pounds, with a Note of this Value. This Circumstance they offer to your Consideration: And they take Notice of some Letters which shew that there was originally *free*, which is now turned into *for the before Value received*. It appears that it was *free Samuel Edwards*: And it is almost legible notwithstanding the Alteration that hath been made. He hath said nothing in his Defence to shew how he came by that Note. He saith that *Lee* gave it him. Is it likely that a Man not worth five Pounds in the World should give out such a Note as this? Though there is no direct Evidence of his forging it, that makes no Alteration: If he directed it to be done, it is the same Thing as if he did it himself; nor doth it appear that any but himself is concerned therein. He having published it, is guilty not only of the Publication, but of the forging of it: If you believe it to be a forged Note, he is guilty of the Forgery. His publishing of the Note is a sufficient Evidence of it. If a Man had received such a Note, he would readily say, I received it of such a Person on such an Occasion: But there hath been no Evidence of this Nature given. If you ask a Man, how he came by this or that Thing, he saith another gave it him: That may be said in every criminal Case; it is often said, but never regarded except proved. You are then to consider all these Circumstances, and to judge thereupon whether it is a forged Note; whether it is likely that *Lee* should have a Note of this Value, and that there should be any Reason for his delivering such a Note? There have been no Pretence of any Transactions between this *Lee* and Mr. *Edwards*, nor any Colour of Proof on what Consideration the Gentleman should write such a Note payable to such a Man, and give it him. Gentlemen, here is as full and plain Proof as can be expected, if the Evidence swear true; so I leave it to you.

Clerk. Are you all agreed in your Verdict?—Jury. Agreed.

Clerk. Who shall speak for you?—Jury. Our Foreman.

Clerk. How say you, Is *William Hales* Guilty of the Misdemeanour whereof he stands indicted in forging a Note in the Name of *Samuel Edwards*, Esq. for Four Thousand Seven Hundred Pounds, and publishing the same, or Not Guilty?—Foreman. Guilty.

Mr. Serj. *Whit*. My Lord, the Note being found to be forged, we desire that Sir *Biby Lake* may deliver it to Mr. *Edwards*.

Sir *William Thompson*. That is but common Justice.

Mr. *Strange*. My Lord, there is another Indictment: But we will not trouble your Lordship with that; therefore the Jury may be discharged.

Mr. Serj. *Whit*. My Lord, we think it proper to take notice, that upon the three Indictments wherof he hath been found guilty on the Statute of King *Henry VIII.* for obtaining Money by false Tokens, there can be no Fine in the Case: We must therefore crave corporal Punishment.

Sir *William Thompson*. The Question is, What corporal Punishment? To be sure he will be pilloried.

Mr. Serj. *Whit*. The Pillory, my Lord, is nothing. The Gentleman hath endeavoured to get many Thousand Pounds of several Gentlemen: Now he is only to look through a wooden Casement, and this is to make Recompence. We humbly hope, that according to the Words of the Act of Parliament, some Punishment will be ordered, not only ignominious but corporal Punishment, as the Words are very extensive.

Sir *William Thompson*. The Court to be sure will order Imprisonment, as well as the Pillory, and Security afterward.

Mr. Serj. *Whit*. But should not the Punishment left to the Discretion of the Court be extended to something further?

Sir *William Thompson*. I am not for extending it to Torture. I know not any Precedent; nor would I begin any Thing of that Nature. The King himself is limited by our Law.

Mr. Serj. *Whit*. The Penalty seems left to the Discretion of this Court.

Sir *William Thompson*. I would not extend it. I do not know but that the Parliament may think of something else afterwards.

Mr. Serj. *Whit*. Well, Sir, I have laid it before you. I submit it.

The Judgment of the Court.

That *William Hales* and *Thomas Kinnersley* should stand twice in the Pillory; once in *Fleet-Street*, at the End of *Fetter-Lane*, and once at the *Royal-Exchange*, in *Cornhill*.

That *Hales* should pay a Fine of fifty Marks, suffer five Years Imprisonment, and give Security for his good Behaviour for seven Years afterwards. And

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That

That *Kinnersley* should pay a Fine of Two Hundred Pounds (an Hundred on each Indictment), suffer two Years Imprisonment, and give Security for his good Behaviour for three Years longer.

Mr. *Hales* begged that two Years of his Imprisonment might be remitted on account of his Age; but it was not granted.

February 11 following, *Hales* and *Kinnersley* stood in the Pillory at the Royal-Exchange in Cornhill.

February 15. They both stood again in the Pillory at Fetter-Lane End, in Fleet-Street. *Kinnersley* stood both Times in his Canonical Habit,

thinking to draw Compassion and Respect from the Populace, but it had the contrary Effect.

Feb. 18th following, died in the Press-Yard in Newgate the said *William Hales*; and April 7, 1729, died in the same Place, of a Fever, *Thomas Kinnersley*, Clerk.

Forgery is now made Felony, without Benefit of Clergy; as is likewise the publishing any forged Deed, Will, Bond, Note, Indorsement, &c. knowing them to be forged, by the Stat. 2. Geo. II. and 7 Geo. II. which see for the several particular Cases there mentioned.

X. Proceedings against JOHN HUGGINS, Esq. Warden of the Fleet, THOMAS BAMBRIDGE, Esq. Warden of the Fleet, RICHARD CORBET, one of the Tipstaffs of the Fleet, and WILLIAM ACTON, Keeper of the Marshalsea Prison.

A Report from the Committee of the House of Commons appointed to enquire into the State of the Gaols of this Kingdom, so far as relates to the cruel Usage of the Prisoners; which occasioned the following Trials.

Jovis, 20 Die Martii, 1728.

MR. *Oglethorpe*, from the Committee appointed to inquire into the State of the Gaols of this Kingdom, made a Report of some Progress which the Committee had made in their Inquiry into the State of the Fleet Prison, with the Resolutions of the Committee thereupon; and he read the Report in his Place, and afterwards delivered the same in at the Table, viz.

The Committee find, That the Fleet Prison is an ancient Prison, and formerly used for the Reception of the Prisoners committed by the Council-Table, then called the Court of the Star-Chamber, which exercised unlimited Authority, and inflicted heavier Punishments than by any Law were warranted.

And as that assumed Authority was found to be an intolerable Burden to the Subject, and the Means to introduce an Arbitrary Power and Government, all Jurisdiction, Power, and Authority belonging unto, or exercised in the same Court, or by any the Judges, Officers, or Ministers thereof, were clearly and absolutely dissolved, taken away, and determined, by an Act made in the sixteenth Year of the Reign of King Charles the First.

And thereby the Committee apprehend all Pretences of the Warden of the Fleet to take Fees from Archbishops, Bishops, Temporal Peers, Barons, and others of lower Degree, or to put them in Irons, or exact Fees for not doing so, were determined, and abolished.

That after the said Act took Place, the Fleet Prison became a Prison for Debtors, and for Contempts of the Courts of Chancery, Exchequer, and Common-Pleas only, and fell under the same Regulations as other Gaols of this Kingdom.

That by an Act of the 22d and 23d of King Charles the Second, the future Government of all Prisons was vested in the Lords Chief-Justices, the Chief-Baron, or any two of them, for the Time being; and the Justices of the Peace in London, Middlesex, and Surry; and the Judges for the several Circuits; and the Justices of the Peace, for the Time being, in their several Precincts: And pursuant thereunto, several Orders and Regulations have been made, which the present Warden of the Fleet hath not regarded or complied with, but hath exercised an unwarrantable and arbitrary Power, not only in extorting exorbitant Fees, but in oppressing Prisoners for Debt, by loading them with Irons, worse than if the Star-Chamber was still subsisting, and contrary to the great Charter, the Foundation of the Liberty of the Subject, and in Defiance and Contempt thereof, as well as of other good Laws of this Kingdom.

It appears by a Patent of the third Year of Queen Elizabeth, recited in Letters Patents bearing Date the nineteenth Year of King Charles the Second, That the Fleet Prison was an ancient Prison, called *Prisona de le Fleet*, alias, *The Queen's Gaol of the Fleet*; and that certain Constitutions were then established by Agreement between *Richard Tyrrell*, Warden, and the Prisoners of the Fleet, and a Table of Fees annexed, in which the Fees to be paid by an Archbishop, Duke, Marquis, Earl, or other Lord Spiritual or Temporal, are particularly mentioned, and the Fine ascertained which they are to pay for the Liberty of the House and Irons; and that these Constitutions and Orders were confirmed by the said Letters Patent of King Charles the Second: Which Letters Patent grant the Office of Warden of the Fleet, and of the Keeper of the Old Palace at Westminster, the Shops in Westminster-Hall, certain Tenements adjoining to the Fleet, and other Rents and Profits belonging to the Warden, to Sir *Jeremy Whicheot* and his Heirs for ever. And the said Sir *Jeremy* rebuilt the said Prison at his own Expence, as a Consideration for the Grant thereof. But the said Prison, and the Custody of the Prisoners, being a Freehold, and falling by Descent or Purchase into the Hands of Persons incapable of executing the Office of Warden, was the Occasion of great Abuses, and frequent Complaints to Parliament, till at length the Patent was set aside.

And a Patent for Life was granted to *Baldwyn Leighton*, Esq. in Consideration of his great Pains and Expences in suing the former Patentees to a Forfeiture; and he soon dying, *John Huggins*, Esq. by giving 5000*l.* to the late Lord *Clarendon*, did, by his Interest, obtain a Grant of the said Office for his own and his Son's Life.

That it appeared to the Committee, That in the Year 1725, one Mr. *Arne*, an Upholder, was carried into a Stable which stood where the strong Room on the Master's Side now is, and was there confined (being a Place of cold Restraint) till he died, and that he was in good State of Health before he was confined to that Room.

That the said *John Huggins* growing in Years, and willing to retire from Business, and his Son not caring to take upon him so troublesome an Office, he hath for several Years been engaged in continual Negotiations about the Disposal of the said Office, and in August last concluded a final Treaty with *Thomas Bambridge* and *Deugal Cutburt*, Esqrs. and for 5000*l.* to be paid unto him, obliged himself to surrender the said Patent for his and his Son's Life, and procure a new Patent for the said *Bambridge* and *Cutburt*, which the said *Huggins* did accordingly obtain, and *Cutburt* paid in Money, or gave good Security to pay 2500*l.* for one

Moiety of the said Office of Warden; and *Bambridge* gave Land and other Security, which the said *Huggins* was then content with, for 2500*l.* being for the other Moiety of the said Office.

That Mr. *Huggins* being examined touching an Instrument signed by him in November 1724, appointing *Richard Corbett*, one of the five Tipstaffs of or belonging to the Fleet Prison, acknowledged that he had no Power by Virtue of any Patent from the Crown to constitute such Tipstaff but that when he came to his Office he found that such an Officer had been so constituted, and he took that for a Precedent to do the same.

That since the said *Thomas Bambridge* has acted as Warden, the Books belonging to the Office of the Warden have been very negligently kept, and the Discharges not duly entered, to the great Prejudice of many of his Majesty's Subjects; and he hath not regularly taken Charge of the Prisoners committed to his Care by his Patent; and hath not, as he himself confesseth, ever had any authentick List of the Prisoners in the Rules delivered him, so he cannot have executed the Trust of keeping his Prisoners in safe Custody, when he did not know who or where they were.

The Committee find that the said *Thomas Bambridge*, who for some Years acted as Deputy-Warden of the Fleet, and is now actually Warden of that Prison, hath himself been aiding and assisting in an Escape: That he caused a private Door to be made through the Walls of the Prison out of the Yard where the Dogs are, the Key of which Door was kept by himself, and he with his own Hands opened the Door and let out *Byce*, the Smuggler, charged at the King's Suit with upwards of 30,000*l.* and was afterwards seen at *Islington*, and hath been several Times let out of the Prison by *Bambridge*.

The Committee find that the said *Bambridge* hath by himself and his Agents often refused to admit Prisoners into the Prison, though committed by due Course of Law; and in order to extort Money from them, hath often, contrary to an Act of the Twenty-second and Twenty-third of King Charles II. without their free and voluntary Consent, caused them to be carried away from the Prison Gate unto a publick Victualling or Drinking-House, commonly called a Spunging-House, belonging to him the said *Bambridge* as Warden, and rented of him by *Corbett* his Tipstaff, and hath there kept them at exorbitant Charges, and forced them to call for more Liquor than they were inclined to, and to spend more than they were able to afford, to the defrauding of their Creditors, and the distressing of their Families, whose Substance they are compelled there to consume; and for the more effectual making them stretch their poor Remains of Credit, and to squeeze out of them the Charity of their Friends, each Prisoner is better or worse treated according to his Expences, some being allowed a handsome Room and Bed to themselves, some stowed in Garrets, three in one Bed, and some put in Irons.

That these Houses were further used by the said *Bambridge*, as a Terror for extorting Money from the Prisoners, who on Security given have the Liberty of the Rules; of which Mr. *Robert Castell* was an unhappy Instance, a Man born to a competent Estate, but being unfortunately plunged in Debt, was thrown into Prison; he was first sent (according to Custom) to *Corbett's*, from whence he by Presents to *Bambridge* redeemed himself, and, giving Security, obtained the Liberty of the Rules; notwithstanding which he had frequently Presents, as they are called, exacted from him by *Bambridge*, and was menaced, on Refusal, to be sent back to *Corbett's* again.

The said *Bambridge* having thus unlawfully extorted large Sums of Money from him in a very short Time, *Castell* grew weary of being made such a wretched Property, and resolving not to injure farther his Family or his Creditors for the sake of so small a Liberty, he refused to submit to further Exactions; upon which the said *Bambridge* ordered him to be recommitted to *Corbett's*, where the Small-Pox then raged, though *Castell* acquainted him with his not having had that Distemper, and that he dreaded it so much, that the putting him into a House where it was would occasion his Death, which, if it happened before he could settle his Affairs, would be a great Prejudice to his Creditors, and would expose his Family to Destruction; and therefore he earnestly desired that he might either be sent to another House, or even into the Gaol itself, as a Favour. The melancholy Case of this Poor Gentleman moved the very Agents of the said *Bambridge* to Compassion, so that they also used their utmost Endeavours to dissuade him from sending this unhappy Prisoner to that infected House: But *Bambridge* forced him thither, where he (as he feared he should) caught the Small-Pox, and in a few Days died thereof, justly charging the said *Bambridge* with his Death; and unhappily leaving all his Affairs in the greatest Confusion, and a numerous Family of small Children in the utmost Distress.

It appeared to the Committee, That the Letting-out of the Fleet Tenements to Victuallers for the Reception of Prisoners hath been but of late practised, and that the first of them Lett for this Purpose was to *Mary Whitwood*, who still continues Tenant of the same, and that her Rent has from 32*l.* per Ann. been increased to 60*l.* and a certain Number of Prisoners stipulated to be made a prey of, to enable her to pay so great a Rent; and that she, to procure the Benefit of having such a Number of Prisoners sent to her

her House, hath, over and above the increased Rent, been obliged to make a Present to the said *Bambridge* of Forty Guineas, as also of a Toy, (as it is called) being the Model of a *Chinese Ship*, made of Amber, set in Silver, for which Four-score Broad-Pieces had been offered her.

This is the first Method of extorting Money from the unhappy Prisoners; and when they can no longer bear the Misery and Expence of a Spunging-House, before they can obtain the Privilege of being admitted into the Prison, they are obliged to comply with such exorbitant Fees as the said *Bambridge* thinks fit to demand, which, if they do not, they are sure, under various Pretences, of being turned down to the Common-Side, if not put in Irons and Dungeons; and this has been done to those who were willing and offered to pay the Fees established by the Regulation made by the Judges of the *Common-Pleas* in *Trin. Term 1727*, which ought to have been hung up in some publick Place in the Prison, to which the Prisoners might have free Access, but was secreted by the said *James Barnes*, pursuant to Orders of the said *Bambridge*; which Table of Fees seems to be unreasonable, because it obliges Men who are committed for not being able to pay their Debts, to pay such Sums of Money as their Circumstances render them altogether unable to comply with.

And notwithstanding the Payment of such large Fees, in order to extort further Sums from the unfortunate Prisoners, the said *Bambridge* unjustly pretends he has a Right, as *Warden*, to exercise an unlimited Power of changing Prisoners from Room to Room; of turning them into the Common-Side, though they have paid the Master's Side Fee; and inflicting Arbitrary Punishments by locking them down in unwholsome Dungeons, and loading them with torturing Irons; some Instances of which follow; viz.

Jacob Mendez Solas, a *Portuguese*, was, as far as it appeared to the Committee, one of the first Prisoners for Debt that ever was loaded with Irons in the Fleet; The said *Bambridge* one Day called him into the Gate-House of the Prison, called the *Lodge*, where he caused him to be seized, fettered, and carried to *Corbett's*, the Spunging-House, and there kept for upwards of a Week, and when brought back into the Prison, *Bambridge* caused him to be turned into the Dungeon, called the *Strong Room of the Master's Side*.

This Place is a Vault like those in which the Dead are Inter'd, and wherein the Bodies of Persons dying in the said Prison are usually deposited, till the Coroner's Inquest hath passed upon them; it has no Chimney nor Fire-place, nor any Light but what comes over the Door, or through a Hole of about Eight Inches square. It is neither paved nor boarded; and the rough Bricks appear both on the Sides and Top, being neither wainscotted nor plastered: What adds to the Dampness and Stench of the Place is, its being built over the Common-Sewer, and adjoining to the Sink and Dung-hill where all the Nastiness of the Prison is cast. In this miserable Place the poor Wretch was kept by the said *Bambridge*, manacled and shackled for near Two Months. At length, on receiving Five Guineas from Mr. *Kemp*, a Friend of *Solas's*, *Bambridge* released the Prisoner from his cruel Confinement. But though his Chains were taken off, his Terror still remained, and the unhappy Man was prevailed upon by that Terror, not only to labour gratis for the said *Bambridge*, but to swear also at Random all that he hath required of him: And the Committee themselves saw an Instance of the deep Impression his Sufferings had made upon him; for on his furnishing from something said, that *Bambridge* was to return again, as *Warden of the Fleet*, he fainted, and the Blood started out of his Mouth and Nose.

Captain *John Mackphedris*, who was bred a Merchant, is another melancholy Instance of the cruel Use the said *Bambridge* hath made of his assumed Authority. *Mackphedris* was a considerable Trader, and in a very flourishing Condition until the Year 1720, when being bound for large Sums to the Crown, for a Person afterwards ruined by the Misfortunes of that Year, he was undone. In June 1727 he was a Prisoner in the Fleet, and altho' he had before paid his Commitment-Fee, the like Fee was extorted from him a second Time; and he having furnished a Room, *Bambridge* demanded an extravagant Price for it, which he refused to pay; and urged, that it was unlawful for the *Warden* to demand extravagant Rents, and offered to pay what was legally due: Notwithstanding which, the said *Bambridge*, assisted by the said *James Barnes* and other Accomplices, broke open his Room, and took away several Things of great Value, amongst others, the King's Extent in Aid of the Prisoner (which was to have been returned in a few Days, in order to procure the Debt to the Crown, and the Prisoner's Enlargement), which *Bambridge* still detains. Not content with this, *Bambridge* locked the Prisoner out of his Room, and forced him to lie in the open Yard, called the *Bare*. He sat quietly under his Wrongs, and getting some poor Materials, built a little Hut to protect himself, as well as he could, from the Injuries of the Weather. The said *Bambridge* seeing his Unconcernedness, said, *Damn him! he is easy. I will put him into the Strong Room before To-morrow*; and ordered *Barnes* to pull down his little Hut, which was done accordingly. The poor Prisoner being in an ill State of Health, and the Night rainy, was put to great Distress. Some time after this he was (about Eleven o'Clock at Night) assaulted by *Bambridge*, with several other Persons his Accomplices, in a violent Manner; and *Bambridge*, though the Prisoner was unarmed, attacked him with his Sword, but by good Fortune was prevented from killing him; and several other Prisoners coming out upon the Noise, they carried *Mackphedris* for Safety into another Gentleman's Room; soon after which *Bambridge* coming with one *Savage*, and several others, broke open the Door, and *Bambridge* strove with his Sword to kill the Prisoner: But he again got away, and hid himself in another Room. Next Morning the said *Bambridge* entered the Prison with a Detachment of Soldiers, and ordered the Prisoner to be dragged to the Lodge, and ironed with great Irons; on which he desiring to know for what Cause, and by what Authority he was to be so cruelly used? *Bambridge* replied, *It was by his own Authority, and Damn him he would do it, and lose his Life*. The Prisoner desired he might be carried before a Magistrate, that he might know his Crime before he was punished; but *Bambridge* refused, and put Irons upon his Legs which were too little, so that in forcing them on, his Legs were like to have been broken; and the Torture was impossible to be endured. Upon which the Prisoner complaining of the grievous Pain and Straintness of the Irons, *Bambridge* answered, *That he did it on Purpose to torture him*: On which the Prisoner replying,

That by the Law of England no Man ought to be tortured; *Bambridge* declared, *That he would do it first, and answer for it afterwards*; and caused him to be dragged away to the Dungeon, where he lay without a Bed, loaded with Irons so close rivetted that they kept him in continual Torture, and mortified his Legs. After long Application his Irons were changed, and a Surgeon directed to dress his Legs, but his Lameness is not, nor ever can be cured. He was kept in this miserable Condition for three Weeks, by which his Sight is greatly prejudiced, and in danger of being lost.

The Prisoner, upon this Usage, petitioned the Judges, and after several Meetings, and a full Hearing, the Judges reprimanded Mr. *Huggins* and *Bambridge*, and declared, *That a Gaoler could not answer the Ironing of a Man before he was found guilty of a Crime*; but it being out of Term, they could not give the Prisoner any Relief or Satisfaction.

Notwithstanding this Opinion of the Judges, the said *Bambridge* continued to keep the Prisoner in Irons till he had paid him Six Guineas; and to prevent the Prisoner's recovering Damages for the cruel Treatment of him, *Bambridge* indicted him and his principal Witnesses at the *Old Bailey*, before they knew any Thing of the Matter; and to support that Indictment, he had recourse to Subornation, and turned two of his Servants out of Places which they had bought, because they would not swear falsely that the Prisoner had struck the said *Bambridge*, which Words he had inserted in Affidavits ready prepared for Signing, and which they knew to be false. As soon as they were apprized of it, they applied to the Lord-Mayor, who ordered the Grand-Jury down to the Fleet, where they found that *Bambridge* was the Aggressor. But the Bill against the Prisoners being already found, the second Inquiry was too late.

The Prisoners being no longer able to bear the Charges of Prosecution, which had already cost 100*l.* and being softened by Promises, and terrified by Threats, submitted to plead Guilty, on a solemn Assurance and Agreement made with *Bambridge* before Witnesses, of having but One Shilling Fine laid upon them; but so soon as they had pleaded Guilty, *Bambridge* took Advantage of it, and has continued harrassing them and their Securities ever since.

The Desire of Gain urged the said *Bambridge* to the preceding Instances of Cruelty; but a more diabolical Passion, that of *Malice*, animated him to oppress Captain *David Sinclair* in the following Manner.

At the latter End of June or Beginning of July last, the said *Bambridge* declared to the said *James Barnes*, one of the Agents of his Cruelties, *That he would have Sinclair's Blood*; and he took the Opportunity of the first Festival Day, which was on the first of August following, when he thought Captain *Sinclair* might, by celebrating the Memory of the late King, be warmed with Liquor so far as to give him some Excuse for the Cruelties which he intended to inflict upon him. But in some measure he was disappointed; for Captain *Sinclair* was perfectly sober, when the said *Bambridge* rushed into his Room with a dark Lanthorn in his Hand, assisted by his Accomplices *James Barnes* and *William Pindar*, and supported by his usual Guard, armed with Muskets and Bayonets, and without any Provocation given, run his Lanthorn into Captain *Sinclair's* Face, seized him by the Collar, and told him he must come along with him: Captain *Sinclair*, though surprized, asked for what, and by what Authority he so treated him? Upon which *Barnes* and the rest seized Captain *Sinclair*, who still desiring to know by what Authority they so abused him? *Bambridge* grossly insulted him, and struck him with his Cane on the Head and Shoulders, whilst he was held fast by *Pindar* and *Barnes*. Such base and scandalous Usage of this Gentleman, who had in the late Wars always signalized himself with the greatest Courage, Gallantry, and Honour in the Service of his Country upon many the most brave and desperate Occasions, must be most shocking and intolerable; yet Captain *Sinclair* bore it with Patience, refusing only to go out of his Room unless he was forced; whereupon the said *Bambridge* threatened to run his Cane down his Throat, and ordered his Guard to stab him with their Bayonets, or drag him down to the said Dungeon, called the *Strong Room*; the latter of which they did, and *Bambridge* kept him confined in that damp and loathsome Place, till he had lost the Use of his Limbs and Memory, neither of which has he perfectly recovered to this Day. Many aggravating Cruelties were used to make his Confinement more terrible; and when *Bambridge* found he was in danger of immediate Death, he removed him, for fear of his dying in Durefs, and caused him to be carried in a dying Condition from that Dungeon to a Room where there was no Bed or Furniture; and so unmercifully prevented his Friends having any Access to him, that he was four Days without the least Sustainance.

It appeared to the Committee by the Evidence of a Surgeon and others, who were Prisoners in the House, that when Captain *Sinclair* was forced into that loathsome Dungeon he was in perfect Health.

Captain *Sinclair* applied for Remedy at Law against the said Cruelties of *Bambridge*, and had procured a *Habeas Corpus* for his Witnesses to be brought before the Sessions of Oyer and Terminer, when the said *Bambridge*, by Colour of his assumed Authority as *Warden*, took the said Writs of *Habeas Corpus* from the Officer whose Duty it was to make a Return of them, and commanded him to keep out of the Way, whilst he himself went to the *Old Bailey*, and immediately indicted Captain *Sinclair* and such of his Witnesses as he knew he could not deter by Threats, or prevail with by Promises to go from the Truth.

Captain *Sinclair* had Temper enough to bear patiently almost insupportable Injuries, and to reserve himself for a proper Occasion, when Justice should be done him by the Laws of the Realm.

But the said *Bambridge* has forced others by Wrongs and Injuries beyond human Bearing, to endeavour the avenging Injuries and Oppressions which they could no longer endure.

And it appeared to the Committee, that the said *Bambridge*, in order to avoid the Punishment due to these Crimes, hath committed greater, and hath not only deny'd Admittance to the Solicitors, who might procure Justice to the injured Prisoners, and in open Defiance to the Law, disobey'd the King's Writs, but hath also seduced some by indulging them in Riot, and terrified others with fear of Durefs, to swear to and subscribe such false Affidavits as he thought fit to prepare for them, on several Occasions; in all which Wrongs and Oppressions *John Everett* also acted as one of the said *Bambridge's* wicked Accomplices.

That

That the said *Bambridge* being asked by the Committee, *By what Authority he pretended to put Prisoners into Dungeons and Irons?* Answered, *That he did it by his own Authority as Warden, to preserve the Quiet and Safety of the Custody of the Prison.*

But it appeared to the Committee by the Examinations of many Witnesses, that before the Time when *Gybbon* and the said *Bambridge* acted as Deputy-Wardens under Mr. *Huggins*, the Quiet and Safety of the Custody were very well preserved without the Use of Irons or Dungeons.

That the two Dungeons, called The Strong Room on the Master Side, and The Strong Room on the Common Side, were both built within these few Years; and that the old Method of punishing drunken and disorderly Persons was putting them in the Stocks; and the Punishment of those who had escaped, or attempted to escape, was putting them upon a Tub at the Gate of the Prison; by way of publick Shame, or securing them without Irons, in their proper Rooms for some Days.

And that the said Dungeons were built in Defiance of, and contrary to the Declaration of the Lord King, when Lord Chief Justice of the Common-Pleas; who, upon an Application made to him on Behalf of the Prisoners of the Fleet, when Mr. *Huggins* and *Gybbon* urged that there was Danger of Prisoners escaping, DECLARED, *that they might raise their Walls higher, but that there should be no Prison within a Prison.*

That upon the strictest Inquiry, the Committee could not find that any Prisoners in the Fleet for Debt had been put in Irons before the said Mr. *Huggins* had the Office of Warden.

That it is not the only Design of the said *Thomas Bambridge* to extort Money from his Prisoners, if they survive his inhuman Treatment, but he seems to have a farther View, in case it causes Death, of possessing himself of their Effects. One remarkable Proof of which the Committee think proper here to insert, *viz.*

Mr. *John Holder*, a Spanish Merchant, was a Prisoner in the Fleet, and had a Room which he fitted up with his own Furniture, and had with him all his Books, Accounts and Writings, and other Effects, to the Value of about 30,000*l.* which he declared by Affidavit, upon the following Occasion:

The said *Thomas Bambridge*, by Force, turned the said Mr. *Holder* over to the Common Side, and took Possession of his Room, in which all his Effects were.

Mr. *Holder* remonstrated strongly against this Usage, and *Bambridge* refusing to restore him to his Room, or Possession of his Effects, he made a proper Affidavit in order to apply to the Judges for Relief, and declared that he feared his Effects might be imbezelled whilst he was thus unjustly forced from them, and that he feared *Bambridge's* cruel Treatment of him would be the Cause of his Death: The Miseries of the Common Side, which he dreaded, had such an Effect upon him (being a Man of an advanced Age, and accustomed to live in Ease and Plenty), that it threw him into such a Fit of Sickness as made his Life despaired of, and in his Illness he often declared, *That the Villain Bambridge would be the Occasion of his Death.* Which proved true; for *Bambridge* finding Mr. *Holder* like to die in the Durels which he had put him into, (for his own Sake, to avoid the Punishment inflicted by Law upon Gaolers who so inhumanly destroy their Prisoners) permitted him to be carried back to his Room, where in a few Days he died of the said Sickness, contracted by the said forcible Removal of him to the Common Side by *Bambridge*, as aforesaid.

Mr. *Holder* by his last Will appointed Major *Wilson* and Mr. *John Pigott* Trustees for his Son, a Youth of about thirteen Years of Age, who had accompanied him in the Time of his Confinement.

This young Gentleman, after his Father's Death, locked up his Effects in several Trunks and Boxes, and delivered the Keys thereof to Mr. *Pigott* as his Trustee, who locked up the Room and took the Key with him; but the said *Thomas Bambridge* caused the said Room to be broke open by *Thomas King*, another of his Accomplices, and caused the said Effects to be seized, after that he, *Bambridge*, had forced Mr. *Pigott* out of the Prison, (though a Prisoner in Execution) and locked down Major *Wilson* (the other Trustee) in the Dungeon, to prevent their taking any Inventory in Behalf of the Heir at Law, then an Orphan.

These evil Practices of letting out Prisoners, extorting exorbitant Fees, suffering Escapes, and exercising all Sorts of Inhumanity for Gain, may in a great measure be imputed to the Venality of the Warden's Office; for the Warden who buys the Privilege of punishing others, does consequently sell his Forbearance at high Rates, and repair his own Charge and Loss at the wretched Expence of the Ease and Quiet of the miserable Objects in his Custody.

Upon the whole Matter the Committee came to the following Resolutions, *viz.*

Resolved, That it appears to this Committee, That *Thomas Bambridge*, the Acting Warden of the Prison of the Fleet, hath wilfully permitted several Debtors to the Crown in great Sums of Money, as well as Debtors to divers of his Majesty's Subjects, to escape; hath been guilty of the most notorious Breaches of his Trust, great Extortions, and the highest Crimes and Misdemeanours in the Execution of his said Office; and hath arbitrarily and unlawfully loaded with Irons, put into Dungeons, and destroyed Prisoners for Debt under his Charge, treating them in the most barbarous and cruel Manner, in high Violation and Contempt of the Laws of this Kingdom.

Resolved, That it appears to this Committee, That *John Huggins*, Esq. late Warden of the Prison of the Fleet, did, during the Time of his Wardenship, wilfully permit many considerable Debtors in his Custody to escape, and was notoriously guilty of great Breaches of his Trust, Extortions, Cruelties, and other High Crimes and Misdemeanours in the Execution of his said Office, to the great Oppression and Ruin of many of the Subjects of this Kingdom.

The Resolutions of the Committee being severally read a second Time, were, upon the Question severally put thereupon, agreed unto by the House, and are as follow, *viz.*

Resolved, *Nemine contradicente*, That *Thomas Bambridge*, the Acting Warden of the Prison of the Fleet, hath wilfully permitted several Debtors to the Crown in great Sums of Money, as well as Debtors to divers of his Majesty's Subjects, to escape; hath been guilty of the most notorious Breaches of his Trust, great Extortions, and the highest Crimes and Misdemeanours in the Execution of his said Office: And hath arbitrarily and unlawfully loaded with Irons, put into Dungeons, and destroyed Prisoners for Debt under his Charge, treating them in the most barbarous and cruel Manner, in high Violation and Contempt of the Laws of this Kingdom.

Resolved, *Nemine contradicente*, That *John Huggins*, Esq. late Warden of the Prison of the Fleet, did, during the Time of his Wardenship, wilfully permit many considerable Debtors, in his Custody, to escape; and was notoriously guilty of great Breaches of his Trust, Extortions, Cruelties, and other High Crimes and Misdemeanours in the Execution of his said Office, to the great Oppression and Ruin of many of the Subjects of this Kingdom.

Resolved, That it appears to this House, That *James Barnes* was an Agent of, and an Accomplice with the said *Thomas Bambridge* in the Commission of his said Crimes.

Resolved, That it appears to this House, That *William Pindar* was an Agent of, and an Accomplice with the said *Thomas Bambridge* in the Commission of his said Crimes.

Resolved, That it appears to this House, That *John Everett* was an Agent of, and an Accomplice with the said *Thomas Bambridge* in the Commission of his said Crimes.

Resolved, That it appears to this House, That *Thomas King* was an Agent of, and an Accomplice with the said *Thomas Bambridge* in the Commission of his said Crimes.

Resolved, *Nemine contradicente*, That an humble Address be presented to his Majesty that he will be graciously pleased to direct his Attorney-General forthwith to prosecute, in the most effectual Manner, the said *Thomas Bambridge* for his said Crimes.

Resolved, *Nemine contradicente*, That an humble Address be presented to his Majesty that he will be graciously pleased to direct his Attorney-General forthwith to prosecute, in the most effectual Manner, the said *John Huggins* for his said Crimes.

Resolved, That an humble Address be presented to his Majesty that he will be graciously pleased to direct his Attorney-General forthwith to prosecute, in the most effectual Manner, the said *James Barnes*, *William Pindar*, *John Everett*, and *Thomas King*, for their said Crimes.

Ordered, That the said *Thomas Bambridge* be committed close Prisoner to his Majesty's Gaol of Newgate, and that Mr. *Speaker* do issue his Warrants accordingly.

Ordered, That the said *John Huggins*, Esq. be committed close Prisoner to his Majesty's Gaol of Newgate, and that Mr. *Speaker* do issue his Warrants accordingly.

Ordered, That the said *James Barnes* be committed close Prisoner to his Majesty's Gaol of Newgate, and that Mr. *Speaker* do issue his Warrants accordingly.

Ordered, That the said *William Pindar* be committed close Prisoner to his Majesty's Gaol of Newgate, and that Mr. *Speaker* do issue his Warrants accordingly.

Ordered, That the said *John Everett* be committed close Prisoner to his Majesty's Gaol of Newgate, and that Mr. *Speaker* do issue his Warrants accordingly.

Ordered, That the said *Thomas King* be committed close Prisoner to his Majesty's Gaol of Newgate, and that Mr. *Speaker* do issue his Warrants accordingly.

Ordered, *Nemine contradicente*, That Leave be given to bring in a Bill to disable the said *Thomas Bambridge* to hold or execute the Office of Warden of the Prison of the Fleet, or to have or exercise any Authority relating thereto; and that Mr. *Oglethorpe*, Mr. *Earl*, the Lord *Percivall*, and Mr. *Hughes* do prepare and bring in the same.

Ordered, *Nemine contradicente*, That Leave be given to bring in a Bill for better regulating the Prison of the Fleet, and for more effectual preventing and punishing arbitrary and illegal Practices of the Warden of the said Prison; and that Mr. *Oglethorpe*, Mr. *Cornwall*, Mr. *Glanville*, and Mr. *Hughes* do prepare and bring in the same.

Which Bills passed into a Law.

They also enquired into the State and Condition of the *Marshalsea* Prison, and ordered a Prosecution against *William Aston* for Murder.

XI. The Trial of JOHN HUGGINS, Esq. Warden of the Fleet Prison for the Murder of EDWARD, ARNE, at the Sessions-House in the Old-Bailey, May 21, 1729, before Mr. Justice Page, Mr. Baron Carter and others his Majesty's Justices*.

Die Martis, 20 Die Maij, 1729.

Proclamation was made for all Persons concerned to attend.

Clerk of Arraignment.

YOU good Men, that are impannelled to inquire, &c. answer to your Names, and save your Fines.

John Huggins, hold up thy Hand. (Which he did.)

Clerk. Thou standest indicted by the Name of *John Huggins*, Esq. Warden of the Fleet, &c. [The Indictment being inserted with the Special Verdict at the End of this Trial, is omitted here].

* These Trials of *Huggins*, *Bambridge* and *Aston*, were all taken in Short-Hand by Mr. *Luke Kenn*, (Clerk to the Committee appointed to inquire into the Gaols of the Fleet, *Marshalsea*, &c.) who in his Life-time asked Two Hundred Pounds for the Copy of them.

How sayest thou, *John Huggins*, art thou Guilty of the Felony and Murder whereof thou standest indicted, or Not Guilty?

Mr. *Huggins*. Not Guilty.

Clerk. How wilt thou be tried?—Mr. *Hugg*. By God and my Country.

Clerk. God send thee a good Deliverance.

Die Mercurij 21 Die Maij, 1729.

Proclamation was made for Information.

Clerk. Thou the Prisoner at the Bar, these Men that thou shalt hear called, and personally appear, are to pass between our Sovereign Lord the King

and thee, upon the Trial of thy Life and Death; therefore, if thou wilt challenge them, or any of them, thy Time to speak is as they come to the Book to be sworn, before they are sworn.

Then the Jury sworn were as follow, viz.

Phillip Frusbard,	John Milward,	Martin Wardell,
John Fillebreven,	Daniel Town,	Richard Pitt,
Peter Sejourney,	Thomas Clayton,	John Price,
Thomas Gregg,	John Har,	James King.

Clark. John Huggins hold up thy Hand. (Which he did.) You of the Jury look upon the Prisoner (and was going on).

Mr. Huggins. My Lord, the Distance is too great to be heard: I desire I may come to the Inner Bar; for, my Lord, when any Inconvenience happens, it is the constant Rule to admit the Prisoner to come there: It was done in the Case of Sanders and Clifton.

Mr. Just. Page. Whenever the Court conceives an Inconvenience, it has been allowed; but I cannot allow it till then.

Clark. You Gentlemen of the Jury look upon the Prisoner; he stands indicted by the Name of, &c.

(Prout the Indictment mutatis mutandis.)

Mr. Huggins. I must desire, my Lord, to have the Indictment read in Latin. (Which was accordingly done.)

Mr. Holland. (Member of Parliament for Chippenham). My Lord, and you Gentlemen of the Jury, I am of Counsel for the King; and this is an Indictment against John Huggins, for aiding and abetting James Barnes in the Murder of Edward Arne; that John Huggins was Warden, and one James Barnes was then his Agent, who did in November, in the 11th Year of his late Majesty, make an Assault upon Edward Arne, and took Arne involuntarily, and confined him in the Strong Room (without the Comfort of Fire, Close-stool, or other Utensil), built near the Place where Executions are thrown out, a Place very unwholesome, and most dangerous to the Health; that Arne fell sick in the said Room, and languished till the 7th of December, and then died; that Huggins, through his cruel Disposition, being an Oppressor of the Prisoners, did, &c.

Mr. Serj. Chesbire. My Lord, and you Gentlemen of the Jury, James Barnes, who stands indicted for the Murder of Edward Arne, is fled from Justice; and John Huggins, the Prisoner at the Bar, also stands indicted for aiding and abetting in the said Fact. He was then Warden of the Fleet, and had the Custody and Care of the Prisoners then committed to his Charge; therefore it will be necessary to let you know what Bounds the Law sets to Gaolers, and to Prisoners. The Law sets Fences to them both: The Gaoler is to be protected in his Duty, supported and maintained in it; and it is justifiable, if, in Defence of himself, he destroys a Man, and commits an Act of Felony: On the other hand, if by any unnecessary Tyranny, or Restraint, any of the Prisoners come by an untimely Death, it is Murder in the Gaoler; and this last is principally necessary for your Attention.

Edward Arne, on the 12th of May, 1725, was committed upon Mesne Process; he was a quiet, peaceable, and inoffensive Man, and continued so till September in that Year; the Gentleman at the Bar, not content with the same Security that his Predecessors had, took it in his head to make a Strong Room, which was built about three Months before the Death of Edward Arne; it was like a Vault, built over the Common Sewer, near a Laystall, where the filthy Matter was lodged, nothing but Bricks and Mortar, not tiled or pointed; and in this Condition, about September, one Barnes, Servant of the Defendant, came to the said Arne, as he was sitting in the Cellar, rushed upon him, and took him away to the Dungeon, a Place where Nobody had been put in before; in this said Place of Restraint he was confined, though he was in a quiet Condition: There was no Fire, nor Fire-place, no Light but through a Hole over the Door, and a little Hole by the Side, big enough to put a Quart Pot in at; there was not the Want only of Fire, or Fire-place, but there was no Chamber-pot, no Convenience for the Ease of Nature, so that it must fall, and he converse with it: The Place was so moist, that Drops of Wet run down the Wall. The Man immediately lost his Voice, his Throat was swelled, and his Cloaths rotted with the Dampness of the Place, and the poor Man having a Feather-bed crept into it, and the Feathers stuck close to him, and in this Condition he lay; but one Day, the Door being open, he got out, and run into the Common Hall; he looked, Gentlemen, more like a feather'd Fowl, than an Human Creature. This was represented to Mr. Huggins, who generally lived in the Country, and did not come to the Gaol so often as he ought; but at one Time, when he was at the Prison, he saw the Man, and the poor Man just saw him, his Eye fell, the Door was closed, and he died: The Warden, Gentlemen, had the Door shut, and ordered him to be locked up, and he continued so locked up from September till the 20th of October; and it is wonderful to think (if he had not been a Man of a very strong Frame) how he could have continued there so long. It moved the Compassion of his Fellow-Prisoners, who applied to have him released out of that Place, but that not being done, a little Care was taken to attend him. Gentlemen, at the Time when Mr. Gybbon was Deputy, some of the Prisoners asked him, Why he did not take care of Arne, for the Man cannot speak? And Answer was made by Barnes, let him die and be damned; and this was in the Presence of the Warden. Gentlemen, I must observe to you, that for Security of the Lives of Prisoners, the Coroner's Inquest ought to sit upon them, to see if any Marks could be found to give an Information of the Cause of Death, but this was not done: This is the Substance of the Evidence, which cannot be aggravated.

Mr. Att. Gen. (Sir Philip Yorke, afterwards Earl of Hardwick and Lord Chancellor.) My Lord, and you Gentlemen of the Jury, I am of Counsel for the King, and this Prosecution is the Effect of a useful, compassionate Inquiry concerning the Gaols, so it was found necessary to bring the Cause before you, that Gaolers may be punished, who have Opportunity, and have endeavoured to oppress the unfortunate Persons under their Charge and Power. It is necessary there should be Gaols and Prisoners, and that Persons should be under Confinement; but not for Gaolers to have it in their Power to commit Oppressions and Cruelties, to the Loss of the Lives of his Majesty's Subjects; if the Evidence be true, which

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shall be offered to you, this will appear to be an Instance of the utmost Oppression, and the utmost Cruelty. Mr. Huggins was Warden of the Fleet Prison, and had the Care and Custody of the Prisoners, and ought personally, or by his Deputy, to take care of them, and so is answerable for them: Mr. Edward Arne came a Prisoner in May 1725, and continued there till he died. At his first coming in, he lodged with one Robert Shaw; but some Difference happening between them, he was turned out of that Room, and lay in the Common Hall. This unhappy Man was said to be disordered in his Senses, which his Oppression might reasonably occasion; he was an inoffensive, quiet Man: But about this Time, there was a new Scheme of having a Prison within a Prison, and was the Occasion of their committing Oppressions upon the Prisoners. This Strong Room was then erected in the manner of a Vault, commonly called a Dungeon; there was no Window, no Chimney; it was built with bare Brick and Mortar: Upon what Occasion it was built, the Prisoner will give you an Account, if he had any Authority for building it. Gaolers are to take care of Prisoners, but not to build Dungeons to put them in; the Walls were not dry, but very damp and unwholesome, as usually such Places must be. While Arne was standing in the Cellar inoffensively, Barnes, who was intrusted with the Care of the Prisoners, seized him and put him in this Place, and he was there put without any manner of Provision to sustain Life; there was a little Hole where you might put a little Drink through, sometimes he had an Opportunity of having some, and sometimes none. Under this Restraint this Person was kept, without any Convenience to ease Nature; the Description is such that must move every body to Compassion. His Bed was dragged in with him, and he ripped it open and crept into it to keep himself warm, and the Feathers stuck to him by reason of his being besmeared with his own Ordure, which he had not Opportunity of doing out of the Place. During the whole Time whilst Arne was confined, Mr. Huggins, who was then Warden, came twice, though he ought to have come often, and his Duty required him so to do: Mr. Huggins looked upon him there, and saw him lie in that Condition, in the Place built by his own Order; but the Prisoner, so far from giving him any Relief, or removing him out of that Confinement, ordered the Door to be locked up in his Presence, he being Warden, and by his Authority. This affecting Condition the poor Man was in, and in the Circumstance he was in, he ought to have relieved him. Several Applications were made to Gybbon, and other the Servants of the Warden, to desire this unhappy Man to be released: Letters were sent to shew his miserable Condition, that he was not likely to live, and to desire that he might be put under a proper Custody; but nothing was done. At that Time even the Prisoner saw him languish; his Speech was lost, and then he languished, and continued in the Dungeon till the Time of his Death; this will appear clearly by the Evidence, that he died in Durefs, and that the Distemper there contracted was the Occasion of his Death. The next Consideration is, who, and what was the Occasion of his Death: It is the Duty of a Gaoler to have a Coroner's Inquest to inquire into the Death of a Prisoner, for his own Justification, who, by having the Custody of, and the Power over his Prisoners, may destroy them; therefore, if there was no particular Reason, why should it not have been done? Tho' he cannot pretend to shew a particular Order why he did not. When I consider, that nothing could be done but by his Authority, nothing done but by his Direction, that was his particular Order.

If he, who was the principal Gaoler, who had the Authority to confine him, and to discharge him from an improper Confinement, who saw him there, did not release him, but instead of that suffered him to be locked up, he is guilty of his Death. In point of Law, if a Prisoner dies in Durefs of the Gaoler by hard Confinement, in a cruel Manner, unnecessary to the Gaoler's safe Custody, it is Death by Law; if the Gaoler is not answerable for the Act, what needs the dead Persons to be inquired after by a Jury? Justice ought to be done, let it fall on whom it will; and I do not doubt, but the Jury, for the Sake of their Oaths, will find him Guilty.

Mr. Sol. Gen. (Hon. Mr. Talbot, afterwards a Peer and Lord Chancellor.) We will call our Evidence to prove the Facts.

Call Richard Longborn. (Who was sworn, as were all the rest that appeared.) He produced a Copy of Mr. Huggins's Patent, bearing Date the 22d July, the 12th Queen Ann, which he proved to be a true Copy, and such Part of it was read as proved him to be Warden.

Mr. Huggins. My Lord, I desire the Habendum may be read, by which I have a Power to appoint a Deputy or Deputies for and during my natural Life.

Mr. Just. Page. I don't know what Use you will make of it; but you may call for it in your Defence.

Call Robert Bigrave.

Mr. Sol. Gen. Do you know the Prisoner?—Mr. Bigrave. Very well.

Mr. Sol. Gen. How long have you known him?

Mr. Bigrave. I knew him when I was Clerk of the Papers, in April 1725.

Mr. Sol. Gen. Did he act?—Mr. Bigrave. He was Warden, but did not act, Mr. Gybbon was Deputy to Mr. Huggins.

Mr. Sol. Gen. Who constituted you Clerk of the Papers?

Mr. Bigrave. Mr. Huggins.

Mr. Sol. Gen. Were the Securities taken in the Name of Mr. Huggins?

Mr. Bigrave. The Security Bonds were taken, and Returns made in the Name of Mr. Huggins.

Mr. Huggins. My Lord, I desire to come to the Inner-Bar, for I can't hear.

Mr. Just. Page. You shall have all reasonable Indulgence, and if you can't hear you must be allowed to come. (Which he accordingly did.)

Mr. Sol. Gen. Mr. Bigrave, did Mr. Huggins continue Warden during the whole Year 1725?

Mr. Bigrave. He did continue Warden during the whole Year 1725, and Returns were made in his Name.

Mr. Sol. Gen. Do you know James Barnes?

Mr. Bigrave. Yes, He was Servant to Mr. Gybbon, and was employ'd as Watchman and Runner, to take care that the Prisoners did not escape.

Mr. Sol. Gen. Did he act in this Capacity, whilst Mr. Huggins was principal Warden?

Mr. Bigrave. He did.

Q

Mr.

Mr. Sol. Gen. When did you come there?
 Mr. Bigrave. In April 1725.
 Mr. Sol. Gen. What do you know of the Building the Strong Room?
 Mr. Bigrave. When I came there, there was a Stable, which was converted into a Strong Room, but as to the Time it was pulled down and rebuilt, I am not certain.
 Mr. Sol. Gen. What Sort of a Place is it?
 Mr. Bigrave. It is a Place arched like a Wine-Vault, and built of Brick and Mortar.
 Mr. Sol. Gen. What are the Dimensions?
 Mr. Bigrave. It is eight Feet wide, and eleven Feet long.
 Mr. Sol. Gen. Had it any Floor?
 Mr. Bigrave. I did not see it had.
 Mr. Sol. Gen. Did you see Mr. Arne in it?
 Mr. Bigrave. I never saw any-body in it, till Captain Mackbeadris was put in.
 Mr. Sol. Gen. Did the Common-Sewer run under it?
 Mr. Bigrave. I can't say whether the Common-Sewer runs under it or not.
 Mr. Sol. Gen. How near was the Dunghill to it?
 Mr. Bigrave. The Dunghill was as nigh as to the other Part of the Court.
 Mr. Sol. Gen. Was there any Fire-place or Chimney?
 Mr. Bigrave. No.
 Mr. Sol. Gen. Was there any Place to let the Air or Light in?
 Mr. Bigrave. There was a Hole in the Side of the Wall seven or eight Inches square, and an opening of two Foot over the Door.
 Mr. Sol. Gen. Did not you see Edward Arne confined in that Place?
 Mr. Bigrave. I remember Edward Arne, and I did hear he was confined there.
 Mr. Sol. Gen. Who was the Place built by?
 Mr. Bigrave. It was built by Mr. Gybbon, because I saw Mr. Gybbon give Directions about it.
 Mr. Sol. Gen. Do you know Daniel Hopkins?
 Mr. Bigrave. I do.
 Mr. Sol. Gen. Whose Servant was he?
 Mr. Bigrave. I esteemed him to be Gybbon's Servant.
 Mr. Sol. Gen. Did not he belong to Mr. Huggins?
 Mr. Bigrave. He used to be Clerk to Mr. Huggins.
 Mr. Sol. Gen. Did you at any Time, during the building the Strong Room, take any Notice of it?
 Mr. Bigrave. I can't say I did.
 Mr. Sol. Gen. Was not James Barnes a Runner to look after Prisoners that had escaped?
 Mr. Bigrave. Yes.
 Mr. Sol. Gen. Were not the Warrants given to him in Mr. Huggins's Name?
 Mr. Bigrave. They generally were.
 Mr. Justice Page. What were the Dimensions of this Room?
 Mr. Bigrave. The Room is eight Foot wide, eleven Foot long, and nine Foot high.
 Mr. Att. Gen. Did not Hopkins from Time to Time acquaint Mr. Huggins with the Transactions of the Gaol?
 Mr. Bigrave. He was Clerk of the Inquiries to the Warden of the Fleet.
 Mr. Att. Gen. So he chose to be Deputy to Mr. Gybbon?
 Mr. Justice Page. My Lord, I desire the Witness may be asked if the Room was boarded or floored.
 Mr. Bigrave. I did not observe it till Mackbeadris's Time.
 Mr. Att. Gen. How were the Sides of it?
 Mr. Bigrave. Brick and Mortar.
 Mr. Att. Gen. Was you not in the Room till after Arne died?
 Mr. Bigrave. No.
 Mr. Huggins. My Lord, I shall follow the Gentleman step by step, and desire Mr. Bigrave may be asked, if the Bonds were not made up by Mr. Gybbon's Direction, and he took the Advantage of them?
 Mr. Bigrave. He always did, and I filled up several by his Order.
 Mr. Huggins. Did he receive all the Advantage and Benefit of the Office to his own Use?
 Mr. Bigrave. I took it so.
 Mr. Att. Gen. Can you take upon you to say that Mr. Huggins had no Part?
 Mr. Bigrave. I can't say.
 Mr. Huggins. Was not Gybbon appointed my Deputy?
 Mr. Bigrave. I found Mr. Gybbon Deputy, when I came there, but can't say, whether he was appointed by Writing or not.
 Mr. Huggins. Did he pay no Salary?
 Mr. Bigrave. I heard he paid 400 l. per. Ann. and I always apprehended Mr. Gybbon had the whole Account.
 Mr. Huggins. I desire he may be asked, whether the Bonds were not filled up by Mr. Gybbon?
 Mr. Bigrave. Always.
 Mr. Huggins. Returns of Writs were made in my Name; I desire he may be asked, whether he did not receive Direction from Mr. Gybbon to make Returns?
 Mr. Bigrave. I did receive Directions from him, for in 1727, I had some difficulty in making a Return of a Languidus, and then made Returns in Writing, and I received two Rule Fees, and 1s. out of each was due to the Warden, which I allowed and paid to Mr. Gybbon, and had a Receipt under his Hand for it.
 Mr. Huggins. Were Warrants in my Name for Prisoners escaping?
 Mr. Bigrave. The Warrants were generally left in the Publick Office, and signed and sealed in Blank, and that they were filled up by Mr. Gybbon, and signed and sealed by Mr. Huggins.
 Mr. Huggins. In whose Name were the Warrants returned?
 Mr. Bigrave. The Warrants were returned in the Name of Mr. Huggins, but by the Direction of Mr. Gybbon.
 Mr. Huggins. Was Barnes my Servant or Mr. Gybbon's?
 Mr. Bigrave. He was allowed to be Servant to Mr. Gybbon.
 Mr. Justice Page. I will ask a Question or two.
 Mr. Huggins. I must beg Leave, my Lord, to ask one Question more, and then will make some Observations upon the Evidence.
 Mr. Justice Page. It is not proper to break in upon the Evidence to make any Observations now.

Mr. Huggins. This is the grand Point.
 Mr. Justice Page. Whether it is or no, that will come anon. If you insist upon making your Remarks now you shall; but I think it will be to your Prejudice, for by that you will be precluded from making your Remarks upon the Cloze of the Evidence.
 Mr. Huggins. My Lord, I will then submit.
 Mr. Justice Page. If you will ask Mr. Bigrave any more Questions, you may proceed.
 Mr. Huggins. Did you hear of any Ill-usage from me to this Man (meaning Mr. Arne)?
 Mr. Bigrave. I remember Mr. Arne was there, though I knew no such Man, and heard he was in the Strong Room.
 Mr. Huggins. Did you hear of any Alteration that was made in the Strong Room while Mr. Arne was there?
 Mr. Bigrave. I never heard of any Alteration during that Time.
 Mr. Huggins. Did not Gybbon keep two distinct Offices in one and the same House?
 Mr. Bigrave. In the Year 1725 he did.
 Mr. Att. Gen. Pray distinguish nicely as to Barnes, Huggins, and Gybbon, whether Barnes was not employed as Watchman while Huggins was Principal, and Gybbon Deputy-Warden?
 Mr. Bigrave. He was.
 Mr. Att. Gen. Who put you into your Office?
 Mr. Bigrave. Mr. Huggins put me into the Place, and I made an Agreement, and was to have One Shilling paid me out of each Day-Rule.
 Mr. Baron Carter. Who made the Agreement?
 Mr. Bigrave. I made the Agreement with Mr. Huggins, and paid 700l. to Mr. Huggins and Fifty Guineas.
 Mr. Baron Carter. Who put Mr. Barnes in?—Mr. Bigrave. Mr. Gybbon.
 Mr. Baron Carter. How do you know?—Mr. Bigrave. I heard so, Call Richard Bishop.
 Mr. Sol. Gen. What are you?
 Mr. Bishop. I was Tipstaff to Mr. Huggins, presently after Huggins came to his Office, and paid him 200l. for it.
 Mr. Sol. Gen. Who was Deputy then?
 Mr. Bishop. There was no Deputy-Warden, only Mr. Dickson, Clerk of the Papers.
 Mr. Sol. Gen. When did Gybbon come there?
 Mr. Bishop. In the Year 1724.
 Mr. Sol. Gen. What time did Arne become a Prisoner?
 Mr. Bishop. In 1724 or 1725, I brought him down from the Judges Chambers, and put him at the Vine as usual.
 Mr. Sol. Gen. Why did you not bring him into the Prison?
 Mr. Bishop. Because he thought to give Security.
 Mr. Sol. Gen. Was not that a Spunging-house?
 Mr. Bishop. Yes.
 Mr. Sol. Gen. How long did he continue there?
 Mr. Bishop. About two Months.
 Mr. Sol. Gen. Where did he lie, when he went into the Gaol?
 Mr. Bishop. When he went into the Gaol, I did not trouble myself about it.
 Mr. Sol. Gen. Do you remember the building the Strong Room?
 Mr. Bishop. I do remember its being built in 1725.
 Mr. Sol. Gen. What Sort of a Place is it?
 Mr. Bishop. I have seen the Outside, but never saw the Inside; I believe it is built over the Common-Sewer, and but a little Way from the Dunghill; the Ashes and Dirt of the House is flung down there.
 Mr. Sol. Gen. Did you see Mr. Arne there?
 Mr. Bishop. I saw him once in the Long Room out of his Cloaths, before he was brought into the Strong Room, and I complained to Mr. Gybbon, and said he ought to be sent to Bethlem, but he put him in the Strong Room.
 Mr. Sol. Gen. Can you tell of any Complaints made about Arne's being put there?
 Mr. Bishop. I did apply to Mr. Gybbon, and said it was better to keep him in his own Room, for if a Wife Man was put there it would make him mad; and it would have made me mad if I had been put there myself; and I heard Mr. Gybbon speak to Mr. Hopkins to acquaint Mr. Huggins, that as Mr. Taylor was one of the Governors of Bethlem, and Mr. Huggins's Friend and Acquaintance, he might easily get him in there.
 Mr. Huggins. It was no Part of the Office of Warden of the Fleet; but I might, by a friendly Office, use my Interest with Mr. Taylor, and that would shew me more a humane Man, than one guilty of Cruelty.
 Mr. Sol. Gen. Did you see Mr. Huggins in the Gaol, during the Time Mr. Arne was in the Strong Room?
 Mr. Bishop. I saw Mr. Huggins there several Times, but can't say whether then or not when Mr. Arne was in the Strong Room.
 Mr. Sol. Gen. Was he any way abusive?
 Mr. Bishop. I never heard that Arne was any way abusive, or needed any such Restraint.
 Mr. Sol. Gen. What was James Barnes?
 Mr. Bishop. He was to take up People that the Warden directed him to take up, and acted as Watchman in the Gaol, and was Servant under the Warden.
 Mr. Sol. Gen. What time was Arne put in the Strong Room?
 Mr. Bishop. He came into the Prison before the Strong Room was built.
 Mr. Sol. Gen. Do you remember when it was built?
 Mr. Bishop. It was built in 1725, I believe at the latter Part of the Summer Season.
 Mr. Sol. Gen. Do you remember the Time while Arne was there?
 Mr. Bishop. I do.
 Mr. Sol. Gen. Was there any Thing of Consequence done in the Gaol, without the Direction of Mr. Huggins?
 Mr. Bishop. Nothing of Consequence was done without his Direction; but the common Business of the Gaol was done by Mr. Gybbon's Direction.
 Mr. Sol. Gen. Did you ever speak to Mr. Huggins in relation to Arne's Confinement?
 Mr. Bishop. I believe I might speak to Mr. Gybbon, and I believe I might speak to Mr. Huggins, for I frequently did speak to him about Business.
 Mr. Sol. Gen. What Condition was Mr. Arne in, when brought to the Fleet?
 Mr. Bishop. I think he was in his Senses, he was inoffensive, and I think there was no Occasion to confine him; I saw him several Times walking about

about the Yard, and if he had been confined to his own Room any-body might have looked after him, even if it had been a Child.

Mr. Sol. Gen. Had he any Bed whilst in the Strong Room?

Mr. Bishop. I think he had no Bed there; it was a dark Place, I could not see into it.

Mr. Sol. Gen. Did Huggins use to come there after Gybbon was Deputy?

Mr. Bishop. I saw Mr. Huggins there several times after Mr. Gybbon was Deputy-Warden, and Huggins used to give Directions, during the Time Gybbon was his Deputy, and Hopkins used to bring Orders to Mr. Gybbon from Mr. Huggins.

Mr. Sol. Gen. In what condition of Health was Mr. Arne when he was brought in?

Mr. Bishop. He was in a good Condition of Health, and in his Senses; and I believe, being put in the Strong Room in the Fleet, would have killed any-body, and that that forwarded Arne's Death, and he would not have died so soon if he had not been there.

Mr. Huggins. When you spoke to Mr. Gybbon to apply to me to make Interest to the Governor of *Bathlem*, whether it was Quatenus-Warden, or only as I was supposed to have Acquaintance or Interest?

Mr. Bishop. It was to apply to you as Warden.

Mr. Huggins. Was there not Women Prisoners, and Men's Wives in the Gaol?

Mr. Bishop. Yes. Mr. Huggins. My Lord, It was very unfit for a Man to go naked about where there were Women, and it was fit he should be confined some where. Whose Servant was *James Barnes*?

Mr. Bishop. Mr. Gybbon's.

Mr. Justice Page. At the Time, when he run about naked, was there no other Room that he could have been put in?

Mr. Bishop. There certainly were other Places where he might have been put.

Mr. Justice Page. How often have you seen him naked?

Mr. Bishop. I saw him naked but once.

Mr. Baron Carter. You said Gybbon gave some Directions; and Huggins gave some Directions; now during the Time that Gybbon acted, did the Prisoner, Mr. Huggins, give any Directions as to the moving of Prisoners?

Mr. Bishop. My Lord, I never meddled with what was done in the Inside of the Prison, so can't inform you.

Call Mr. John Cotton.

Mr. Att. Gen. What Officer are you belonging to the Fleet?

Mr. Cotton. Clerk of the Papers.

Mr. Att. Gen. Pray see what Time Arne was committed?

Mr. Cotton. He was committed the 12th of May, 1725, at the Suit of *John Martin* and others upon *Mesne Process*.

Mr. Huggins. I desire he may see, when *Barnes* became a Prisoner?

Mr. Cotton. In *Hillary*, 1724.

Mr. Att. Gen. Is not *Barnes* still a Prisoner, and what is become of him?

Mr. Cotton. He was a Prisoner, and had the Liberty of the Gate; and when the Order of the House of Commons came for taking him into Custody, he ran away, and *Corbet* has endeavoured to find him out, but could not.

Mr. Att. Gen. Was Arne charged in Execution?

Mr. Cotton. No, he was not.

Call Mr. Thomas Farrington.

Mr. Att. Gen. Did you know *Edward Arne*?

Mr. Farrington. I did, and the first Time, that he came into the Prison, it was between the 20th and 28th of June, 1725. He was some time at the *Vins* before.

Mr. Att. Gen. What State of Health was he in?

Mr. Farrington. When he came into the Fleet Prison he was in a good State of Health, and free from any Sort of Deliriousness, and I never saw him do any Thing amiss to Man, Woman, or Child.

Mr. Att. Gen. Do you remember his being confined in the Strong Room?

Mr. Farrington. I do remember his being confined in September, and that he died in October.

Mr. Att. Gen. When was the first Time you knew of his Confinement?

Mr. Farrington. The first time I ever heard of his being confined, I heard he was carried into the Strong Room by *Barnes*, by the Directions of *Gybbon*, Deputy-Warden to the Prisoner at the Bar, and he had lain before that in Number VII. with *Robert Shaw*, and upon some Difference, being turned out of that Room, he then lay in the Common-Hall, upon a Bed of his own, which he laid upon Part of a broken Table-Bedstead.

Mr. Att. Gen. When was the first Time you saw Arne in the Strong Room?

Mr. Farrington. I saw him the very Day he was put in.

Mr. Att. Gen. What Sort of a Place is it?

Mr. Farrington. It is a Room arched over like a Vault, and had been new erected about six Weeks, and the Walls were very damp and wet, you might strike off the Drops with your Hand like the Dew on the Top of the Grass in a Morning; there was no Wainscot nor Plastering, there were some Boards at the Bottom, but whether intirely boarded I can't tell. It was a Vault arched over, and when Arne was carried in not tiled; there was a Window over the Door three Quarters of a Yard long, and another on the Side of the Door seven or eight Inches long, and four wide, and no Fire-place, and the Common-Sewer runs under it.

Mr. Att. Gen. Who supply'd him with Victuals?

Mr. Farrington. I saw Mr. *Louden* give him Victuals.

Mr. Att. Gen. Who kept the Key of the Room?

Mr. Farrington. *Barnes*.

Mr. Att. Gen. From the Time that Mr. Arne came into the Prison, which was between the 20th and 28th of June, till he was put in the Strong Room, What State of Health was he in?

Mr. Farrington. He continued in a good State of Health, till a little before he was put in the Strong Room, and then he grew somewhat disordered; and from the Time he was put in the Strong Room, he altered every Day, grew hoarse, and at last could not speak, and he grew weaker and weaker every Day; about the Beginning of October lost his Voice, he grew then delirious, and ript open his Bed, and crept into the Feathers, and one Day came to the Chapel with Excrement and Feathers sticking

about him like a Magpye, being forced to ease Nature in that Place; and after that, I saw the Prisoner at the Bar, and *Hopkins*, looking into the Strong Room (the Door being open) upon Arne, and Arne was lying in the Bed ript open, and covered much about as high as his Navel.

Mr. Att. Gen. Did you hear Arne speak?

Mr. Farrington. He was very hoarse, and could not speak; but lifted up his Eyes, and looked at Mr. Huggins.

Mr. Att. Gen. Did Huggins then see him?

Mr. Farrington. Mr. Huggins must see him, if he was not blind.

Mr. Att. Gen. Did you hear them speak?

Mr. Farrington. Mr. Huggins and Hopkins whispered, but I did not hear what they said; but Huggins shook his Head, then *Barnes* shut the Door, and Huggins and Hopkins were then going away.

Mr. Att. Gen. How long after was it before Arne died?

Mr. Farrington. About fourteen Days.

Mr. Att. Gen. Did you see Arne between this Time of Huggins being there and his Death?

Mr. Farrington. I saw him the Morning before he died, and at that Time he was so weak, he could not stir any Way, but there lay gaping for Life.

Mr. Att. Gen. What was the Occasion of his lying in that languishing Condition?

Mr. Farrington. Arne's Confinement was the Occasion. I was in the Strong Room three Days myself with one *Smith*, my Legs were so swelled, that the Small was as big as my Thigh, and I never knew a Day's Sickness till that Time, and if I had continued a Week longer it would have killed me, and I was forced to buy Paper to ease Nature in, and sling it out of the Window.

Mr. Att. Gen. What is the Situation of that Room?

Mr. Farrington. Its Situation is at the furthest Part of the Prison Northward, and there is a Sewer under it, into which runs the Water from the Pump to carry off the Excrements of the Prison, which are emptied into it, and the Dunghil was then about six Yards from it.

Mr. Att. Gen. What Distance is there between the Strong Room and the Dunghil now?

Mr. Farrington. About eight Yards, and all the Nuisance of the House is flung there, and there are very bad Smells.

Mr. Att. Gen. What was the Occasion of the Death of Arne?

Mr. Farrington. I think it was the Strong Room was the Occasion of it, for it was enough to kill the strongest Body.

Mr. Att. Gen. Did Arne die there?

Mr. Farrington. He did, and Mr. Huggins always said he had Authority to put Persons in the Strong Room, or Irons, which I can prove under his Hand (and was going to pull out a Paper, which not being allowed as Evidence, he desisted). I saw Mr. Huggins a second Time walking upon the Bars with *Gybbon* and *Levinz*, between the Hours of Eleven and One, a Week or Fortnight after which he was at the Strong Room.

Mr. Att. Gen. How long did Mr. Huggins stand looking upon Mr. Arne in the Strong Room?

Mr. Farrington. About three, four, or five Minutes, and he then stood looking at the Door, as I now stand looking at the Council.

Mr. Att. Gen. Was Arne let out of the Strong Room afterwards?

Mr. Farrington. I never heard that Arne was afterwards out of the Strong Room till he died.

Mr. Huggins. Did not you make some Affidavits by way of Complaint to the Court of Common Pleas?—Mr. Farrington. Yes.

Mr. Huggins. Please, my Lord, to ask, Whether or not Mr. Arne was mentioned in that Complaint that he made?

Mr. Farrington. I never made but three Affidavits, two of which I have in my Hand in Print, but don't remember Mr. Arne's being mentioned in either of them.

Mr. Huggins. My Lord, The Affidavits tend chiefly to the sending of Coffins in.

Mr. Justice Page. If you intend to make any Use of those Affidavits, they must be produced and read.

Call Mr. Richard Fulthorpe.

Mr. Att. Gen. Did you know *Edward Arne*?

Mr. Fulthorpe. I did, I was a Prisoner then myself, he was brought in the latter End of August, and I remember him a Prisoner before he was confined in the Strong Room; I being in the Cellar, one *Barnes* and two or three other Servants of the Wardens, took him by Violence and carried him there.

Mr. Att. Gen. Had you been in his Company, and had Conversation with him?—Mr. Fulthorpe. I had several Times.

Mr. Att. Gen. Was he disorderly?

Mr. Fulthorpe. He might be a little in Liquor, but he did nothing to offend any one, and gave no Disturbance to the Company. He was carried by *Barnes* into the Strong Room.

Mr. Att. Gen. What Sort of a Place is the Strong Room?

Mr. Fulthorpe. It is a Place like a Dungeon, with a Hole on the Side big enough to put in a full Pot of Beer.

Mr. Att. Gen. How big is the Room?

Mr. Fulthorpe. The Room is about Half the Bigness of the Court where the Counsel sit, and stands near the Dunghill, and the Sewer runs under it. I saw it opened.

Mr. Att. Gen. What was over the Common Sewer?

Mr. Fulthorpe. There was Boards laid loose over.

Mr. Att. Gen. What was between the Common Sewer and the Boards?

Mr. Fulthorpe. Nothing. The Walls were green. It was not tiled in, and scarce been built above a Week, and was as wet as any Thing could be.

Mr. Att. Gen. Who put Arne into the Strong Room?

Mr. Fulthorpe. *Barnes* and some others, then Prisoners, who acted under the Warden, took him out of the Cellar, put him in there, and locked him up.

Mr. Att. Gen. Did you see Mr. Huggins during the Time Arne was there confined?

Mr. Fulthorpe. I saw Mr. Huggins twice there. I saw him at the Strong Room; he went along with *Gybbon* and *Hopkins*, and Mr. Huggins laid his Hand upon the Door, and looked in, the Door being open.

Mr. Att. Gen. How long was he there?

Mr. Fulthorpe. A Minute or two.

Mr.

Mr. Att. Gen. Who was there besides?
Mr. Fulbourn. Several belonging to the Fleet. I believe Barnes was there.

Mr. Att. Gen. How long before the Death of Arne?

Mr. Ful. About a Month.

Mr. Att. Gen. What Contition was Arne in at the Time he was put in there?—Mr. Ful. When he was put in there, he was a little out of the way when fuddled, but when sober as well as any Man; when I came to the Door, there used to be a Smell enough to strike one down.

Mr. Att. Gen. How long was Arne in the Strong Room, before you saw him there?—Mr. Ful. I went the next Morning, and at several other Times.

Mr. Att. Gen. How long was Arne there?—Mr. Ful. About six Weeks.

Mr. Att. Gen. What Condition was he in when Huggins looked upon him?—Mr. Ful. He was very ill when Huggins looked upon him.

Mr. Att. Gen. What do you think was the Occasion of his Death?

Mr. Ful. The Confinement and the Dampness of the Room gave him his Death.

Mr. Att. Gen. Had Mr. Huggins spoke to have Arne taken out?

Mr. Ful. He had not, for the Door was shut, Mr. Huggins being then present.

Mr. Att. Gen. How came you to be there?

Mr. Ful. I wanted to speak to Mr. Huggins about Business, for the Payment of the Bill drawn upon Huggins by one Lewis.

Mr. Att. Gen. How came Arne to cut his Bed in Pieces, and creep into the Feathers?

Mr. Ful. It was occasioned by his Confinement; there was no Fire there, and I believe the Confinement was the Occasion of his Death.

Mr. Huggins. How often did you know him let out?

Mr. Ful. Two or three Times.

Mr. Huggins. How long was you a Prisoner after?

Mr. Ful. I was discharged by the Act of Grace.

Mr. Att. Gen. How came you to be present at the Time Mr. Huggins looked into the Strong Room?

Mr. Ful. I waited for an Opportunity of speaking to him about a Note.

Call Mr. Tudor Smith.

Mr. Sol. Gen. Did you know Edward Arne?

Mr. Smith. I knew Mr. Arne very well, and that he was in the Fleet Prison. I remember the Time of his coming into the Fleet Prison. I was with him in the Spunging-House, and then he was carried into the Fleet Prison.

Mr. Sol. Gen. Where did he lie?

Mr. Smith. In the Room of one Robert Shaw, and continued there about a Fortnight or three Weeks; but upon some Quarrel was turned out.

Mr. Sol. Gen. When Arne came out of the Room, was not his Bed turned out with him?

Mr. Smith. It was; upon which, he then lay in the Common-Hall for some Time.

Mr. Sol. Gen. Did you see Arne carried to the Strong Room?

Mr. Smith. I was in the Cellar, when he was carried to the Strong Room; Barnes took him away.

Mr. Sol. Gen. What was Barnes?

Mr. Smith. I apprehended him to be Mr. Huggins's Servant.

Mr. Sol. Gen. What did you see done by Barnes?

Mr. Smith. I did see Barnes come, and take Arne by the Collar, and he said, He must go along with him. Arne said, Where? Barnes replied, No matter where, you must go along with me; and the next Morning I saw Arne in the Strong Room.

Mr. Sol. Gen. What State of Health was he in, when carried there?

Mr. Smith. He was in an ill State of Health.

Mr. Sol. Gen. What Sort of a Room was it?

Mr. Smith. It was newly built, very damp, and a nauseous Place. I knowing him before, was under more than common Concern, and asked Arne how he did? And he said Barnes carried him there. I asked him if he had a Bed? He said he had no Bed; but the next Day a Bed was brought to him.

Mr. Sol. Gen. How long did he lie there?

Mr. Smith. A Month or six Weeks; I visited him often.

Mr. Sol. Gen. Was there any Fire-place, any Candle, or any thing necessary to ease Nature in?

Mr. Smith. There was no Fire-Place, no Candle, nothing necessary to ease Nature in, and he was forced to do all that Nature required there; and many a Time, when I carried Drink, Meat, or Ale to him, I have been forced to hold my Nose.

Mr. Sol. Gen. What place was there to let in the Air?

Mr. Smith. There was a Place over the Door with Iron Bars, three Foot in Length, and another Hole on the Side, about a Foot and Half.

Mr. Att. Gen. Did you give any Notice to Mr. Huggins of the Condition this Man was in?

Mr. Smith. Having been a Prisoner some Time, I applied for the Benefit of the Rules, and he received Twelve Pounds for the Liberty of the Rules, and Hopkins and Gybbon insisted upon Ten Guineas more; and I wrote four Letters of the Usage I received, having paid several Sums of Money; which I sent to Mr. Huggins by Robin the Porter, and did in one of them, of the 5th of October, mention Mr. Arne's Confinement.

Mr. Baron Carter. To what Purpose was that Letter?

Mr. Smith. It partly related to my own Business, and I mentioned that the Strong Room was a Place not fit for a Christian to be in, and Mr. Arne lay in a very miserable Condition; and seeing him in such a Condition, I gave him an old Night-Gown, being in a Manner naked for want of Covering, he had ripped open his Bed, and had got into the Feathers.

Mr. Baron Carter. Did you take any Notice in the Letter of his lying in the Feathers?

Mr. Smith. I had wrote in the Letter about seeing him in the Feathers,

and directed the Letter to Mr. Huggins, at his House in St. Martin's Lane, and sent it by Robin the Porter. I spoke to Mr. Hopkins.

Mr. Justice Page. That was not material.

Mr. Baron Carter. Did you ever see Mr. Huggins in the Gaol?

Mr. Smith. I never did, but watched an Opportunity of seeing him.

Mr. Baron Carter. What Condition was Arne in?

Mr. Smith. It was a miserable Scene; and I take it that it was the Cause of his Death; and that he perished by being in such a Condition.

Mr. Hug. I desire he may be asked, my Lord, if ever I had come into the Fleet Prison, he should have seen me?—Mr. Smith. I believe I should.

Mr. Huggins. Did you ever see me there?

Mr. Smith. I saw Mr. Huggins two or three Times, at the Time the Prothonotaries were there.

Mr. Huggins. I desire he may be asked, my Lord, if he received any Answer from me to the Letter?

Mr. Smith. I received no Answer from Mr. Huggins.

Mr. Hug. Did the Letter contain other Business?—Mr. Smith. It did.

Call Robert Saintclair, the Porter.

Mr. Att. Gen. Is that the Man, Robin?—Mr. Smith. It is the Man I sent.

Mr. Att. Gen. Did you carry any Letters for Mr. Smith?

Saintclair. I carried several Letters, and brought Answers back again to them; but by reason of the Distance of the Time, cannot remember the Delivery of the Letters, but gave the Answers to Mr. Smith.

Mr. Att. Gen. Do you remember about what Time?

Saint. I cannot say about what Time.

Mr. Att. Gen. Did you carry any Letters from Mr. Smith to Mr. Huggins?

Saint. I carried several Letters to Mr. Huggins from Mr. Smith, and always returned an Answer to whom I delivered them.

Mr. Huggins. My Lord, I desire he may be asked, if he ever delivered a Letter from Mr. Smith to me?

Saint. I cannot say I ever saw Mr. Huggins at his own House.

Call Thomas Paine.

Mr. Att. Gen. Did you know Edward Arne?

Mr. Paine. I did, and remember his being put in the Fleet Prison.

Mr. Att. Gen. What State of Health was he in when he came there?

Mr. Paine. He was in a good State of Health. I was in Company with him and Captain Bateman, who was at Cards, and Arne was at Play, and did not seem to be lunatick; and one James Barnes came into the Room whilst I was in Company drinking with them, and Arne was doing nothing disorderly, and Barnes forced him into the Strong Room, and I was then by.

Mr. Att. Gen. Who was Barnes?

Mr. Paine. Barnes was a Prisoner, and was made a Watchman by Gybbon, who gave him the Liberty of the Gate.

Mr. Att. Gen. What was his Business?

Mr. Paine. He was a Watchman.

Mr. Att. Gen. Whose Servant did you look upon him to be?

Mr. Paine. I looked upon him to be a Servant of Mr. Gibbon's.

Mr. Att. Gen. Did you ever see Mr. Huggins there?

Mr. Paine. I never saw Mr. Huggins there, but when the Prothonotaries were there.

Mr. Att. Gen. What Sort of a Place was it before it was made so?

Mr. Paine. It was a Stable where the Cocks and Hens roosted.

Mr. Att. Gen. Did you see it after it was converted into a Strong Room, before Mr. Arne was put into it?

Mr. Paine. I did; and the Walls were green; there was certainly a Dampness.

Mr. Att. Gen. Was there any Sewer run under it?

Mr. Paine. I cannot say; but there was an ill Smell came both from the Necessary-House and from the Dunghill.

Mr. Att. Gen. What Condition was Arne in, after he was put in by Barnes?

Mr. Paine. Arne grew outrageous, and tore his Clothes and Bedding.

Mr. Att. Gen. What Condition of Health was Arne in?

Mr. Paine. I never talked to him, but through the Hole in the Wall.

Mr. Att. Gen. How was he before he died?

Mr. Paine. I was discharged before he died.

Mr. Att. Gen. What kind of Alteration was there in his Voice?

Mr. Paine. He was a little hoarser, and I could not see him, but only as I talked to him through the Hole.

Mr. Att. Gen. Was it a fit Place to confine a Prisoner in?

Mr. Paine. It was not a fit Place to confine Prisoners in without Danger of their Lives.

Mr. Hug. Was there a Court of Inspectors or Governors of the Fleet?

Mr. Paine. There was such.

Mr. Hug. Did they not ballot once a Month?

Mr. Paine. We once balloted for Steward and Inspector.

Mr. Hug. Did not the Court of Inspectors place Arne in the Strong Room?

Mr. Paine. The Inspectors did not so much as visit the Strong Room.

Mr. Hug. If any Complaint had been made, was not the Power vested in the Court of Inspectors to redress?

Mr. Justice Page. Mr. Huggins, that is not a proper Question.

Mr. Hug. My Lord, I desire he may be asked then how long it was before Mr. Arne died that he left the Prison?

Mr. Paine. I was discharged in September, about the 8th.

Mr. Hug. The 8th of September, my Lord, which was about six Weeks before Mr. Arne died.

Mr. Justice Page. When was the Strong Room built?

Mr. Paine. In Mr. Gybbon's Time.

Mr. Hug. My Lord, if Mr. Gybbon built the Strong Room, there is Reason to believe he paid for it.

Call John Bouch.

Mr. Att. Gen. Did you belong to the Fleet?

Mr. Bouch. I did, I was Turnkey there.

Mr. Att. Gen. When was the Strong Room built?

Mr.

* In Justice Vol

Mr. Bouch. It was built in 1725, the latter End of the Summer, by the Direction of Mr. Huggins.

Mr. Att. Gen. During the Time that you belonged there, did not Mr. Huggins come frequently?

Mr. Bouch. He came now and then, not very often.

Mr. Att. Gen. When was Arne put in the Strong Room?

Mr. Bouch. He was put in about August.

Mr. Att. Gen. Did you know him before he was carried there?

Mr. Bouch. I knew him very well, and never saw any Ill offered by him.

Mr. Att. Gen. Whose Order was he put in by?

Mr. Bouch. He was put in by the Order of Mr. Gybbon and Mr. Huggins.

Mr. Att. Gen. Did he die in that Place?

Mr. Bouch. He did.

Mr. Att. Gen. How long was he there?

Mr. Bouch. About a Month or six Weeks.

Mr. Att. Gen. Did you see Mr. Huggins there during the Time Arne was in the Strong Room?

Mr. Bouch. I cannot say I did.

Mr. Att. Gen. Who was it over-look'd the building the Strong Room?

Mr. Bouch. Mr. Huggins, when he came to the Lodge.

Mr. Att. Gen. Was he there when the Building was a-raising?

Mr. Bouch. I cannot be certain, but I remember there was a Direction of the Court of Common-Pleas for Mr. Huggins to inspect the Gaol, and that he came once a-Week after the Order from the Court of Common-Pleas.

Mr. Att. Gen. What was the Condition of the Room?

Mr. Bouch. The Room was newly built and green.

Mr. Att. Gen. Did you carry any Letter to Mr. Huggins relating to Mr. Arne?

Mr. Bouch. I did carry a Letter from a Friend of Mr. Arne's, and he was so weak then that he could not speak.

Mr. Att. Gen. Where did you carry it from?

Mr. Bouch. From the Fleet Prison.

Mr. Att. Gen. What was it about?

Mr. Bouch. It was about getting Arne his Liberty; a Gentleman gave me the Letter, and desired me to bring an Answer as to Arne's having the Liberty of the Rules; and I went myself, and saw Mr. Huggins, and gave him the Letter; he opened it, and said he would send an Answer by Mr. Hopkins.

Mr. Att. Gen. When was this?

Mr. Bouch. It was in October, about a Week before Arne died.

Mr. Att. Gen. Where did Arne die?

Mr. Bouch. He died in the Strong Room, I saw him two Days before he died; he was just as if dead then, and very weak and ill.

Mr. Att. Gen. What kind of a Place was the Strong Room?

Mr. Bouch. It was a very fickle Place, because of the Common Sewer running under it.

Mr. Att. Gen. What Message did Mr. Huggins send by Mr. Hopkins as to the Letter?

Mr. Bouch. Mr. Huggins sent Word by Daniel Hopkins, that he would inform Mr. Arne's Friend what was to be done.

Mr. Att. Gen. Who was it built the Strong Room?

Mr. Bouch. One Fry, a Bricklayer, took Directions from Mr. Huggins, at Mr. Huggins's own House, and I was present when Fry was there.

Mr. Att. Gen. Who paid for the Building?

Mr. Bouch. I believe Mr. Huggins, for Fry was a Master Bricklayer, and I saw him there about Business after the Building was finished.

Mr. Att. Gen. How came you to be there?

Mr. Bouch. I went there then to get a Place of Mr. Huggins.

Mr. Att. Gen. When was you Turnkey?

Mr. Bouch. I was not Turnkey till after Mr. Arne's Death.

Mr. Att. Gen. Did you see him in the Strong Room?

Mr. Bouch. I saw him in the Strong Room twenty Times, for I was then endeavouring to get to be Turnkey.

Mr. Att. Gen. Who had you the Place from?

Mr. Bouch. From Mr. Huggins; and during the Time I was endeavouring for it, I saw Mr. Arne in the Strong Room.

Call James Tucker.

Mr. Att. Gen. Do you know the Place that is called the Strong Room in the Fleet Prison?

Mr. Tucker. I do, and was employed by the Bricklayer and Carpenter to make the Iron-work.

Mr. Att. Gen. Who did you make out your Bill to?

Mr. Tucker. I made it out to Mr. Huggins, as Debtor.

Mr. Att. Gen. Who paid you?

Mr. Tucker. I made the Bill out in Mr. Huggins's Name, and was paid by Pindar, and a Receipt was given in full of that Bill.

Call Mrs. Eliz. Le Pointz.

Mr. Att. Gen. Did you know Edward Arne?

Mrs. Le Pointz. I did.

Mr. Att. Gen. Do you remember him a Prisoner in the Fleet, and his Confinement in the Strong Room?

Mrs. Le Pointz. I do; he had been confined two or three Days before I went to him; the first Time I saw him sitting upon a Bench, and the next Time in his Feather-bed, and he was covered therein, and his Bed lay on the Floor.

Mr. Att. Gen. What Condition of Health was he in?

Mrs. Le Pointz. I never found him any Way distempered, only disordered by the Cold and Dampness of the Place.

Mr. Att. Gen. Was not his Voice altered?

Mrs. Le Pointz. He had a shivering Hoarseness upon him.

Mr. Att. Gen. How long did he continue there?

Mrs. Le Pointz. He continued there seven Weeks, or thereabouts.

Mr. Att. Gen. What Condition was the Place in?

Mrs. Le Pointz. It was building in July, and I remember the finishing of it some Time in August.

Mr. Att. Gen. When was Mr. Arne put in?

Mrs. Le Pointz. He was put in as soon as it was finished.

Mr. Att. Gen. Do you believe that was the Occasion of his Death?

Mrs. Le Pointz. It was impossible to be otherwise; for the Building was so very green, that you might pull the Mortar from the Bricks with your Fingers, and it was impossible any body could be continued therein for seven Weeks without being killed by the Dampness of the Place; and I verily believe that Confinement was the Occasion of Arne's Death.

Mr. Att. Gen. Did you ever speak to any body about his Release?

Mrs. Le Pointz. Whilst he was in this Place, I met with Mr. Hopkins, and spoke to him to acquaint Mr. Huggins, that it was impossible but that Arne must perish, if continued in that Place; and if he did not speak to Mr. Huggins, I would send to him myself; to which Hopkins replied, he would; and afterwards I met with him, and asked him, whether he had spoke? He told me he had spoke to Mr. Huggins, who said it was no Business of his.

Mr. Justice Page. That cannot be given in Evidence, for 'tis only Hearsay.

Mrs. Le Pointz. (Standing up again) I saw Mr. Huggins upon the Bare, with one Levings, a Quaker, then a Prisoner in the House, and Mr. Gybbon, during the Time Arne was in the Strong Room.

Mr. Serj. Cheshire. Which Way did he come upon the Bare?

Mrs. Le Pointz. I cannot tell; there was then but two Ways, one by the Strong Room, and the other through the House.

Mr. Serj. Cheshire. Whereabouts is the Strong Room?

Mrs. Le Pointz. The Strong Room was built near the Bare, and joins to the End of the House; and I saw them walking together; and that he could not well come in or out without coming near the Strong Room.

Mr. Serj. Cheshire. What did you think was the Occasion of his coming there?

Mrs. Le Pointz. To take a Survey of the Walls, which were then finished, for that I saw him look up at them.

Mr. Serj. Cheshire. Did you know Mr. Huggins?

Mrs. Le Pointz. I knew him very well.

Mr. Serj. Cheshire. When was this?

Mrs. Le Pointz. I take it to be some Time in October, about fourteen Days before Arne died: It was after the Fire happened in Bell-Savage Yard. Thomas Levings was called, and being a Quaker* refused to take an Oath, and therefore could not be admitted an Evidence.

Mr. Huggins. It is a great while ago since this Matter happened; there is no Notice taken by the Course of the Evidence how this Matter has gone on, and therefore it was very difficult to answer particularly thereto; this I do solemnly affirm, That during the Time Arne was there, I never heard of his Name, that he died, or was in the Strong Room, till that I was in the Fleet to be examined. That I never was seen in the Fleet Prison while Arne was in the Strong Room; and that no one of the King's Witnesses has said, that I used any hard Words about Mr. Arne. There was a Suggestion of my getting Arne into Bethlehem, it was no Part of my Office as Warden of the Fleet, but I might by a friendly Office use my Interest with Mr. Taylor; and that would shew me more a humane Man, than one guilty of Cruelty.

That some of the Prisoners, who were Witnesses, were discharged the Prison the 7th of September, so it was not likely that they should be able to swear as to Arne's Death, who did not die till October.

As to Gybbon being Deputy, the first Evidence to be produced will be the Act for Insolvent Debtors in 1725, to prove that Gybbon carried in a Lift pursuant to that Act; and delivered it as Gaoler, and swore to it; and I must desire, that Mr. Tanner may read the Clause in that Act of Parliament, where Gaolers are directed to make out a Lift of Prisoners.

Mr. Att. Gen. If you would prove Mr. Gybbon Warden, you must prove what Consideration he gave, and what Stile he bore.

Mr. Justice Page. Did the Commissioners in that Act take notice who was Deputy-Warden or not? Let it be Deputy, or how it would, they took no Notice of that. It would be no Evidence for the King.

Mr. Huggins. It will prove that Gybbon acted.

Mr. Justice Page. We shall see that when the Act of Parliament is read, I allow Gybbon did act in Fact.

Mr. Att. Gen. If he had a Mind to prove Mr. Gybbon Deputy, he must prove it by his Deputation.

Mr. Serj. Cheshire. It is too early to offer this before the Deputation lies before us; therefore I submit it, if it is not too soon to offer this in Evidence.

Mr. Justice Page. I cannot direct the Prisoner how he should proceed; whether this may be of Advantage to him I cannot find. If he be charged from a particular Fact that did arise by Gybbon, why should not Huggins, by the same Rule of Reason, justify himself by any other Act done by Gybbon?

Vide Act.] Then the Clause in the Act of Insolvency in the Year 1725 was ordered to be read.

Mr. Justice Page. I do not see, upon reading of the Act, it affects any Thing that has been said. I take it that the Officer acts, and makes Returns, and the Law does not say whether it is the Warden or the Deputy-Warden. Mr. Huggins, I dare to say you yourself will own it; and the Use that you would make of it is to shew, that he acted as Warden.

Mr. Huggins. Fulthorpe was discharged the 7th of September. I desire Mr. Tanner may produce the Lift, and that it may be read to shew that.

Mr. Justice Page. If Fulthorpe's Evidence was laid aside, yet there are Witnesses enough to prove, that they saw you there: However, I must take notice of what Fulthorpe said; he said, that Arne was a peaceable Man, and then gave a Description of the Room; and said, that the Floor was covered with a few Boards; and that he saw the Prisoner twice in the Fleet, and that he was there at one Time, and looked in at the Door, and then the Door was shut, and he went away. This Defence seems but trifling.

* In the Case of Bambridge (postea) the Appellant's Counsel called a Quaker, and insisted that this is a Civil Suit, in which he might be a Witness. But the Chief Justice said, it was to this Purpose a Criminal Proceeding, and therefore he could not be a Witness. *Strange's Reports*, Vol. II. p. 856.

Mr. Huggins. I intended it as to the Credit of the Witness.
Mr. Just. Page. The Man has sworn honestly, and if it was struck out of the Evidence it would not signify; and I must a little assist you, as no Counsel is allowed but in Cases of High-Treason. You was going to shew the Act of the Deputy, without shewing what Authority was given to the Deputy. If you have any Instrument or Agreement by which you constituted Gybbon Deputy, you must produce it.

Mr. Hugg. My Lord, I cannot produce it, because it is in the Hands of the Widow Gybbon, or some other Person; and we are at this Time in Equity.

Mr. Just. Page. Affairs of this Nature have always been done by Indenture—as the Sheriffs of London to their Under-Sheriff—and then you must have a Counterpart.

Mr. Hugg. My Lord, I never made any such Indenture; I desire Mr. Tanner may be asked, who appeared as Warden upon the Insolvent Act?

Mr. Tanner. Mr. Gybbon, my Lord.

Mr. Just. Page. Do you believe he was Deputy or not?

Mr. Tanner. I looked upon Gybbon as a proper Officer.

Mr. Just. Page. Who do you think was Warden?

Mr. Tanner. I cannot say who was Warden.

Mr. Just. Page. I thought you would not have equivocated. You are a good Officer, but I shall never examine you as a Witness.

Call John Jeffreys, Keeper of the Compter. (Who was sworn.)

Mr. Hugg. Mr. Jeffreys, pray acquaint the Court what Agreement was made between Mr. Gybbon and me.

Mr. Jeff. There was a Writing made, and I was a Witness to it, but did not know what it was.

Mr. Just. Page. Mr. Huggins, the Questions that you ask, you must first explain to the Court.

Mr. Hugg. I desire Mr. Jeffreys may be asked, if he was present at the Agreement?—Mr. Jeffreys. I was present.

Mr. Hugg. Was there any Writing signed?

Mr. Just. Page. You must take care to produce the Writings if you examine to them.

Mr. Hugg. I have sent a Man for the Receipt of 1000l.

Mr. Just. Page. I cannot comply for the same Title made under your Grant to be given in Evidence for the Grantor: It was a Title from you, and how you will do to prove this by Word of Mouth, I cannot see how it can be done; for when a Treaty comes into Articles and Writing, the Treaty by Word of Mouth is at an End without the Writing is produced.

Mr. Hugg. I was going to explain myself, and was over-ruled.

Mr. Just. Page. When once Articles are come to be a Conveyance, except it is to explain that Conveyance, and except it is to discover some Fraud even in the Conveyance when given, it cannot be spoke to.

Mr. Baron Carter being gone out of Court, now returned, and Mr. Justice Page took notice to him of what had passed in his Absence.

Mr. Huggins's Aim is to shew, that Mr. Gybbon was sole, intire, acting Warden; and that no Act of Gybbon's should affect him; and had the late Act of Insolvency read, and thought to have read the Schedule, but that could not be read. Mr. Huggins asked who brought in that Schedule, and asked Mr. Tanner, whether Mr. Gybbon brought in that Return as Deputy or not; who said that he did not know who was Warden, but that Gybbon was the proper Officer: Now Huggins carrying this Matter further, would have Gybbon appear to be his Deputy, and has now called Jeffreys to prove that Deputation. Jeffreys says, that it was in Writing, and I could not allow Jeffreys to give in Evidence what was in Writing. Huggins said in Answer, that there was no Counterpart, and that Gybbon's Widow had such Appointment. I submit it if it was not his Act and Deed, if Mr. Gybbon allowed of it.

Mr. Hugg. My Lord, it is only a Receipt.

Mr. Jeffreys. My Lord, it was a Receipt for 1000l. and no Agreement.

Mr. Hugg. Mr. Gybbon agreed with me for 500l. per Annum; and liking the Bargain made a Deposit of 1000l. and this was all the Writing between us, and in it declared that he was to pay 500l. per Annum, on Condition of having the Rents of the House and Shops in Westminster-Hall, and required a Deposit of 1000l. and a Parole of three Years may amount to a Lease or Demise.

Mr. Baron Carter. At six Months End Gybbon desired to have it renewed, and came to the subsequent Agreement for 900l. per Annum for three Years. If the Court could see that Agreement, whether it do not amount to a Lease, there may be a Demise in it, but how far the Court will lay their Commands to produce it, we shall not now determine; it would be very hard to have it out of his Power, and not to admit him to give Evidence.

Mr. Att. Gen. The Law requires the best Evidence that is to be given; supposing that that Writing was lost, he might be admitted to give Evidence that it was lost. If it was in the Hands of any Officer of the Crown, and they wanted to be admitted to give Evidence as to the Contents, whether upon giving Evidence, that the Thing was in Being, and in the Hands of a third Person, they should give Evidence Parole as to that.

Mr. Just. Page. Suppose a Man receive Money by false Tokens, but by some Accident it is got into other Hands, and he uses all the Care and Art he can to get it, and proves that he cannot come at it, it would be hard to convict a Man, if he cannot come at the Writing. It is the same in Cases of Life and Death, by Forgery and false Deeds.

Mr. Bar. Carter. I agree your Notion is right in Cases of Civil Actions, for if he can't give such Evidence as the Law gives against it, he has a Remedy at Equity; but in this Case, where a Man stands indicted for Murder, where can he have his Remedy? I am sure we should be guilty of Murder, if we insisted on it; Huggins ought to give an Account, that he can't come at such Agreement.

Mr. Hugg. Mr. Jeffreys says, that he applied to Mrs. Gybbon, and Mrs. Gybbon told him, that it was in the Hands of one Wilson, her Clerk in Court, and he could not tell whose Hands it was in.

Mr. Jeffreys. I have a Copy of that Writing, which has been in my Hands long before any Contest happened to Mr. Huggins, for it was written at the same Time the Receipt was given.

Mr. Justice Page. Is it a true Copy?

Mr. Jeff. I believe it to be a true Copy, and that there has been no Alteration made in it.

The Copy of the Writing read — And it appeared to be witnessed by Mr. Jeffreys, the 26th of June 1723.

Mr. Hugg. Have you had any Conversation with Mrs. Gybbon lately?

Mr. Jeff. Mrs. Gybbon came to me about fourteen Days ago.

Mr. Hugg. Was there any Talk of any such Thing as a Lease or Articles of Agreement?

Mr. Jeff. There was no such Word mentioned as a Lease or Articles of Agreement.

Mr. Hugg. Do you know of any Articles of Agreement?

Mr. Jeff. I don't believe there was any, for I was very conversant with Mr. Gybbon, but never heard him ask after them.

Mr. Hugg. How long did Gybbon continue in that Office?

Mr. Jeff. Three Years.

Mr. Att. Gen. What do you mean by that Office; did he continue to act for those three Years?

Mr. Jeff. He did, and one Year longer, which I apply'd to Mr. Huggins for him to do.

Mr. Just. Page. You was present at the settling of the Account between Mr. Huggins and Mr. Gybbon: at the Bottom of the Account there are some Items that have no Sums to them; pray how did that happen?

Mr. Jeff. My Lord, it was not settled.

Mr. Just. Page. Was any Thing mentioned, who was to be at the Charge of Repairs during the four Years?

Mr. Jeff. Mr. Huggins made a Memorandum at the Bottom of the Paper.

Mr. Hugg. It was settled at the End of four Years.

Mr. Just. Page. The Repairs of the Prison was left a Blank.

Mr. Hugg. I answer to that, my Lord, that it was settled at the End of four Years; Mr. Jeffreys was then present. Your Lordship seems to take it for a Lease of three Years.

Mr. Just. Page. It is neither the one, nor the other, either Lease or Agreement.

Mr. Hugg. My Lord, Jeffreys said there was no other Agreement.

Call George Welland. (Who was sworn.)

Mr. Hugg. When did Gybbon enter upon his Office?

Mr. George Welland. Mr. Gybbon entered at Christmas, 1722, and I was concerned for Mr. Gybbon before, and by his Direction acted, and he always paid me my Fees, and I never received any Thing from Mr. Huggins.

Mr. Hugg. Who bore all Expences relating to the Gaol?

Mr. Well. Mr. Gybbon.

Mr. Huggins. How long did he act?

Mr. Well. Mr. Gybbon was in four Years and a Half.

Mr. Hugg. What do you know about Arne?

Mr. Well. I was there then, and Arne was committed about the Middle of May, and at the latter End of September, Hopkins was sent into the Country to Shropshire, and I acted till October, and I was requested by Mr. Gybbon to go to the Company of Upholders relating to Mr. Arne. He was brought in May, and put at the Vine, and made his Escape, and then grew disordered in his Senses. Some of the Prisoners come and brought a Bed of Mr. Howard's, and I saw him stark naked; and being desired, he was put in the Strong Room at the Request of the Prisoners.

Mr. Hugg. What was done upon your Application to the Company of Upholders?—Mr. Well. They took Care of him.

The Witnesses had a Book in his Hand, which he called a Check-Book.

Mr. Hugg. Pray give an Account, whether I gave any Direction relating to the Prisoners?

Mr. Well. I never saw Mr. Huggins there but twice, and that was, when the Prothonotaries were there.

Mr. Hugg. When had you that Book delivered to you?

Mr. Well. Two Days before Mr. Fitch died; the Book was brought into my Hands, which I continued to act in till Mr. Bigrave came in.

Mr. Hugg. By the Writing in that Book, I can prove Hopkins out of Town. When was Hopkins out of Town?

Mr. Just. Page. I will call Fulthorpe to clear up this Matter.

Fulthorpe was called again.

Mr. Just. Page. When was it you saw Mr. Huggins at the Fleet Prison?

Mr. Fulthorpe. It was some time before I was discharged. It was about a Month before Mr. Arne died, and I likewise saw Mr. Farrington at the same Time. Mr. Hopkins was there, and then came in with Huggins.

Mr. Just. Page. How often did you see Mr. Huggins there?

Mr. Fulth. I saw him twice at the Prison, but once at the Strong Room.

Mr. Just. Page. What Time of the Day was it you saw Mr. Huggins there?

Mr. Fulthorpe. It was between Eleven and Twelve, and there were there Mr. Huggins, Mr. Hopkins, and Barnes; and I saw Mr. Huggins walking upon the Bars, when Levings the Quaker was there, and I believe Mr. Gybbon with them.

Thomas Farrington was again called.

Mr. Just. Page. Who was at the Strong Room when you saw Huggins there?

Mr. Farrington. There were Mr. Huggins, Hopkins, and Barnes there.

Mr. Hugg. I beg Leave to observe, that Fulthorpe was discharged on the 7th of September, and whether I may not be allowed to examine Welland again, to know if Mr. Gybbon did not give all Orders, and to prove that the constant Usage was not to have the Coroner sit upon Bodies in Mesne Process.

Mr. Just. Page. You may ask what Questions you think proper, for I will stay here till To-morrow Morning, to give you an Opportunity of going on with your Defence in your own way.

Mr. Hugg. I desire then, my Lord, he may be asked, whether Gybbon did not give all Orders relating to the Prisoners?

Mr. Well. He did.

Mr. Hugg. Whether the Coroner was called in to sit upon any Bodies, but in Execution?

Mr. Well. We never had the Coroner, but upon Execution.

Mr. Hugg. Whose Servant was Barnes?

Mr.

Mr. Welland. Mr. Gibbon's Servant, I saw Gibbon pay him Money.
 Mr. Huggins. Did you ever see me and Barnes together?
 Mr. Wel. I don't believe I ever did.
 Mr. Hug. At whose Request was Arne put in the Strong Room?
 Mr. Wel. At the Request of the Prisoners.
 Mr. Justice Page. Name at whose Request he was put in.
 Mr. Wel. I can't tell.
 Mr. Justice Page. How came you to know it?
 Mr. Wel. I was in the Lodge.
 Mr. Justice Page. Was you then present?—Mr. Wel. I was.
 Mr. Justice Page. Can't you name one of them?
 Mr. Wel. No, none of them are now in Gaol.
 Mr. Justice Page. Was not Farrington then a Prisoner?
 Mr. Wel. He was.
 Mr. Justice Page. How long is it since you was concerned in the Prison?
 Mr. Wel. In Michaelmas 1722, and I know nothing of it before.
 Mr. Justice Page. Was there not a Benefit to the Warden for Day-Rules?—Mr. Wel. Yes.
 Mr. Justice Page. Who was the Money accounted for?
 Mr. Wel. It was accounted for to Bishop. The Clerk of the Papers always received the Money, and I have been there several Times at the Payment of Money.
 Mr. Lee. Was it not usual to give Money for the Liberty of the Rules?
 Mr. Wel. Mr. Gibbon made it a Custom to take Two Guineas for every Hundred Pounds, for the Liberty.
 Mr. Lee. Do you know of any Money paid to Mr. Huggins?
 Mr. Wel. I don't know any was.
 Mr. Lee. Was you there when the Strong Room was built?
 Mr. Wel. I was, and Arne was the first Person that was put in.
 Mr. Lee. I ask you, whether it was all finished?
 Mr. Wel. I believe it was floored.
 Mr. Lee. Was it not an arched Vault?
 Mr. Wel. It was a Kind of a Vault, and there was a Bench in it.
 Mr. Lee. Where was it situated?
 Mr. Wel. It was about three Yards from the Dunghill.
 Mr. Lee. Had Arne a Bed there?
 Mr. Wel. He had a Bed in it.
 Mr. Lee. Was he not in a naked Condition?
 Mr. Wel. He was in a naked Condition, which proceeded from his Madnefs.
 Mr. Lee. Was that a Place fit for a Man in his Condition to be kept in?
 Mr. Wel. It was.
 Mr. Lee. Is there any Place so bad in the Prison?
 Mr. Wel. There was a worse Place where I lay, called Julius Caesar's Ward.
 Mr. Lee. How could it be worse?
 Mr. Wel. Because many People lay in it.
 Mr. Lee. Whether Writs were not directed *Deputato*, or *Locum Tenenti*?
 Mr. Wel. They were.
 Mr. Lee. Who were the Writs returned by?
 Mr. Wel. By Mr. Huggins.

Call John Browning. (*Who was sworn.*)

Mr. Huggins. How long have you known the Fleet Prison?
 John Browning. I have been a Prisoner there above twenty Years.
 Mr. Huggins. When any body died in the Fleet, except in Execution, was there any Coroner's Inquest?
 Mr. Browning. Never, but when in Execution. Mr. Dickson, who was Clerk of the Papers before Huggins came, told me so.
 Mr. Huggins. My Lord, the Prison being very full, it being against the Time of an Infolvency, the Prisoners grew very riotous, and Mr. Gibbon could not come in, so that there was no Place but the Strong Room to put Arne in.

Call Mr. Samuel Green.

Mr. Huggins. What was the State of the Prison, and the Condition of it in 1725?
 Mr. Green. I was had in in February 1724, and came out the latter End of June 1725, and I apply'd to Mr. Gibbon in February 1724 for a Room; Mr. Gibbon said he could not help me to one; then I apply'd to the Prisoners, and gave a Guinea and a Half to them for one.
 Mr. Huggins. Was there a Court of Inspectors?
 Mr. Green. Yes, and I was one of them, and every Prisoner that came in paid 5s. in order to apply to the Court of Common Pleas to regulate the Fees.
 Mr. Huggins. You did place People in Rooms. Did you punish any Prisoners?—Mr. Green. I can't say we did.
 Mr. Huggins. Did the Warden dare to come in?
 Mr. Green. He did not.
 Mr. Justice Page. Could the Prisoners set open the Gates?
 Mr. Green. They could not set open the Gates, because there was a Turnkey.
 Mr. Huggins. Did Mr. Gibbon offer to come in?
 Mr. Green. He d.d.

Call Mr. William Howard.

Mr. Huggins. Did you know Edward Arne?
 Mr. Howard. Mr. Arne came in about three Weeks before I went out, and he was in the same Room where I was, and wanting some Goods, Arne offered me much more than I thought they were worth; for which Reason I did not apprehend him to be in his right Understanding.
 Mr. Huggins. Did you desire him to bring some Friend?
 Mr. Howard. I think I might desire him to bring some Friend.
 Mr. Huggins. How much might he offer?
 Mr. Howard. He offered me Nine Guineas, but I took Three, when I sold them to his Friends.

Call Mr. Daniel Woodcock.

Mr. Huggins. What do you know of Edward Arne?
 Mr. Woodcock. He came into the Fleet Prison in 1725, and I was a Prisoner a Year and a Half before that, in July 1723, and continued there till September 1725; and I remember Arne's being there some time before I was discharged.
 Mr. Huggins. Was you there when he was carried into the Strong Room?
 Mr. Woodcock. I was.
 Mr. Huggins. Was you in the Cellar, when he was taken from thence?

Mr. Woodcock. I was upon the Stairs, when he was carried into the Strong Room: He lay up and down in the Goal in the Common-Hall and Cellar, till he was carried into the Strong Room, and he was in it till I came away.

Mr. Huggins. Was you ever in the Strong Room?
 Mr. Woodcock. I was.
 Mr. Huggins. Do you remember the building of it?
 Mr. Woodcock. I do.
 Mr. Huggins. How near to the Laystall and Dunghill is it?
 Mr. Woodcock. Within eight or ten Yards.
 Mr. Huggins. Are there any Lights?
 Mr. Woodcock. There is a Place to put in Drink at, on the Side of the Door.
 Mr. Huggins. What is the Wall made of?
 Mr. Woodcock. Lime and Brick, as other Walls are.
 Mr. Huggins. How long was it finished before Arne was carried in?
 Mr. Woodcock. I can't be certain.
 Mr. Huggins. Did you see Arne let out at any time?
 Mr. Woodcock. I saw him let out, and he run about stark Naked.
 Mr. Huggins. Did you ever see him naked before he was put in there?
 Mr. Woodcock. No.
 Mr. Huggins. Did you ever see me at the Prison?
 Mr. Woodcock. Yes, when the Prothonotaries were there.
 Mr. Huggins. Did you think you should have known, when I came there?
 Mr. Woodcock. It was as well known, as if the King had made a publick Entry.
 Mr. Huggins. Was it not for the Prisoners Security to have Arne put there?—Mr. Woodcock. I think it was.
 Mr. Huggins. Who sold Arne his Goods?
 Mr. Woodcock. Captain Howard sold Arne his Goods.
 Mr. Huggins. My Lord, I must observe that the Court of Inspectors punished Prisoners. Did not the Inspectors punish their own Prisoners?
 Mr. Woodcock. Yes, they put them in the Stocks.
 Mr. Huggins. Could Mr. Gibbon come into the Prison?
 Mr. Woodcock. He could not.
 Mr. Justice Page. Why then did you not all go out of Prison?
 Mr. Huggins. Did not the Court of Inspectors dispose of Rooms?
 Mr. Woodcock. I can't say.
 Mr. Huggins. Did you see Barnes carry Arne to the Strong Room?
 Mr. Woodcock. I saw Arne as he was going to the Strong Room with Barnes; and there was a Complaint made to the Court of Inspectors; but not about this Man, but about others.
 Mr. Huggins. Was he a quiet Man?
 Mr. Woodcock. I saw no other, than his running about like a Madman.
 Mr. Huggins. How many Days was Arne in the Strong Room before you was let out of Prison?
 Mr. Woodcock. I was let out about the 4th or 5th of September, there was an Application made to the Court of Common Pleas, and I made an Affidavit against Barnes.

Call Mr. Samuel Humphrys.

Mr. Huggins. Was not you Steward of the Court of Inspectors?
 Mr. Humphrys. I was Steward for some considerable Time.
 Mr. Huggins. When was the Court first erected, and upon what Occasion?
 Mr. Baron Carter. Mr. Huggins, how can you apply this, I can't apprehend. Mr. Humphrys, what do you know of Arne or the Strong Room?
 Mr. Humphrys. Mr. Arne was a Prisoner there, when I was there first.
 Mr. Baron Carter. Where was he when he came first?
 Mr. Humphrys. A Person of his Name came there, whom I knew, and I went with him to see Mr. Arne, and he lived intemperately. This Gentleman, after he had been there, had supplied him with Money, which he spent in Liquors; and after some time he was much altered in his way, and I saw him one Day walking with his Hat and Wig off in the Rain, and took Notice of it; and after that he proceeded to further Extremities, and took up a Brick-bat, and throwed it upon the Bars.
 Mr. Justice Page. Do you believe he had any Design against any body?
 Mr. Humphrys. I believe he had not.
 Mr. Justice Page. Did he ever hit any body?
 Mr. Humphrys. I do not know that he did, but we had apprehensions, that he might, after being in that Condition; he was an Object of great Compassion.
 Mr. Huggins. What was his Behaviour?
 Mr. Humphrys. His Behaviour was such, that he was not fit for a Bed-fellow.
 Mr. Huggins. Do you know any Thing of his being put into the Strong Room?
 Mr. Humphrys. Before he was put into that Place I was discharged.
 Mr. Huggins. Do you remember that you saw me there?
 Mr. Humphrys. I don't remember I saw you there, except when the Prothonotaries were there.
 Mr. Huggins. Was that Room built when you was there?
 Mr. Humphrys. According to the best of my Memory, that Room was built while I was there.
 Mr. Huggins. Was it not a Stable before?
 Mr. Humphrys. There was a Stable, but I don't apprehend it was built on that Spot.
 Mr. Huggins. Was you present at any Time, when the Prisoners desired to have Arne put into the Strong Room?
 Mr. Humphrys. I do not know it; it was after that I came away.
 Mr. Huggins. Did Gibbon dare to come into the Prison without Leave of the Inspectors?
 Mr. Humphrys. Mr. Gibbon was very unwilling to come in, and I believe the Reason was, he could not come in with any Safety. Mr. Gibbon sent one Day to some Gentlemen of the Master Side to know, if he might venture with Safety to the Fleet Prison, for that he had a mind to see the Repairs; upon which Answer was returned, that he might come in; and Mr. Gibbon came in, and I went about with him.
 Mr. Huggins. I desire he may be asked, whether, if any Man was injured, would they not have complained of it?
 Mr. Humphrys. I was there when Arne came in, and discharged before he was put in the Strong Room.

Call

Call Mr. Thomas Dean.

Mr. Huggins. Did you see me in the Prison during the Time Mr. Arne was there?

Mr. Dean. During the Time I was there, which was till the 12th or 14th of September, you was not there; I was discharged on the 7th, but stay'd a Week after.

Mr. Huggins. Was it the Opinion of the Prisoners that Mr. Arne should be confined?

Mr. Dean. It was.

Mr. Huggins. Who provided him Victuals?

Mr. Dean. One Mr. Loudon found him in Meat and Drink, and he was allowed for it. I have seen Mr. Loudon in the Room.

Mr. Huggins. Who kept the Key of the Strong Room?

Mr. Dean. I don't know who kept the Key.

Mr. Huggins. Did you see Arne there?

Mr. Dean. I have seen Arne in the Strong Room.

Mr. Huggins. When was he carried there?

Mr. Dean. He was committed to the Strong Room in July, or the Beginning of August.

Mr. Huggins. Did you see me with Gybbon?

Mr. Dean. I went round the Bare when Mr. Gybbon was in the Prison, and was upon the Bare with him.

Mr. Att. Gen. Did not Gybbon's Servants come in?

Mr. Dean. They did, and Gybbon came to Chapel.

Mr. Att. Gen. Whereabouts is the Chapel?

Mr. Dean. The Chapel is within the Walls of the Prison.

Mr. Att. Gen. If Mr. Gybbon dare to venture to come to Chapel; how came he not to come at other Times?

Mr. Huggins. Please to ask, whether, if between the Hours of Ten and Twelve I had been there, I must not have been seen?

Mr. Dean. Captain Pattison and others went round the Prison with Mr. Gybbon.

Mr. Huggins. The Question is, If I had been there, whether you would not have seen me?

Mr. Dean. I should.

Mr. Huggins. Had not Arne a broken Constitution?

Mr. Baron Carter. Mr. Huggins, I cannot admit you to go into that Evidence; I don't know what Advantage it will be to you, you are going to prejudice yourself; for if he had a broken Constitution, there was less Reason to put him into the Strong Room.

Call Mr. John Loudon.

Mr. Huggins. My Lord, be pleased to ask Mr. Loudon, whether he had the Care and Custody of Mr. Arne?

Mr. Justice Page. Answer that Question.

Mr. Loudon. I knew Mr. Arne before he came to Prison, I had some Acquaintance with him; he came into Prison about the latter End of June, and some Gentlemen spoke to me to have Mr. Arne table with me, and he allowed me 5s. per Week; but the Gentlemen grew uneasy at his Dining with them, because that he was something out of Order; and some Time after growing worse, the Gentleman with whom he lay quarrelled with him, and I could not afford to board him any longer, he not being able to pay me; and after he was turned from my Table, some of the Upholders Company came and desired me to dine him as usual; and every Morning I carried him a Breakfast, and a Plate of hot Victuals and Drink, and I had the Key of the Room in two or three Days after he was put in.

Mr. Justice Page. How came you by the Key?

Mr. Loudon. Sometimes it was Half an Hour, sometimes an Hour before I could find the Officer, and I said, if they would not let me have the Key, I would not furnish him with Victuals.

Mr. Justice Page. You had the Liberty of going in, could you let him out?

Mr. Loudon. Though I had the Key, and had the Liberty of going in, I had no Power to let him out. He was never out, from the Time he was put in, but once, and that was when some Servants of the Upholders Company came to see him, and then Barnes locked him up again; and when he was out he was stark naked, and run into the Chapel with the Feathers all about him, and I went to take him to carry him in again, but he was very surdy, and would not let me.

Mr. Huggins. In all the Time you had the Key, and the Custody of him, which was from the third Day after his going into the Room, till three Days of his coming out, did you see me in the Prison?

Mr. Loudon. I did not.

Mr. Huggins. Do you think you should, if I had come?

Mr. Loudon. Yes.

Mr. Huggins. If I had been in the House, should you have seen, or heard of it?—Mr. Loudon. I should.

Mr. Huggins. Did any-body sit up with Mr. Arne?

Mr. Loudon. There was somebody sat up with him a few Nights before he died.

Mr. Huggins. I submit it to you, my Lord, whether I shall produce the People of the Upholders Company that sat up with him.

Mr. Justice Page. That will be of no great Use to you.

Mr. Huggins. Was there a Court of Inspectors, who governed the Prisoners?—Mr. Loudon. Yes, there was.

Mr. Huggins. Do you remember you saw Mr. Gybbon there then?

Mr. Loudon. No.

Mr. Huggins. Did the Prisoners dispose of their Rooms?

Mr. Loudon. Yes.

Mr. Baron Carter. I don't understand very well what way you propose to make your Defence; if Mr. Gybbon had the sole Power, then the Court of Inspectors could not; first Mr. Huggins is not concerned, because Gybbon was; and then he could not be concerned, because the Court of Inspectors was. Mr. Huggins I take to be Warden, and Gybbon Deputy-Warden.

Mr. Attorney-General. What kind of a Place is the Strong Room?

Mr. Loudon. It is a Brick-wall, and arched over with Bricks, and the Floor is boarded, and at that Time a Bench went across the Room. There is a Hole over the Door, with four or five Iron Bars, and a Hole big enough to put a Quart-pot in by the side; it was a new built Room, about six or eight Weeks before Arne was put in, there was no Chimney, Fire-place, nor any Convenience to ease Nature.

Mr. Att. Gen. Was it not the Occasion of his Death?

Mr. Loudon. It was possible it might. I believe it might do him Prejudice as to his Health.

Mr. Att. Gen. Did it hasten his Death?

Mr. Loudon. I do not know but it might; I believe it did hasten his Death.

Mr. Att. Gen. Who gave you the Key?

Mr. Loudon. The Turnkey; and I restored it to him again.

Mr. Att. Gen. As you came to take charge of it, did you always keep the Key?—Mr. Loudon. Sometimes I had it, and sometimes they had it.

Mr. Justice Page. Do you believe you could have lived there six Weeks, if you had been put in that Room?

Mr. Loudon. I don't believe I could.

Call Morgan Gwyn.

Mr. Huggins. Was you a Prisoner all the while Mr. Arne was there?

Mr. Gwyn. Yes.

Mr. Huggins. Did you see me in the House during that Time?

Mr. Gwyn. I did not hear that you had been in the House all the Time he was a Prisoner there, nor did I see you.

Mr. Huggins. Do you think if I had come, you should have seen me?

Mr. Gwyn. I do think I should.

Mr. Huggins. My Lord, I have Witnesses to prove that I was in Hampshire from the Beginning of September till the Middle of September; that one Part of the Time that Hopkins and myself are said to be at the Strong Room I was out of Town, and another Part that Hopkins was out of Town.

Call William Huggins.

Mr. Justice Page. You are Son to the Prisoner?

William Huggins. I am, my Lord; I have a House in Hampshire; and I remember by several Circumstances, that my Father came there the 1st of September, and continued till the 14th or 15th.

Mr. Huggins. Was I from your House during that Time?

William Huggins. Neither my Father nor myself were; that being the long Vacation, my Father was absent from his Business, and was out of Town at Sir George Oxenden's.

Call Richard Smith.

Mr. Huggins. I desire he may be asked, my Lord, whether he saw me in Hampshire, in 1725, at my Son's?

Mr. Smith. My Lord, I saw Mr. Huggins in Hampshire about the 14th or 15th of September in that Year; and he was likewise there some Time in August.

Mr. Justice Page. Was Mr. Huggins twice there in that Summer?

Mr. Smith. He was there for a great many Days at one Time.

Mr. Justice Page. Did he go up to London, and come down again?

Mr. Smith. I cannot say whether he did or not.

Mr. Justice Page. Did he come up and down several Times?

Mr. Smith. He was constantly there for some Days.

Mr. Justice Page. What are you?

Mr. Smith. I am Tenant to the Estate which Mr. Huggins purchased.

Call Robert Knight.

Mr. Huggins. Do you know of my being at my Son's House in Hampshire, in 1725?

Mr. Knight. You was there between the 4th and 11th of September, and staid fifteen Days.

Mr. Huggins. When did I return?—Mr. Knight. The 15th.

Mr. Huggins. Was I there in August too?

Mr. Knight. You was there between the 9th and 14th, and stayed seven Days.

Call Charles Bird.

Mr. Huggins. Do you know of my being at my Son's House, in Hampshire, in 1725?

Mr. Bird. You was there in August, 1725, about the 7th, but cannot say how long you stayed there; then you came down on the 1st of September, and returned the 15th of the same Month.

Mr. Huggins. My Lord, I went from thence into Berkshire.

Call James Green.

Mr. Huggins. Did you see me in Hampshire at my Son's in 1725?

Green. I was a Servant then, and lived in Hampshire at the same Time; and you came there on the first of September, and continued till the Eleventh; and in the same Year you was there in August.

Call John Tucker.

Mr. Huggins. Who are you Servant to?

Tucker. To Sir George Oxenden.

Mr. Huggins. Was I any Time in Berkshire in 1725?

Tucker. You was there in September, 1725; and on the 17th I carried you from Wittenham, in Berkshire, to Henley upon Thames.

Mr. Huggins. Did you carry me any further?—Tucker. No.

Mr. Justice Page. When did Mr. Huggins come there?

Tucker. I did not mind that; I know the Time when I carried him from thence, but cannot tell when he came there.

Sir George Oxenden.

Sir George Oxenden. My Lord, Mr. Huggins said he came from his Son's about the 15th of September, and came to Henley about the 17th. I remember very well that Mr. Huggins was at my House in Berkshire, because Sir Cecil Bishop being there (it was the Day before or after Watlington Fair, which was the 18th), Mr. Huggins offered to purchase a little Farm of him, which Mr. Huggins said he would make a Present of to his Son, which, I thought, was a kind, good-natur'd Act: He went away on the 17th or 18th, and I rather believe it was the 18th, because on that Day I went to Watlington Fair.

Mr. Justice Page. How long did Mr. Huggins stay at your House?

Sir George Oxenden. Mr. Huggins was not there above two Days, and said that he came out of Hampshire.

Call Daniel Hopkins.

Mr. Huggins. I must observe, my Lord, the Witnesses said, that Mr. Hopkins was with me, that he was present at the Strong Room.

Mr. Justice Page. Mr. Hopkins, pray when did you go out of Town?

Mr. Hopkins. I went in the Oxford Coach on Monday, the 27th of September, 1725, and got to Oxford that Night; and on Tuesday took the Worcester Coach to Merton in the Marsh, and went from thence to a Place called Barton, to one Mr. Oakley's, a Relation's.

Mr. Huggins. When did you return?

Mr. Hopkins. I came back on the 14th of October in the same Year.

Mr. Huggins. I desire, my Lord, he may be asked, if ever he saw me in the Prison in the Month of September?

Mr.

Mr. Hopkins. No, nor in October; for you was not come back on the 19th.

Mr. Huggins. Was you at the Door of the Strong Room with me?

Mr. Hopkins. No, I was there by myself.

Mr. Serj. Chesbire. Do you know Mr. Farrington?—Mr. Hopkins. Yes.

Mr. Serj. Chesbire. Don't you remember that he was there with you?

Mr. Hopkins. I don't remember any Company was there then.

Mr. Serj. Chesbire. Was Barnes there?—Mr. Hopkins. No.

Mr. Serj. Chesbire. Who opened the Door?

Mr. Hopkins. I cannot tell.

Mr. Serj. Chesbire. Did you see Mr. Arne?

Mr. Hopkins. I saw him there; he was naked; he had something about him white, but I cannot say what.

Mr. Serj. Chesb. Had you no Discourse about this Man?

Mr. Hopkins. No.

Mr. Serj. Chesb. Did not Mr. Gybbon send you to Mr. Huggins about Arne?—Mr. Hopkins. No.

Mr. Serj. Chesb. When you was at the Door, Did you not whisper to any one?—Mr. Hopkins. No.

Mr. Serj. Chesb. Whose Servant was Barnes?

Mr. Hopkins. He was Servant to Gybbon.

Mr. Serj. Chesb. Who named him a Watchman?

Mr. Hopkins. He was a Watchman when I came there; and I saw Gybbon pay him several Times.

Mr. Serj. Chesb. Who was you appointed by?

Mr. Hopkins. I was recommended to Mr. Gybbon by Mr. Huggins.

Mr. Serj. Chesb. Did you do any Business for the Prisoner?

Mr. Hopkins. Yes, and attended him constantly at his House every Morning; but I never had any Thing for that Trouble.

Mr. Serj. Chesb. Did you buy your Place?—Mr. Hopkins. No.

Mr. Serj. Chesb. Did you take all those Journeys to Mr. Huggins for nothing?

Mr. Hopkins. He had seldom any thing to do for me; I was in the Morning generally with him about seven o'Clock, and left him by nine.

Mr. Serj. Chesb. Do you know Mrs. Le Pointz?—Mr. Hopkins. Yes.

Mr. Serj. Chesb. Had you no Discourse with her about Arne as to his Condition?—Mr. Hopkins. I do not remember I had.

Mr. Serj. Chesb. Mr. Hopkins, pray consider with yourself, and answer directly, whether or no Mrs. Le Pointz did not desire you to speak to Mr. Huggins about Arne, and you said you would, and that you came to her after, and told her, that you had spoke to Mr. Huggins, and that he said it was no Business of his? Pray consider, and recollect yourself.

Mr. Hopkins. I cannot recollect it.

Mr. Serj. Chesb. How did Arne come into the Strong Room?

Mr. Hopkins. I do not know.

Mr. Serj. Chesb. How long was he there?—Mr. Hopkins. Six Weeks.

Mr. Serj. Chesb. How long was it in that Time before you heard he was there?—Mr. Hopkins. It could not be long.

Mr. Serj. Chesb. How long after the Beginning of the six Weeks was it that you saw him there?

Mr. Hopkins. I cannot tell how long; it could not be long.

Mr. Serj. Chesb. Was there any Matter in the Gaol that you did not acquaint Mr. Huggins with?

Mr. Hopkins. I seldom acquainted him with any of the Transactions.

Mr. Serj. Chesb. Do you remember you acquainted him with this Man's being in the Strong Room?—Mr. Hopkins. I do not know I did.

Mr. Serj. Chesb. Did you hear any Complaint of his being in that Place?

Mr. Hopkins. I cannot say that I heard any Complaint of his being there.

Mr. Serj. Chesb. I have in my Hand, Mr. Hopkins, an Examination of your's, and I would have you consider with yourself, and I will ask you one Question or two. Do you think the Keeping the Man in that Place was the Cause of his Death?

Mr. Hopkins. I had been very credibly informed of the Indisposition of Arne before.

Mr. Serj. Chesb. Upon the Oath you have taken, was not Arne's being confined in that Place the Occasion of his Death?

Mr. Hopkins. I cannot say, upon the Oath that I have taken, that it was, as he was mad and sick before he was put in the Strong Room. I believe the Madness was the Occasion of his Death.

Mr. Att. Gen. How long after Mr. Arne was confined was it that you saw him?

Mr. Hopkins. I cannot say how long; I believe it was in the Month of September.

Mr. Att. Gen. Did not you see him more than once?

Mr. Hopkins. I do not remember.

Mr. Att. Gen. I ask you again, Did not you see him more than once?

Mr. Hopkins. I do remember I saw him a second Time lying on the Floor, and the upper Part of his Body was then naked.

Mr. Att. Gen. Was any Prisoner in the Fleet confined in such a Strong Room before?

Mr. Hopkins. None was put in there before, nor in any such.

Mr. Att. Gen. What Kind of Room was it?

Mr. Hopkins. The Roof was arched; it was built even with the Ground, and built not long before Arne was put in there.

Mr. Att. Gen. Did you observe the Condition of the Wall?

Mr. Hopkins. The Room was damp.

Mr. Att. Gen. What Officer was you belonging to the Fleet?

Mr. Hopkins. I was Clerk of the Inquiries.

Mr. Att. Gen. Did not you go to Mr. Huggins frequently?

Mr. Hopkins. I went to Mr. Huggins three or four Times a Week.

Mr. Att. Gen. What did you go to Mr. Huggins upon?

Mr. Hopkins. I went to him about his own Business.

Mr. Att. Gen. Did you never attend him on Mornings about the Business of the Prison?

Mr. Hopkins. I have acquainted him with some Things.

Mr. Att. Gen. Did not you acquaint him with Matters of Consequence in the Prison?

Mr. Hopkins. I did, if they were Matters of any Consequence, or extraordinary.

Mr. Att. Gen. Did not you acquaint Mr. Huggins with Mr. Arne's being there?

Mr. Hopkins. The Reason is why I did not, that I went out of Town on the 27th of September, and did not return till the 1st of October.

Mr. Att. Gen. I ask you, Whether you believe in your Conscience you did acquaint Mr. Huggins or not?

Mr. Hopkins. It is very likely I did, if I was desired.

Mr. Att. Gen. Do you believe in your Conscience you did, if you was desired?—Mr. Hopkins. Why, I verily believe in my Conscience I did, if I was desired.

Mr. Att. Gen. How do you know Arne was mad?

Mr. Hopkins. I heard that he was.

Mr. Att. Gen. Would not his own Room have been a sufficient Confinement?—Mr. Hopkins. I believe it would.

Mr. Att. Gen. Did you receive any Order from Mr. Huggins for the Relief of this Man?—Mr. Hopkins. I do not know that I did.

[Upon which his Examination, which was taken before Edward Hughes, Esq. upon Oath, was read, to shew his Prevarication.]

Mr. Justice Page. I ask you, Whether in the Month of September, there was not a great many People discharged out of Custody, and whether there was not any one Room that became empty?

Mr. Hopkins. I believe there was, for fifty or sixty Persons were then discharged; but I had nothing to do with the Affair of Rent.

Mr. Justice Page. Was there any Room better than the Strong Room empty?—Mr. Hopkins. Any Room was better than the Strong Room.

Mr. Justice Page. How long was Arne continued there after the 7th of September?—Mr. Hopkins. He was continued there till he died.

Mr. Justice Page. Was there any Room in the House so bad as that?

Mr. Hopkins. I do not know of any.

Mr. Justice Page. When so many were discharged, might there not be a Room that Arne might be put in?

Mr. Hopkins. I do not remember any Disposition of Rooms.

Mr. Justice Page. Was there no Places empty where the fifty or sixty lay?—Mr. Hopkins. Yes.

Mr. Justice Page. Was there not a Room then for one Man to lie in?

Mr. Hopkins. Yes.

Mr. Att. Gen. Had you any Discourse with Bishop about Arne?

Mr. Hopkins. I do not remember he ever spoke to me about him.

Mr. Att. Gen. Did Mr. Gybbon never speak to you in the Presence of Bishop, to speak to Mr. Huggins, that some Care might be taken of Arne?

Mr. Hopkins. He did not.

Mr. Att. Gen. Did Mr. Gybbon order you to speak to Mr. Huggins to get him into Bethlehem, and to speak to Mr. Taylor, to get him in?

Mr. Justice Page. I must observe, that Mr. Huggins owned that he only did it (speaking of Arne's being got into Bethlehem) as a Friend, and not Quatenus Warden.

Mr. Lee. Mr. Hopkins. I ask you, Whether you at any Time spoke to Gybbon, or any one else, to give Mr. Huggins Notice of Arne's being in the Strong Room?—Mr. Hopkins. I do not know that I did.

(Call Thomas Smith.)

Mr. Huggins. What Resolution did the Upholder's Company come to, as to the discharging Arne out of the Fleet?

Smith. He was Servant to the Company of Undertakers at Exeter Change.

Mr. Justice Page. Do you know if Arne was to be discharged, or how?

Smith. Martin and others, Members of the said Company, first arrested him, and he was carried to a Bailiff's in Hare-Court, and lay there a considerable Time, and then was carried to the Fleet; and upon an Application to the Company of Upholders, they agreed to discharge him, and get him into Bethlehem.

Mr. Huggins. My Lord, he was a very sickly Man before he came there; and I desire the Witness may tell you what Condition he was in.

Smith. In the Month of April, 1725, he was in a weakly Condition.

Mr. Justice Page. Mr. Huggins, I cannot admit you into that Evidence.

Mr. Huggins. I desire to call People to his Character.

(Call Mr. Thomas Arne.)

Mr. Huggins. He was chief Mourner to Arne; I desire he may acquaint you what Relation he was to him.

Mr. Arne. Edward Arne was my Uncle's Son: I know that he was in Prison; he lay some Time at an Officer's House, and from thence was removed to the Fleet.

Mr. Huggins. When did you go to him?

Mr. Arne. A Week or ten Days before he died I saw him there; I enquired for him, and they said he was locked up, and directed me to go to Mr. Loudon, Mr. Jerningham's Man.

Mr. Huggins. Was the Door shut?

Mr. Arne. It was padlocked; he lay down at the Side of the Room near the Door, and I found some Rags about him. He knew me, and took me by the Hand; he was then very ill, and could hardly speak. I asked him, what was become of his Ring, Seal, Gold-headed Cane, and other Things of Value? He spoke very faint; I with much Difficulty understood by a Word now and then, that one Searls, a Mercer, had got some of them; and afterwards upon Enquiry found, that he had his Gold Watch, which he had lent him fourteen Guineas upon.

Mr. Huggins. Did he make any Complaint to you?

Mr. Arne. He was not capable of complaining, being so very weak.

Mr. Huggins. What State of Health was he in before he came there?

Mr. Arne. I believe he was in a wasting Condition before he was arrested.

Mr. Att. Gen. Did you hear any Complaint as to his being in the strong Room?—Mr. Arne. By him I did not.

Mr. Att. Gen. At the Time when you came to visit him, was the Room in a Condition for a sick or a well Man?

Mr. Arne. I believe it was not fit for a sick or a well Man to be in it.

Mr. Att. Gen. How long do you think you could have lived if you had been confined in that Room?

Mr. Arne. I could not have lived six or seven Days, and could not believe any Man alive could be there six or seven Weeks.

Mr. Att. Gen. How often was you there?

Mr. Arne. I never saw it but once.

Mr. Att. Gen. Do you think you could have lived there six Weeks?

Mr. Arne. I think I could not live six Weeks in the Damp without Fire or Candle.

Mr. Huggins. My Lord, I desire to call some Gentlemen to my Character.

Mr. Just. Page. That you may do if you think fit.

Sir George Oxenden, Bart.

My Lord, I have known Mr. Huggins about nine Years; but have been more particularly acquainted with him these four or five Years last past; I never took him to be an ill-natur'd or barbarous Man, and do not believe, willingly, he would do an inhumane Thing to any one.

Sir John Hinde Cotton, Bart.

Mr. Huggins. Pray give an Account how long you have known me.

Sir John Cotton. My Lord, I have known Mr. Huggins about four or five Years, and have had Occasion to be a good deal with him. I believe him to be a good-natur'd, humane Man; and believe in my Conscience, he would not have been guilty of the Cruelty laid to his Charge.

Call Robert Viner, Esq.

Mr. Robert Viner. My Lord, I have known Mr. Huggins ever since I can remember any thing at all, he has been concerned for our Family these forty or fifty Years, and I lived with him two Years together; and I take him to be a good-natur'd and humane Man; and, in my Conscience, believe he would not be guilty of a cruel Thing to any Man.

Call John Hedges, Esq.

Mr. John Hedges. My Lord, I have known Mr. Huggins about six Years, and always took him for a good-natur'd and humane Man; and have since had an Opportunity of knowing several Instances of his Generosity and Good-nature without Fee or Reward: I have known him six or seven Years as a general Acquaintance, and he was very good natur'd and humane; and some time since I have known some Instances of great Generosity and Good-nature, merely for the Pleasure of doing Good, without Fee or Reward.

Call John Knight, Esq.

Mr. John Knight. My Lord, I have known Mr. Huggins these eight or nine Years past, and frequently had Opportunities of being in Conversation with him, and I always took him to be, as far as any Man living, from doing any thing that was cruel; and always acted agreeable to the Character of a humane Man; and I am very sorry any such Thing should be laid to his Charge.

Call Christopher Tillson, Esq.

Mr. Tillson. My Lord, I have known Mr. Huggins these five-and-thirty Years, not superficially, but in particular Friendship, and have found him in all Instances a Man unblameable; and I never saw any thing tending to Cruelty or ill Usage; and have always found him so for these thirty-five Years.

Call Major Churchill.

Major Churchill. My Lord, I have known him these forty-five Years, and have had frequent Communication with him, and always found him a Friend and a Man of Humanity, despising of Money; there was one Thing, in a most particular Manner, I will acquaint your Lordship of.

Mr. Just. Page. I can't admit you into a particular Character, but you may go on with a general one.

Major. Churchill. I never thought him capable in Thought, Word, or Deed, of doing a cruel Thing.

Call Thomas Gibson, Esq.

Mr. Thomas Gibson. My Lord, I have known Mr. Huggins for these seven or eight Years past, and found him to act with Good-nature, Integrity, Honour, and Humanity.

The Rev. Doctor Pearce (Rector of St. Martin's in the Fields, now Bishop of Rochester).

Dr. Pearce. My Lord, Mr. Huggins is a Vestry man; and I have had more particular Reason to converse with him frequently on that Account, and I never found any Thing in him, that was any way consistent with what is laid to his Charge, and have constantly found him at Church.

Edward Thompson, Esq.

Mr. Thompson. My Lord, I have known Mr. Huggins these seven Years, and have had frequent Experience of Acts of his Friendship and Good-nature, and never discovered any Thing in his Behaviour, but the utmost Good-nature.

Thomas Woodford, Esq.

Mr. Woodford. My Lord, I have known Mr. Huggins many Years. I have been with him both sober and mellow, and never have discovered any Thing barbarous or cruel in him; and I verily believe he could not be guilty of any such Act, if he knew it at all.

Joseph Taylor, Esq.

Mr. Taylor. My Lord, I have transacted a great deal of Business with Mr. Huggins, and found him act with Candor. Sometimes I have been concerned against him, and sometimes with him; and, if ever I had suspected any Thing in him tending to Cruelty, I assure you, my Lord, I would have shunned his Company instead of seeking it, as I have done.

Martin Bladen, Esq.

Mr. Bladen. My Lord, I have known Mr. Huggins many Years, and have lived by him in the Country these eight or nine Years; and the Character that he has had is, that he is a good-natured, humane Man; it has been his whole Business of Life to leave a good Character; and, therefore, I can't believe he would do an ill-natured Act.

John Lade, Esq. afterwards Sir John Lade, Bart.

Mr. Lade. My Lord, I have known Mr. Huggins these forty Years, and have seen a great many kind, compassionate Things of him.

Sir Charles Cox, Knt.

Sir Charles Cox. My Lord, I have known Mr. Huggins these forty Years, and have had frequent Dealings with him, and always observed him to be a Man of Charity and Humanity; and I have courted his Company from

the good Opinion I have had of him, and don't believe that he would be guilty of any Inhumanity.

Edward Halsey, Esq.

Mr. Halsey. My Lord, I have known Mr. Huggins near thirty Years, and have been conversant with him, and the Observation I have made of him is, that I have found him zealous to do good Offices, where he had no Fee or Reward, and never found him covetous or cruel.

Sir James Thornhill, Knt.

Sir James Thornhill. My Lord, I have known Mr. Huggins for these twenty-five Years, and I was proud of the Honour of his Acquaintance. I have never seen or heard of the least cruel Act that he has done by any one; and if I was to repeat the Instances of good-natured Acts—

Mr. Just. Page. Sir, you can't be admitted to do that.

Thomas Martin, Esq.

Mr. Martin. My Lord, I have known Mr. Huggins these thirty Years, and that he has done a great many kind and good-natured Things. I never knew him a vain Man, but that he did it through Good-nature.

Colonel Negus.

Col. Negus. My Lord, I have known Mr. Huggins a great many Years, and always looked upon him to be a good-natured Man; and that it was impossible to think he could do so ill-natured an Act, as laid to his Charge.

Campbell, Esq.

Mr. Campbell. My Lord, I have known Mr. Huggins from fifteen to twenty Years, and always found him behave himself with Integrity in his Profession, as a good-natured Man, and always thought his Genius far superior to do an ill-natured Thing: I always had, and still have a good Opinion of him.

Mr. Huggins. My Lord, it appeared to your Lordship, that Mr. Gybbon was the Acting-Warden, and that Barnes was his Servant, not mine. No Argument can be drawn from the Coroners not sitting, the Custom of the Place is otherwise, but as to any Application to get him into Bedlam, that, my Lord, can't be applied to me Quatenus Warden, for it would be only in me a good-natured Act: If Barnes put him in, he is not my Servant; if so, then the Indictment must fail.

That as to the Witnesses they were Prisoners, and they are natural Haters of their Keepers.

I never went to the Prison, but had a hundred People about me, and I must have been seen by many; there was no Pretence of using any Barbarity to any Man, no Money to be extorted; and when I could no way be benefited by it, no one can think, my Lord, I could be guilty of Murder, when no Benefit or Advantage by it could arrive.

Mr. Loudon, my Lord, who had the Custody of the Man, and had the Key till three Days before his Death, had never seen me there; and if he that had the Key did not know of my being there, who should? I shewed, my Lord, that I was out of Town in September, and Hopkins was out of Town till the 14th of October, so that it was impossible, that us two could be there together. All the other Witnesses, that have been called against me would not have lain from that Day to this in Prison, had they not lost their Honour, or lost their Designs.

I never saw the Man, nor heard there was such a Prisoner, and to murder a Man for nothing, God Almighty knows there never stood a Man at this Bar with more Innocency than myself.

Mr. Serj. Cheshire. It is plain on the King's Side, that a Subject has been murdered; and what Mr. Huggins has endeavoured to show is, that he never acted, but had a Deputy, and that Deputy was accountable, if any body, for he had no Acquaintance of this Thing; your Lordship, has heard the Witnesses, and I don't doubt but will relate the Evidence fully. The Counsel for the Prisoner objected to Mr. Serjeant Cheshire's replying.

Mr. Just. Page. I am of Opinion, Brother, you can't reply.

Mr. Serj. Cheshire. But I may say something to what has not been given already in Evidence.

Mr. Att. Gen. Mr. Huggins endeavours to shew that Gybbon was the Acting-Warden. No, my Lord, neither by a Lease or Deputation Gybbon could not be appointed Warden.

Mr. Just. Page. Mr. Attorney, I cannot admit you to enter into any Reply, but if you have any Evidence, you may call them.

Call Elijah Beavis.

Mr. Att. Gen. Was you a Prisoner in the Fleet, in the Year 1722?

Mr. Beavis. Yes, and I had the Liberty of the Rules, in the Year 1723; and in the Year 1724, I was intitled to be cleared by the Act of Insolvency, but because I could not give the Warden Money enough, was continued till the Year 1725, and I used to see Mr. Hopkins at Pindar's, where Gybbon kept his Office, and it was generally accepted by every body, that Hopkins brought Directions from Huggins to Gybbon every Day.

Mr. Att. Gen. Have you heard Hopkins say, that he had Directions from Mr. Huggins to Gybbon, and that he came from Huggins?

Mr. Beavis. I did not hear any particular Directions.

Richard Bishop.

Mr. Att. Gen. Who gave Directions as to the Management of the Gaol?

Mr. Bishop. The particular Things were done by Huggins's Directions, but the common Things without.

Call Joseph Johnson.

Mr. Att. Gen. Do you know of any Directions brought from Mr. Huggins by Mr. Hopkins, to Mr. Gybbon?

Mr. Johnson. I have heard Mr. Hopkins say, that he came from Mr. Huggins, and that he bid him come every Morning to him; and that one time Mr. Huggins sent word back by Hopkins, that I should be locked up.

Edward Hughes, Esq. (a Member of the House of Commons.)

Mr. Att. Gen. Sir, what have you heard Mr. Huggins declare, as to the Acts he did during the time Gybbon was his Deputy?

Mr. Hughes. My Lord, it appeared to me—

Mr. Baron Carter. Sir, you are not to tell us of what appeared to you, but what you know of your own Knowledge.

Mr. Hughes. My Lord, I can't tell how Knowledge should come to me, until it appeared to me. (After some Pause Mr. Hughes went on.)

My Lord, Mr. Huggins was ordered to attend the Committee, and while Mr. Huggins was there, he was asked, what Escapes had happened during the Time he was Warden? He said, he could not give an Account of them, there had happened so many; but said, that Oliver Read had escaped, and when he was taken, that he Mr. Huggins had ordered Corbett the Tipstaff to put him in Irons, which were sent for from Newgate by his, Huggins's Directions,

directions, and owned that he did it by Virtue of his Authority for an Escape; this Confession Huggins made himself, and owned, that he had paid 500*l.* for such Escape that Read had made.

Mr. Baron Carter. Was it Mr. Huggins or Mr. Gybbon ordered him to be put in Irons?

Mr. Hughes. I did not say it was Mr. Gybbon bid him be put in Irons, but it was Mr. Huggins, and that he ordered him to be put in Irons as Warden, and in all Escapes he acted as Principal, for he paid 500*l.* for that Escape.

Mr. Baron Carter. About what time was this?

Mr. Hughes. It was upon the first Escape that Read made; it was in the Year 1726, that Read got off those Irons, and made his second Escape, and was retaken; and then he was put in the Dungeon.

Mr. Baron Carter. Was there any particular Time mentioned?

Mr. Hughes. I have recollected, and it was in the Year 1726; what points out the Time, is Read's Escape.

Mr. Serjeant Darnell. That Paper produced by Jeffreys amounts to a Lease.

Mr. Justice Page. When ever an Agreement is made to make a

Mr. Baron Carter. Lease, that can never be esteemed a Lease.

Proclamation was made to keep Silence.

Mr. Justice Page. Gentlemen of the Jury, this is an Indictment against Mr. Huggins, the Prisoner at the Bar, and one Barnes, for the Murder of Edward Arne. The Indictment is indeed particular; the Indictment takes notice, that Huggins was Warden of the Fleet the 1st of October, in the late King's Reign; that he being Warden, had the Government of the Prisoners in the Gaol (that Barnes was an Agent of his, who is fled from Justice). It sets forth, Gentlemen, that Barnes seized upon the said Arne, and carried him to a Place, called the Strong Room; and that Huggins was Aiding, Abetting, and Assisting in carrying him to that Place, and he was continued there the Space of six Weeks; that this is a Place of cold Restraint, and a Room newly built, made of Brick and Mortar, very wet and unfit to live in; that this Barnes did continue him in this Place for six Weeks in a most barbarous and vile Manner, and not allowed him any Necessaries, inasmuch that he had no Chamber-pot, he was without Fire or Fire-place, and only had a little bed. This is the Nature of the Dungeon. It is a Vault arched over, and in the Wall a little Hole big enough to put a Quart-pot in at. It is built over a Common-Sewer adjoining to a Layfall, where all the Dirt and Filth of the Prison lies, which made it not only so noisome, but very unwholesome, that the continuing this Person so long in this Place was the Occasion of his Death. That Mr. Huggins was acquainted with it, but shewed him no Favour; he was not let out, and died in the Middle of October. He died, Gentlemen, by this Durefs of the Prisoner. I will say but little to what the Law is in this Case; a Prisoner for Debt is only taken like a Distress, and kept there till he, or his Friends can pay the Debt for him. Imprisonment is no Punishment, it is not taken as Part of the Debt; for let a Man lie ever so long, his Heirs at Law cannot be exempt from the Debt, but, if they have Effects, are answerable for it. He is kept only in such Manner as he may be forthcoming and safe; this being the Case, he is to be kept in here in a becoming way, as the Warden may be safe, and the Prisoner forthcoming, but in no other Degree that the Prisoner should be punished, by any unreasonable Restraint. If this Arne was kept in no other way than became the Subject of the King, in that reasonable Manner, so that you may take it, there was no Torture, ill Usage, or any Act, but such as was fit and decent for Confinement, no Durefs; then and in that Case, though he died there, it will not be Murder.

But if by the Evidence that has been called, it appears that this Room was an unfit Place to lay this Man in, that it must be the Means of his Destruction, that (being in such Imprisonment as the Gaoler cannot justify) will be Durefs; if they carry that Point, it is Part of the Common Law, the Antient Law, and very rightly observed by the Counsel, that it will be Murder. It would be very hard to take away this Law, though in his own Defence; as he was intrusted with the Life of the King's Subject, he was answerable for him, and the Coroner's Inquest ought to have sat upon his Body; the Law is so much afraid of the Loss of the Life of a Subject, that the King will have an Enquiry to see what is become of the Life of the Prisoner. It was opened by the Counsel for the King, that it was wilfully omitted; on the other Hand, it was urged that this Custom seemed to be asleep, and that it was hard to lay a great Weight, where it had not been so long practised. Gentlemen, there have been great Numbers of Witnesses called, and therefore I cannot give it Word for Word, but will repeat as far as is necessary.

Mr. Longborn was called to prove the first Part of the Indictment, that Huggins was Warden; and he proved the Copy of the Letters Patent granted to Mr. Huggins, who might act by himself or Deputy.

Biggrave gave an Account, that Huggins's Patent bore date on the 25th of July, in the 12th Year of the late Queen; that Mr. Huggins, though Warden, did not act himself, but appointed Gybbon as Deputy; and that Securities were taken by Huggins not by Gybbon, that is to be considered in point of Law, that the Act must be brought against him as Warden, and the making of a Deputy does not discharge him of his Duty; in several Cases he does not continue answerable, for in Civil Cases the Deputy is answerable, therefore the Security is lodged with him. It is a very strong Evidence that the Warden still continues Warden, that he ought to see to the Escape of Prisoners, for that is not only trusted to the Honesty of the Warden, but he is to take the best Care he can of Escapes. He says, that Gybbon did buy his Place, that he did oversee and look after the Affairs of the Fleet, and filled up several Warrants, but always in Huggins's Name; that he did apprehend that Barnes was only a Servant to Gybbon, and that Gybbon, no doubt, had the immediate Trust of the Gaol; and that Barnes was a Runner to Gybbon, and not Huggins's Servant. He agreed what this Place was; that it was arched over; that it was eight Feet wide, eleven Feet long, and nine Feet high; that it was built very little Time before Arne was committed there; he could not describe the whole Situation, but gave an Account that it was very nigh the Dunghill and Filth, had no Chimney nor Chimney-place, and had only two little Holes to let the Air in. He gives an Account of Hopkins; that he looked upon Hopkins to be Gybbon's Servant, besides that he was Clerk to Mr. Huggins at his House in St. Martin's Lane, and generally went backward and forward most

Days to Mr. Huggins, and was able to give him an Account of what happened in the Gaol.

Hopkins tells you, he was Clerk of the Inquiries, and that all the Security-Bonds were left with Gybbon, but left in Blank; and when he had inquired into the Securities, the Security-Bonds were filled up by Gybbon; that Gybbon received all the Money, and he heard that Gybbon was to pay Four Hundred Pounds per Annum for it, but that all went on in the Name of Huggins.

Bishop says, that he was Tipstaff under Huggins; that he did pay for his Place, which cost him Two Hundred Pounds; and that about 1724 or 1725 Arne was brought a Prisoner first, and was carried to the Vine, and there continued about a Month, and afterwards was carried into Prison, and lay with one Shaw, and upon a Quarrel was turned out, and the Strong Room was built at the latter End of the Summer; and it must be granted, it was not fit for mortal Man, scarce any Beast, to be in. Gentlemen, this Room is totally unfit for any Man to be put in; and that it was strongly proved, that from the Nature of the Place, and the Circumstances of the Weather, it was the Occasion of his Death; that it was new built, not above three or four Yards from the Dunghill, and that every thing of Nature was done in it; there was no Chair, no Provision, only an old Bed. That he saw him before running about naked in the common Yard, and upon this did tell Gybbon of him, and that it was not fit for the poor Man to be left alone, so it was fitter for him to go to Bethlehem; and very soon after the Man was put into the Strong Room. To go along with Mr. Huggins, I must take Notice of an Observation he made: That it was very unfit for a Man to go naked about where there were Women; and it was fit he should be confined somewhere. He (speaking of Bishop) gives some Account of Barnes, and some Account when the Room was built, just at the latter End of the Year; that he did hear he was in a very wild Condition; that Barnes nor none of them did apprehend Gybbon to have the sole Power; but that Gybbon acted by the Authority of Mr. Huggins; but that he would apply to Mr. Huggins about it, and did ask the Prisoner if it was not proper to get him into Bethlehem; and Huggins observed it was not Part of the Office of Warden of the Fleet, but he might by a friendly Office use his Interest with Mr. Taylor, and that would shew him more a humane Man than one guilty of Cruelty. When any thing special happened, that was still done by Huggins; that tho' Arne was in that Condition, though there was no Occasion or Hazard, and no Cause for putting him into that Room, Huggins not only a Principal, who is answerable for his Deputy, was often in the Fleet, and saw him several Times whilst Gybbon was Deputy, and Arne in that Confinement, and did give Orders about several Things of Moment. Arne he knew was disordered, but never did any ill Thing to put him in Fear and Hazard; the Man never did any Hurt, he might drink, but then there were other Rooms to put him in; no Place could be found to put this Man in so bad as this. When he was turned out from Shaw he had a little Place that he put up in the Common-Hall, and his Goods were carried down there. It was very hard to imagine, if he was not very well, if he was a little disordered, it was very strange that no Place could be found but the Strong Room to put him in. When I came to ask the Question, if there were other Rooms where the Man might be kept with Safety, it was said, that there were Rooms where he might be put in Safety; but it was not thought fit he should go into a Place fit for a Christian to go in, but into this Place.

Mr. Cotton, by the Book, shews, he was admitted Prisoner on Mesne Process in 1725, to shew he did not require to be kept in the same Strictness as on Execution. The Care of the Gaoler is to keep a safe Custody; but not so great on Mesne Process: If a Man in Execution for 1000*l.* was to escape, he must pay the whole Money: No Action of Debt lies on Mesne Process; then the Gaoler is not answerable, the Gaoler could not pay the Debt, the Gaoler is no further answerable than for the Person; so that the Terror was not so great, the Danger was not so close, and that may be the Reason that the Coroner does not sit upon Prisoners in Mesne Process, because the Hazard is not so great; and he says, that about Hillary Term 1724 Barnes came in; and that he was a Watchman and a Runner there.

Farrington apprehends, that Arne came in about the Middle of June, and that he was in good Health when he came in, and that he never knew him do an ill Thing, nor that he would drink; that there was no Danger of his breaking Prison. That he was put into the Strong Room in September, and continued therein till the Middle of October. When he first came into the Prison he lodged with one Robert Shaw, and Shaw threw his Bed out of the Room; he then put his Bed upon a Settle, and he lay there till he was carried to the Strong Room.

He did not see Arne locked in the Strong Room, but did see him taken away, and says, that the Room was not built above six Weeks before the poor Man was carried there. That it was so very wet, green, and so much oufing from the Mortar, that one might with one's Hands strike the Drops off the Wall; and gave the same Account as to the Manner, that it was not tiled in, and he was continued there from the Middle of September, to the Middle of October, and lay in a miserable Condition, not only having his own Excrements sticking about him, but the Feathers of the Bed, having opened it and crept into it for Warmth. I need not take Notice of the Situation of the Place, that has been fully described. There was only two small Holes to let in the Air, there was no Fire, nor Fire-place. He says, that after some time the poor Man grew hoarse. One of the Witnesses says, that he had a shivering Hoarseness, and so continued lingering on till he died: Before he died he came to a bad Hoarseness, and his Senses and Voice were so far gone afterwards, that he could not speak; then Nature failed, he fell away, and Death grew upon him, then he grew delirious, and in this poor Condition he had nothing but a Feather-bed, which a Gentleman had lent him, laying in the Dirt in his own Excrements, and in a nasty Condition, and no way left to preserve Life, but to cut his Bed open, and to lie in the Feathers as long as he could: Being in this miserable Condition, he came into the Church more like a feathered Fowl, than a human Creature, that the Feathers stuck all about him; he burst out and came to the Church; he was demanded back again, and had no Comfort or Relief. Farrington, one of the Evidences says, that he saw Hopkins and Huggins at the Door of the Strong Room, and the Door was open, and Huggins looked upon him, and Hopkins and Huggins whispered, and talked together, but he was not near enough to hear what

was said, but *Huggins* shook his Head; not only *Gybbon* but *Huggins* himself locked him up, with *Barnes*, and this was at the Time when the Door was open, and *Barnes* kept the Key. It was when the Door was open, and *Huggins* looked in upon him, the Discourse you will best judge of; his (meaning *Huggins*) Eyes were there fixed. This is very strong upon the Prisoner; whether *Huggins* before knew of it, *Huggins* knew of it then, and then might have saved his Life; he might have taken the proper Care as he ought to have done of him; if Mr. *Huggins* had done his Part, it would have been no Objection to *Huggins*, and if he did nothing at that Time, you will judge how far he did pity the Man, whether he did know of it before or no, if he was privy to his being kept in that Durefs, he had sufficient Power, and nothing could bar him of having the superior Power, for, in the Presence of his Deputy, he might act; he that put the Man under Durefs not only was told of it, but saw the Misery of it; it makes him in Law a Principal. That Place was so damp, that he himself was in there but three Days, and was almost killed in that Time. It made his Legs swell, and he had been dead, if he had continued there longer. That Man died there from the Noisomeness of the Place.

Fulthorpe says, that *Arne* and another Prisoner was drinking with him a Pot of Ale (that Gentleman don't create great Anger in the Fleet.) The Witness says, that he paid Five Shillings per Week for Boarding, and *Barnes* came up and seized upon *Arne* and carried him away, but he did not go to follow him; that *Arne* was very quiet, and he went the next Day to see how it was with him, and there was loose Boards, which he apprehended to lie on the common Sewer, and the Walls were all green and wet, and that it was a miserable Place; that the Man continued six or seven Weeks in this Strong Room.

He says, that he saw *Huggins* come twice into the Fleet, while *Arne* was in the Strong Room, but whether it was the Time that *Farrington* was there can't be certain; but that *Huggins*, *Hopkins*, and *Barnes* were there, and were looking upon him. When he came there a second Time, he can't say that *Huggins* came to look on *Arne*, for that he staid there only Half an Hour, to take care of the Prison and Prisoners; that *Arne* was in Health at, and before the Time he was put in there, and that he went to give him some Drink at the Hole, and the Stench of the Room was so great that it was like to strike him down. He says, that to the best of his Judgment on viewing the Place, that it was impossible for a Man to live there. He did see *Arne* out two or three Times, but they turned him in again.

Smith says, that *Arne* for whom he had a great Concern (which Matter is of great Consequence, that requires the utmost Attention), was carried to the Vine, and then carried to the Gaol; that *Barnes*, who was a Servant to *Huggins*, as *Arne* was drinking in the Cellar without being the least troublesome, seized upon *Arne*, and carried him to the Strong Room; he lay upon the bare Ground, and had nothing to rest him upon; the Description of the Room that he gives, is, that there was no Fire-place, no Candle, nothing to ease Nature in, such a Stink that he was forced to hold his Nose, extremely wet, and in no Condition fit for any one to lie in; he having no Credit with *Gybbon*, wrote to *Huggins* several Letters, and in one of them mentioned the said State of *Arne*, and sent it by *Robin* the Porter, he sent it by the common Porter, but did not prove that *Robin* delivered the Letter to *Huggins*, or brought an Answer, and was of Opinion, this barbarous Treatment was the Death of the poor Man.

Robin was examined as a Witness, he said he did not know what the Letters were; he did what he was paid for, but can't take upon him to swear, whether the Letters were delivered to Mr. *Huggins*, and what the Contents of the Letters were; there is a Chasm in that Part.

Paine says, that *Arne* was in a good State of Health, that he might drink, but there was no Ground or Occasion to put him in the Strong Hold, that *Barnes* was Servant to *Gybbon*, and that *Gybbon* acted as Chief-Warden, and that the Prisoner at the Bar did not act. He gave an Account how the Room was built, that it was very damp, that *Arne* grew hoarse, and lost his Voice; and he believes any Person could not be there without Danger of losing his Life.

Bouch says, that he was Turnkey, and gave an Account, when the Strong Room was built, and apprehended it was built by *Huggins*; that *Huggins* did come to the Lodge, but can't say whether he came into the Prison or no; he says, that the poor Man died after in *October*, and that he carried a Letter to Mr. *Huggins*, wrote by one of *Arne's* Friends; that he gave it to *Huggins*, who opened it, and read it, who said, that he must leave it, and Mr. *Huggins* would acquaint him with the Nature of the Rules; he further said, that Mr. *Huggins* did not act singly and solely, and I don't know how indeed he could, I don't know how he could controul a Principal, he might controul a Deputy; he says, he did apply to Mr. *Huggins* to be Turnkey, and was very often in the Prison, and saw *Arne*, and gave an Account of his being in that languishing Condition, and that he died there; the Chief of his Evidence is, that Mr. *Huggins* came often to inquire about the Affairs of the Gaol, and that he was still principal Warden, and if any Thing wrong was done, he ordered it to be rectified.

Tucker was employed to make the Iron Work, but don't say by whom ordered.

Mrs. *Le Pointz* says, she saw *Arne* in the Strong Room; and when Mr. *Huggins* was last there, she saw him on the *Bars*, and that he could not come in or out, without coming near the Strong Room, and that it was impossible for him to go out upon the *Bars*, but to go by that Room.

For the Prisoner, he does insist upon several Ways of making his Defence. He says this was in 1725, and therefore its not to be expected, that he can give so good an Account as if it had been a more recent Prosecution; this Thing had slept for three or four Years. It was taken Notice by Mr. Attorney how this came now by a strict Examination, and a very honourable one, and that he mentioned was the Reason it could not escape the Eyes that were so diligent; that is the Answer to that Part of the Defence. Another Part of his Defence is, whether he was made Warden at the Time, that the Letters Patent bore Date? He takes Notice of his coming to an Agreement with Mr. *Gybbon*, who, he says, had the sole Management, he was willing to put himself into a State of Inaction.—He did agree at first for the Prison only for Half a Year, and then *Gybbon*, willing to take the whole Rents and Profits, was to pay together Nine Hundred Pounds

per Ann. which was agreed on. Another Part of his Defence that he made, was, that he intrusted Mr. *Gybbon* with the Management of the Office; he had so little Knowledge, that he had never seen nor heard of the Name of *Arne*, nor never knew that there was such a Prisoner.

Another Matter insisted upon, that there were three Witnesses, that were all mistaken, and that no Credit at all ought to be given to them; and it won't be very material. Some of his Witnesses say, that they never heard of his being there, and others that he was not at *London*, looking upon it, that he was not concerned at all. To prove this he calls Witnesses, and called Mr. *Tanner* to read the Insolvent Act, that Deputies were to make Returns of Prisoners. To prove the List of the Prisoners was returned by Mr. *Gybbon*, he would have produced an Affidavit, but it was not sufficient to be Proof. Mr. *Tanner* was asked, whether at the Time the List was delivered, Mr. *Huggins* was not Warden? He did not think fit to answer that Question, and I did not press it very far: But I shall shew you *Gybbon* was only Deputy. The next Witness that was called was *Jeffreys*, to shew how far *Gybbon* was concerned in the Office; he was by when the Agreement was made, and signed by Mr. *Huggins*, and when it came to be a Question, when that was to be read, whether it was an Agreement or not, he could not tell where it was, it was out of his Power, he could not produce it then. *Jeffreys* said it was an Acquittance; upon that *Huggins* endeavoured to get the Paper, and that this was a Copy of it taken, and that it was a true Copy, then that Receipt was proper to be read: When that came to be read, you will consider what it was; it was neither Lease nor Deputation, only an Agreement for a Lease, what Rent was to be paid, and how long he was to have it. It was a Receipt for a Deposit of One Thousand Pounds, wherein there was a proper Covenant and Clauses to be performed. I don't go to argue the Validity of it, if a Man had agreed to hold Land for three Years, that would be a Lease; and if *Huggins* and *Gybbon* had agreed certainly for three Years, that would have been a Grant of the Office, and a sufficient Evidence of a Deputation but it is nothing but an Agreement for a Deputation, or a Lease. In Strictness of Law it is nothing; though this may not be in Point of Law, it is sufficient between them for *Gybbon* to be Deputy in Fact, who came with the good liking of Mr. *Huggins* and with his Consent; that he was Deputy in Fact still carry with you, and that *Huggins* was Chief in the Office, and had the Controul thereof. That a Deputy is controulable by the Principal, and when the Principal is there no Man can make a Deputy to execute the Office. This was dated 26 June, 1723, for 1000*l.* and 500*l.* per Annum.

The next was Mr. *Welland*; there was a good deal said by him about the Coroner's sitting upon dead Bodies, not very much to the Purpose; and then he gave an Account that *Gybbon* did act during four Years, but what was become of the Repairs, who was to do that, I do not find; as to the Repairs and Taxes, it is not settled to this Day. If upon the Foot merely from the Trust and Confidence one had of the other, if all the Expences were paid by Mr. *Huggins*, then he built the Strong Room; however, he was liable to the Charge. You will consider, Gentlemen, by what Law this can be built; it was putting a Show of Cruelty in this Office, which they were no way justified to build: Things for Torment, and not for the Service of the Custody, Things of that Kind are not to be done at the Will of the Gaoler, it always ought to be done by Order of their Superiors; if in the City, the Act must be done by the Mayor and Aldermen; if not, by the Common-Council: If in the County, it is not in the Power of the Gaoler, it must be done by the Sessions; there are so many Gentlemen of the Sessions to see what is proper to be done and decent for Christians, that there is no Danger of erecting any Place of Torment. I do not know what Authority either *Gybbon* or *Huggins* had to build it; *Huggins* might have pulled it down, and *Gybbon* would have been answerable for the Contempt. There is no Agreement appears between *Huggins* and *Gybbon* that would clear it up; besides, as to the Repairs we are left in the dark still.

Welland says, that in the Year 1725 *Arne* was stark naked before he was put in the Strong Room. *Huggins* urged, that it was not designed for any such Purpose. *Welland* does not deny, but that there were other Places in the Gaol to put him in: This was in the very Year when the Act passed for Insolvent Debtors, when fifty or sixty were discharged on the 7th of September, before that Time.

Another Part of his Defence is, that the Room was neither his nor *Gybbon's* to answer for; that there was a Court of the Prisoners, who formed themselves into a Jurisdiction, and made what Order and Rules they pleased, and that they were so troublesome that *Gybbon* was afraid to go into the Gaol: I do not know what Excuse this is, it would have been very fit for them to have applied to another Place: And though *Welland* does say, that there was a Request of some of the Prisoners to have him put into the Strong Room, all the Terror this Man put any body in, was flinging a Brick-batt on the *Bars*, not aiming at any one, and forced them to put this Man under the Restraint of the Strong Room. It was the Request of Nobody, it was Nobody did it; it was very much to have such a Combination, but every body knows that *Welland* is an Attorney, and has been taken notice of in the Courts. They have not given any Account of any Man's being put in there before. This Man being in a sick Condition, *Welland* was desired to go to the Upholders at *Exeter-Change*, they are very compassionate, and do assist People of their Fellowship; and he had some Relief given him. He says, that he never knew Mr. *Huggins* give any Direction in the Management of any Matters after Mr. *Gybbon* became Deputy, and gave an Account as to the Coroner's sitting upon dead Bodies; that he took *Barnes* not to be *Huggins's* Servant, and *Gybbon* therefore was answerable for the Act of *Barnes*. He never so much as saw Mr. *Huggins* and *Barnes* together, and that he did not so much as know any Rule-Money paid to *Huggins*; that *Gybbon* generally was paid the Fees, for *Gybbon* paid Nine Hundred Pounds per Annum to *Huggins*. Whether a Man takes the Fees all at once or not, it is the same Thing.

Green says, that he applied to Mr. *Gybbon* in order to have a Room, and Mr. *Gybbon* could not go into the Gaol for fear of this Court of the Prisoners; but at last says, that he did get himself a Room in the House, and did lie there; that he apprehended *Gybbon* was the Principal, and did act.

...and at last he was carried to the Strong Room, and there he was kept till he died; and never saw Huggins there till about the Middle of September.

London says, that he kept a Boarding-house, and boarded a good many there at five Shillings per Week; and Arne was one; that afterwards, when he came to quit the House and was carried into the Strong Room, he was desired by the Upholders Company to take some Care of him; that the Key was kept by Barnes, so that there was a Difficulty to carry and supply him with Provisions; that he said he would give it up unless he had the Key; that he had no Authority to let him out; and that he did keep the Key till three Days before he died, and then delivered it up. He has given an Account of that Act of Arne's running about with the Feathers, and said he never saw Huggins and Gybbon there, at the Time that Arne was in the Strong Room; and that Huggins was Warden, and Gybbon was Deputy. He has given an Account of the Room when built, and of the sad Condition of it.

Gentlemen, Mr. Gwyn said the same; but that he never saw Huggins there. Another Matter that Mr. Huggins insisted upon, to prove the Evidence not to be true, was, that he was not in Town.

The first Witness that he called was his Son, who said, that from the first of September in that Year his Father came down to him in Hampshire, and continued till the 14th or 15th, and staid fourteen or fifteen Days; I do not find but it might be after that that he was at the Strong Room. Smith proves the same, and that he was down there before in August. Knight said, that he was there in August. Bird, Servant to Mr. Huggins, junior, said, that he was there in August seven Days; and that he was there the first of September likewise. Tucker says, that he was employed by Sir George Oxenden, and that he sent his Coach with Mr. Huggins from Wittenham to Henley-upon-Thames about the 15th of September.

Sir George Oxenden agrees with the Servant; and says, that on the 17th or 18th the Prisoner came to his House, and went away the 18th or 19th. I must observe to you, Gentlemen, that from that Time to the Death of this Man, there is no Account given to you where he was.

Hopkins gave Evidence to shew the Witnesses Mistake. Farrington swore, that when Huggins looked in, Hopkins was with him at that Time; and Hopkins said, that he went out of Town to Oxford, and did not return till the 14th of October. Huggins came from Sir George Oxenden's about the 18th or 19th, and I do not hear from any body that he continued out of Town; and it is natural to believe he came to Town, for Henley is the Road to come up to London. Hopkins said, he did not go out of Town till the 27th of September, so that from the 19th to the 28th both might have been at the Strong Room; and I believe this was the Time, may be it may be the 19th, Hopkins did not go till the 27th. What I must leave to you, Gentlemen, is, that this Witness said, it could not be true that he and Huggins could be together. There was about ten Days from the 17th to the 28th, and it appears they were both in Town; and it does seem to come pretty nigh the Time. You see, Gentlemen, Huggins came again a second Time; the first Time does seem to tally, and run very well, if not both.

Gentlemen, you must take this with you, whether Hopkins does not confirm what Farrington says, though he said he was out of Town. Farrington says, once upon a Time, he was at the Strong Room Door; the Door was open, and that he did see the Witness, (meaning Hopkins) and that Arne crept into the Feathers of his Bed; and Hopkins said, that he was there, but he could not see the Feather-bed; that he was in something half up and half naked, which Evidence rather confirms than weakens the Evidence. He (Hopkins) does contradict another Matter; that he does not know that Mr. Huggins was there at the Room, or that he ever saw him there; that he (Hopkins) was at the Strong Room Door, and that he was in the same Manner as the Witness that was there said. And he does contradict, that Barnes was a Servant of Huggins's, and says that Huggins was not to be at the Charge of executing the Office. All that Hopkins says, is, that he was Clerk of the Inquiries, and that he did apply to Mr. Huggins, and that Mr. Huggins did not think fit to put him in, but he sent him to Gybbon to be Clerk of the Inquiries. But that he was Clerk to Mr. Huggins at his Home, he did own it; but in a very extraordinary Manner, that he took him to do his Business for nothing. He said, that the Management of this Office was not solely and clearly under Mr. Gybbon; but, Gentlemen, as to Things of Consequence, there Mr. Huggins was called in, so that it appears that there was a View of his looking after the Prisoners; and it was very well, Gentlemen, that he should, for he was the first Resort upon all Occasions. Hopkins says, that he does not remember any Discourse about Arne with Mr. Huggins, but if he was desired to do any thing as to Arne. It seems, Gentlemen, that he was examined in a strict Manner, and a wise Inquiry made, as appears by an Examination taken before Edward Hughes, Esq. which was produced, and shews, that he had given Evidence to you contrary to that Examination. In that he says, Huggins was Warden; and that he (Hopkins) went from the Fleet to him every Day, and told Huggins, whatever was considerable that was done there; and told him of Arne. He agrees, that there was a Discharge of Prisoners on the 7th of September 1725, when fifty or sixty were discharged; and cannot say, but when they were gone, but that there was Room enough to put Arne in. He denies that Bishop and Gybbon spoke to him about Arne, which Bishop swears.

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The next Witness is Mr. Arne, who was a Relation to the Deceased; he says, that the first Account he received of his miserable Condition was about a Week or ten Days before the poor Man died; he then went to see him, and found him grovelling at the Door, that he was not only become hoarse, but almost speechless: He was crept down and fallen at the Door, and lay like a Dog. He found him, upon opening the Door, in a bad Condition; his Voice was so far gone, that it was a Difficulty to understand him. He had a Gold Watch, and he did get out of him by half Words and Sentences where it was; and said, that the Place was not fit for any Creature whatsoever, neither sick nor well; and that he could not have lived a Week in it. Gentlemen, I asked one of the Witnesses, who appeared to be a very strong Man (London), if he had been there half the Time, would it not have been the Occasion of his Death? Who owned that it would.

The Observation my Brother Carter made is very just: That if a strong Man, being put into that filthy, vile Place it would kill him, to put into such a Place him that wanted Health, Death was more sure. If he was a weak Man, there was no Danger of his escaping, no Danger of going out.

As to his being in that Room being the Occasion of his Death, there need not much be said.

And what is said by Mr. Huggins, except one Thing, carries little or no Weight; and there is only that can deserve your Consideration, Whether he did die by the Cruelty of Gybbon or Huggins? That he did die by Duress, it is not to be supposed to the contrary.

That in Point of Law, wherever there is a Deputy appointed, the Superior must answer; for had a Prisoner of 20,000 l. escaped, Mr. Huggins must have paid the Money.

In criminal Cases I do not think, that the Warden or any other Officer should answer for Murder, unless he was privy and consenting. If this sole Act was Gybbon's, and Huggins no ways consenting, I think the Murder lies upon Gybbon, not Huggins. Though this was the Act of Gybbon and Barnes, whoever has a Hand in it, and the Authority and Power as he had, if it is true that he saw him, and he would not give a helping Hand to assist him, the excepted Rule of Scripture would be true, That he that is not for me must be against me: And if he was any way privy to the carrying him and confining him there, he must answer for the Murder both in this and the next World.

If this is the Act of Gybbon solely, Huggins is not to answer for it; but if Huggins was privy, and he was Warden, he could and ought to have relieved him.

One Thing more, in the latter Part of the Defence Mr. Huggins made for himself, was, to call vast Numbers of Gentlemen of the first Quality; Sir George Oxenden, Sir John Hinde Cotton, in all about twenty he called to his Character and Credit; and if these Gentlemen are not sufficient, I do not know what will be: His Character has been fully established; but I must observe to you, whatever the Character a Man bears, if he is guilty of that Act which destroys his Character, his Character goes for nothing: If there was Difficulty or great Doubt happened upon Circumstances, whether Mr. Huggins was guilty or not, then it was the constant Practice to be governed by a Character: I think Nobody can have a better; he has had a very great Character given him.

Not long since a Person produced twenty-seven People, that gave him a Character, with no Comparison to this, only the Greatness of Numbers.

Notwithstanding which, it there was not doubted, he had committed the Fact; and the Jury very justly brought in their Verdict, Guilty.

Verdicts, in convicting of People, are to be founded upon the Evidence that the Jury has had before them; and I hope I do not express myself so for them to found themselves upon any thing I have said; for they will determine according to the Evidence that has been before them.

Mr. Attorney-General produced three Witnesses, that came to nothing.

I must take notice of one Piece of Evidence given by Mr. Hughes, a Gentleman of Probity and Distinction, one of the Committee appointed by the House of Commons. He tells you, that when Mr. Huggins was under Examination before the Committee, relating to Escapes during the Time he was Warden, Huggins confessed to many had escaped, he could not remember them all; he owned one Oliver Read had escaped, and was retaken; and that he himself sent to Newgate for Irons, and ordered Read to be stapled down and ironed; and that he owned he paid five hundred Pounds to Read's Creditors for the Escape of Read: This was whilst Gybbon acted as Deputy.

Mr. Huggins does give this Answer to that; that Hopkins proved that Gybbon acted, and so he was Warden in Law; I cannot tell what Condition Gybbon was in; and what Security he had given; Huggins was liable for all Escapes.

I have taken Pains to state the Evidence to you as fully as I can; and I hope you will consider it; and that God will direct you to do for the best.

Then one was sworn to keep the Jury, and they withdrew, and Mr. Justice Page and Mr. Baron Carter left the Bench; and Mr. Serjeant Raby with the Lord Mayor remained there; and in about two Hours and an Half the Jury returned.

Clerk of Arraignment. Are you all agreed in your Verdict?

Omnes. Yes.

Clerk. Who shall say for you?—Omnes. Foreman.

Clerk. John Huggins, hold up thy Hand. (Which he did.) Look upon the Prisoner: Is he Guilty of the Felony and Murder whereof he stands indicted, or Not Guilty?

Foreman. We are agreed to bring in our Verdict Special to the Court.

Mr. Att. Gen. What is their Doubt in Point of Law?

Mr. Serj. Raby. What that Doubt is, must be referred to the Court.

Foreman. Was there any Medium between bringing him in Guilty or Not Guilty?

Mr. Serj. Raby. You may find the Fact specially, and refer the special Matter to the Court. If any Matter of Law arises upon that Doubt, it will be explained. You may give a general Verdict in order to refer that to the Judgment of the Court. You must agree upon the Fact; you must state the special Matter: It is usual to state the Point of Law that you doubt in. If you have any Doubt as to the Law, that you must refer to the Court; but as to the Fact, you must determine yourselves.

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Mr. Att. Gen. What is it upon the Question?

Mr. Serj. Raby. The Jury do believe the Prisoner is *guilty*, but not of the whole Indictment.

Foreman. We cannot find any of the Evidence come up to show he was aiding, abetting, and assisting Barnes in putting him into the Room.

Mr. Serj. Raby. Call over the Jury.

Clerk of Arraignment. Answer to your Names, (Which they did.) Are you all agreed in your Verdict? Is John Huggins Guilty of the Murder and Felony, whereof he stands indicted, or Not Guilty?

After considering some Time among themselves, the Foreman speaks as follows:

Foreman. We agree the Prisoner was accessory to the Murder committed upon Edward Arne, but that it was not premeditated in him; that he has been privy to the Cause of this Man's Death, and might have prevented it. Two Witnesses swore, that Mr. Huggins was at the Door of the Dungeon, and saw Arne there; and, as he did not discharge him at that Time, he was accessory to that.

Mr. Serj. Raby. If he was privy, he was guilty of that; if he was privy and consenting, if he did concur in that Act, he is guilty; for it will imply Malice.

If he died by Duress, and he was concurring and consenting to it, then he was guilty of this Act, in that he had Power to redress it, and did not. If he was privy, you must consider if he was concurring.

Mr. Att. Gen. If he was privy and consenting, it does imply it.

In all Special Verdicts the Jury never find Malice.

In no Special Judgment they find Malice.

Foreman. Several of us don't think him guilty of the Malice.

Mr. Att. Gen. The Law will imply the Malice.

Mr. Serj. Raby. You are to consider and find the Fact.

Foreman. We all agree that Arne died by Duress; there are two Witnesses to prove that; but that the Prisoner had no Forethought.

The Jury again considered among themselves; but not immediately agreeing, withdrew, and staid out some considerable Time, and then returned.

Clerk of Arraignment. Are you all agreed?

Foreman. "We are agreed, that there is sufficient Evidence to prove, that they saw Mr. Huggins at the Strong Room."

"We agree that he was Warden of the Fleet-Prison; and that he was Head-Warden at the Time the Fact happened, as mentioned in the Indictment; and that Gybbon was Deputy, and acted as such."

"That James Barnes appeared to us to be Servant to Gybbon, and was employed and acted under him in taking care of the Prisoners, and had the Custody of them; and particularly of Edward Arne."

Mr. Att. Gen. Mr. Tanner, you must write down the Verdict of the Jury.

Mr. Serj. Raby. Get Pen, Ink, and Paper ready. Gentlemen, you must tell him what he is to write, (which is as follows) viz.

"That James Barnes, at the Time mentioned in the Indictment, made an Assault upon Edward Arne, being then a Prisoner in the Fleet Prison; did take and imprison him without his Consent, *prout* in the Indictment."

Mr. Att. Gen. They will find the Description and Situation of the Room as in the Indictment; they can have no Reason to doubt of that.

"That James Barnes and John Huggins, at the Time of the Imprisonment of the said Arne, knew that the Room was newly built; and that the Walls were moist and damp, as in the Indictment."

Mr. Strange. Mr. Huggins did not know it at first, at the Time he was there, when the Door was open.

Mr. Att. Gen. Are the Jury satisfied that Mr. Huggins knew the State and Condition of the Room during the Time Arne was there?

Foreman. "We agree he saw the Building, and that he must know it an unwholesome Room, as described in the Indictment."

Mr. Att. Gen. Let me see the Indictment (Which he did, and read the Words as to the Description of the Strong Room). He must know it when he was at the Strong Room Door.

Mr. Serj. Darnell. It is necessary that the Jury should know what the Attorney reads.

Mr. Att. Gen. Mr. Tanner has twice taken it. How long (speaking to the Jury) before the Death of Arne do you find the Prisoner knew the Condition of the Room?

Foreman. I believe it to be fifteen Days at least before the Death of Arne.

Mr. Att. Gen. That during this Imprisonment and Detention in this Room, the said Arne, by reason of the Duress of such Imprisonment, became sick and languished there, and died, *prout* in the Indictment.

Mr. Hug. The Jury are upon their Oaths, will they find him dead by my Means?

Mr. Strange. I desire the Fact may be found as it is.

Mr. Att. Gen. Mr. Tanner mind, That on the 7th of September he was aiding, abetting, and assisting James Barnes.

Foreman. "We apprehend the Man continued from the 7th of September, and we apprehend he died about the 23d of October."

Mr. Att. Gen. That John Huggins, being principal Warden during the Imprisonment and Detention of the said Arne, was present at the said Room, and saw Arne in that Room under the Duress of that Imprisonment; and that he being present, the Room was locked up with the said Arne in it.

That fifteen Days before the Death of Arne, John Huggins being then Warden of the Fleet, and Mr. Gybbon Deputy-Warden, he saw Arne under the Duress of that Imprisonment; and the said Arne was confined in the said Room, and the said Huggins being then present, he was locked up by James Barnes, and continued in the said Confinement.

Mr. Strange. That is not according to the Evidence. It should be found thus:

That during the Imprisonment of the said Arne, and fifteen Days at the least before his Death, John Huggins being then Warden of the Fleet, and the said Thomas Gybbon, Deputy and acting Warden, was once present, and saw the said James Barnes lock up the Door of the said Room, the said Arne being therein imprisoned.

* *Strange's Reports*, Vol. II. p. 283.

† From Lord Raymond's Reports, Vol. II. p. 1574, 5, 6, 7, 8, &c.

And at the Time Huggins turned away, James Barnes locked up the Door, and Arne continued under the said Imprisonment Duress, until the Time the Building and the Jury took their Verdict, that Huggins knew the said Arne was in the Strong Room when he was left out in them.

Mr. Att. Gen. I must now add the Words, *Aiding, Abetting, and Assisting.* And that Huggins knew of the Badness of the Room.

Mr. Strange. They don't find that, during the whole Time Arne was there, Huggins knew of the Badness of the Room.

Mr. Att. Gen. The Jury cannot find what they don't know.

Foreman. "We find the Letters Patent, constituting John Huggins, Esq. Warden of the Fleet, *prout* in the Indictment."

"That during the Time that Gybbon was Deputy-Warden, Huggins acted as Warden."

Mr. Strange. That does not appear.

Mr. Att. Gen. Who sent for Irons from Newgate?

Ask whether or no they do find, that, at the Time Gybbon was Deputy-Warden, Huggins acted as Warden.—"Beavis in 1725, said Hoptini, came from Huggins about Business; that at the same Time, during the Time that Gybbon acted as Deputy-Warden, John Huggins acted as Warden."

The Verdict was removed, at the Prayer of Mr. Attorney, into B. R. and there argued by Mr. Willes and Serj. Eyre; after which, it was argued at Serjeants-Inn-Hall in Chancery-Lane, before all the Judges, by Serjeant Chisholm, Mr. Attorney, Mr. Solicitor, and Mr. Willes, for the King; and by Serj. Darnell, Serj. Eyre, Serj. Hawkins, Mr. Peter Williams, Mr. Strange, and Mr. Foster, for the Prisoner. But as every Thing insisted on by either side, is taken Notice of in the Opinion delivered by the Lord Chief-Justice Raymond, it will not be necessary to state the Arguments of Counsel.

Mitch. Term. 4 Geo. II. Regis, B. R. 1730.

Rev. vrs. Huggins.

Raymond, Chief-Justice.

This was a Special Verdict, found at the Old-Bailey, on an Indictment of Murder against James Barnes and John Huggins. The Indictment sets forth, "That John Huggins, from the first Day of October, in the twelfth Year of the late King, to the first Day of January next following, and long before and after, was Warden of the Prison of the Fleet, &c. and that James Barnes was, during that Time, Servant to John Huggins, and employed about the Care of the Prisoners; and that James Barnes, *existens persona crudelis natura & immanis dispositionis erga prisionarios in eadem prisione existentes*, on the first Day of November, in the twelfth Year, &c. made an Assault upon one Edward Arne, then being a Prisoner in the same Prison, under the Custody of the said John Huggins, and him the said Edward Arne, then and there, with Force and Arms, &c. unlawfully, feloniously, wilfully, and of his Malice aforethought, and without the Consent of the said Edward Arne, took, and him with Force and Arms, &c. to a certain Room, within the Prison aforesaid, then newly built, unlawfully, &c. conveyed and led, and him the said Edward Arne, with Force and Arms, &c. in the said Room, for a long Time, to wit, for the Space of six Weeks, then next following, unlawfully, &c. imprisoned and detained, and him the said Edward Arne, then and there, with Force and Arms, &c. for all the Time last mentioned, in that Room, *absque salamini ignis necnon sine aliqua matula, scaphio, vel aliquo alia hujusmodi utensili*, unlawfully, &c. forced to remain and be (the Walls of the aforesaid Room, made of Bricks and Mortar, at the aforesaid Time of the Imprisonment of the said Edward Arne in the same, being very moist, and the Room aforesaid being situate over the Common Sewer of the said Prison, and near the place *ubi sordes & fimo prisionum predicta necnon excrementa prisionariorum predictorum adunc usualiter posita fuerunt*, by reason whereof the Room aforesaid then was very unwholesome, and greatly dangerous to the Life of any Person detained in the same). And the Indictment further sets forth, "That the said James Barnes and John Huggins, at the said Time of the Imprisonment of the said Edward Arne in that Room, well knew that the said Room had then been newly built, and that the Walls of that Room, being made of Bricks and Mortar, were then very moist, and that the said Room was so situate as aforesaid." And the Indictment further sets forth, "That the said Edward Arne, during the Imprisonment and Detaining aforesaid, in the said Room, viz. the 7th of November, &c. by Duress of the same Imprisonment and Detaining, became sick, and thereby from the same 7th Day of November, until the 7th Day of December, then next following, in the Room aforesaid, languished, on which said 7th Day of December, the said Edward Arne, by Duress of the Imprisonment and Detaining aforesaid, in the Room aforesaid, died, &c." The Indictment further sets forth, "That the said John Huggins, being a Person of a cruel Nature, and savage Disposition, and a grievous and inhumane Oppressor of the Prisoners in the same Prison, under his Custody being, during the said Imprisonment and Detaining of the aforesaid Edward Arne, in the Room aforesaid, viz. the said 7th Day of November, &c. and divers other Days and Times, during that Imprisonment and Detaining, at London, &c. feloniously, wilfully, and of his Malice aforethought, was present, aiding, abetting, comforting, assisting, and maintaining the aforesaid James Barnes, feloniously, wilfully, and of his Malice aforethought, the said Edward Arne, in Manner aforesaid, to kill and murder: and so the Jurors aforesaid, upon their Oath aforesaid, say, That the said James Barnes and John Huggins, the said Edward Arne, in Manner and Form aforesaid, feloniously, wilfully, and of their Malice aforethought, did kill and murder, against the Peace, &c."

On Not Guilty pleaded by the Prisoner, Huggins, the Jury find a Special Verdict, as follows: "That Queen Anne, by her Letters Patent, bearing Date the 22d of July, in the twelfth Year of Her

Reign, granted to John Huggins, named in the Indictment, the Office

into

of

of the Prison, and Keeper of the Prison, and Gaol of the Fleet, and of the Prisoners then committed, or to be committed, to the Prison and Gaol of the Fleet aforesaid; and the capital Messuages for the Custody of the Prisoners, and Messuages in the Parish aforesaid, and all other Messuages, &c. and all that Rent, Fee or Salary of seven Pounds, twelve Shillings and one Penny yearly, payable and to be paid by the Hands of the Sheriffs of her City of London, and her County of Middlesex, &c. and all other Rents, &c. and him the said John Huggins, Warden or Keeper of the Fleet, and of the Prison and Gaol of the Fleet aforesaid, for herself, her Heirs and Successors, did make, ordain, and constitute, by the same Letters Patent: To have, hold, enjoy, and exercise the said Office, Messuages, Lands, &c. to the aforesaid John Huggins, by himself, or by his sufficient Deputy or Deputies, for and during his natural Life, in as ample Manner and Form as Sir Jeremy Whitchot, Baronet, or any other Warden of her Prison of the Fleet aforesaid, the said Office and other the Premises, or any of them, had before had, held, used or enjoyed, or ought to have had, held, used, or enjoyed, with the usual Averments: And they farther find, that the said John Huggins, first of September, in the twelfth of the late King, and for divers Years before, and continually from thence after, until the first of January then next following, was Warden or Keeper of the said Prison of the Fleet; and that one Thomas Gybbon for all the same Time was Deputy of the said John Huggins in the said Office of Warden or Keeper of the Prison of the Fleet aforesaid, by the same John Huggins appointed, and acted as such his Deputy: And they further find, That James Barnes, in the Indictment named, for all the same Time was Servant of the said Thomas Gybbon, Deputy of the said John Huggins, in the same Office so as aforesaid being, and acted under the said Thomas Gybbon, &c. in and about the Care of the Prisoners committed to the said Prison, and in the same Prison being, and particularly in and about the Care of Edward Arne, in the Indictment named, then and there a Prisoner in the same Prison being: They farther find, That the said James Barnes, the seventh of September, in the twelfth Year, &c. in and upon the said Edward Arne, a Prisoner in the same Prison then as aforesaid being, in Manner and Form as in the said Indictment is specified, made an Assault, and him the said Edward Arne, then and there without his Consent, in Manner and Form as in the said Indictment is specified, took, and him the said Edward Arne to a certain Room within the said Prison, then newly built, in the same Indictment mentioned, without his Consent, in Manner, &c. conveyed and led, and him the said Edward Arne, in the said Room for a long Time, to wit, for the Space of forty-four Days from thence next following, without the Consent of him the said Edward Arne, in Manner, &c. imprisoned and detained, and him the said Edward Arne, then and there for all the Time last-mentioned in that Room, *absque solamine ignis necnon sine aliqua matula, scabbio, vel aliquo alio hujusmodi utensili*, to remain and be without his Consent, in Manner, &c. forced: And they further find, That the Walls of the said Room were made of Bricks and Mortar; and at the said Time of the Imprisonment of the said Edward Arne in the same were very damp; and that the said Room was situate over the Common Sewer of the said Prison, and near the Place *ubi sordes et fimo prisonum prædictarum necnon excrementa prisonariorum prædictorum adunc usualiter posita fuerunt*, by Reason whereof the said Room was then very unwholesome, and greatly dangerous to the Life of any Person detained in the same: And they further find, That the said James Barnes, at the said Time of the Imprisonment of the said Edward Arne in that Room, well knew that the said Room had then been newly built; and that the Walls of that Room were made of Bricks and Mortar, and were then very damp; and that the said Room was situate so as aforesaid: And they further find, That during the said Imprisonment, and detaining of the said Edward Arne in the said Room, to wit, by the Space of fifteen Days at least before the Death of the said Edward Arne, the said John Huggins knew that the said Room had been then newly built, and that the Walls of that Room were made of Bricks and Mortar, and then were damp; but whether the said John Huggins knew, that on the said seventh Day of September, in the twelfth Year, &c. the Jurors know not: And they further find, that the said Edward Arne, during the said Imprisonment and Detaining of him the said Edward Arne in the said Room, to wit, the tenth Day of the same Month of September, in the twelfth Year aforesaid, by Durefs of the same Imprisonment and Detaining, became sick in the said Room; and thereby, from the same tenth Day of September, in the twelfth Year aforesaid, until the twentieth Day of October then next following, in the said Room languished; on which said twentieth Day of October, in the twelfth Year aforesaid, the said Edward Arne, by Durefs of the said Imprisonment and Detaining in the Room aforesaid, died, to wit, at London, &c. And they further find, That during the Imprisonment and Detaining of the said Edward Arne in the said Room, to wit, by the Space of fifteen Days at least before the Death of the said Edward Arne, the said John Huggins was once present at the said Room, and then and there saw the said Edward Arne in that Room, under the Durefs of the said Imprisonment, and then and there turned away; and the said James Barnes locked the Door of the same Room, at the same Time in which the said John Huggins turned away as aforesaid (the same Edward Arne, at the said Time in which the said Door was locked by the said James Barnes, being in the said Room under Durefs of the said Imprisonment). And they further find, That the said Edward Arne, in the said Room, under Durefs of the said Imprisonment remained, and was continued from the said Time in which the said Door of the said Room was so locked by the said James Barnes as aforesaid, until the said Time in which the said Edward Arne so as aforesaid died: And they further find, That the said John Huggins sometimes acted as Warden or Keeper of the said Prison, during the Time in which he the same Thomas Gybbon was Deputy of the said John Huggins in the said Office as aforesaid; but whether upon the whole Matter, &c.

The Record of this Indictment and Special Verdict being removed into the King's Bench by Certiorari, it was argued on Tuesday the sixteenth of June, 1730, by Mr. Willes, for the King; and Mr. Serjeant Eyre, for

the Prisoner. And on the last Day of Michaelmas Term following, after the Case had been argued on the fourteenth of November, at Serjeants Inn Hall, before all the twelve Judges, the Lord Chief Justice (Raymond) delivered the Opinion of the Judges.

In this Case two Questions have been made, first, What Crime the Facts found upon Barnes in the Special Verdict will amount to? Second, Whether the Prisoner at the Bar is found guilty of the same Offence with Barnes?

First, As to the first Question it is very plain, that the Facts found upon Barnes do amount to Murder in him. Murder may be committed without any Stroke. The Law has not confined the Offence to any particular Circumstances or Manner of Killing; but there are as many Ways to commit Murder, as there are to destroy a Man, provided the Act be done with Malice, either express or implied. *Hale P. C. 46. 3 Inst. 52.* Murder is, where a Person kills another of Malice, so he dies within a Year and a Day. *Hale P. C. 43.* And Malice may be either expressed or implied. In this Case the Jury have found the Malice express; for the Facts charged on Barnes are laid in the Indictment to be *ex malitia sua præcogitata*, to wit, that he, having the Custody of Arne, assaulted him, and carried him to this unwholesome Room, and confined him there by Force against his Will, and without his Consent, and without proper Support, *ex malitia sua præcogitata*; by Means of which he languished and died. And the Jury have found that Barnes did all these Facts, *modo et forma prout in indictamento prædicto specificatur.*

But upon the finding of these Facts there is also a plain Malice arising in Construction of Law. *Hale P. C. 46.* The Law implies Malice in respect of the Person killing. If a Prisoner, by Durefs of the Gaoler, comes to an untimely End, it is Murder. It is not necessary to make it Durefs, that there should be actual Strokes or Wounds. And in *3 Inst. 35.* the putting into a Dungeon is Durefs, or into a Place too strait, *3 Inst. 91. plus arctum que deoat, Cromp. 90.* The untimely End, mentioned by Lord Chief Justice Hale, is what is meant by Briton, *cap. 11. fol. 18.* If a Man die in Prison, the Coroner is to take an Inquest upon the View of the Body; and if it is found by the Inquisition, that the Person was brought nearer to Death, and farther from Life, *per dure gard del gaoler*, it is Felony.

The Reasons why the Law implies Malice in such Cases are plain. Because it is a Breach of his Duty, and of the Trust which the Law has reposed in him. A Prisoner is not to be punished in Gaol, but to be kept safely. *Fleet. 38. Braet. 105.* The Act also is deliberate. And the Nature of the Act is such, as that it must apparently do harm. It is also cruel; as it is committed upon a Person that cannot help himself. And it is committed by Force, and without the Consent of the Prisoner. So that the Charge in the Indictment against Barnes is Murder; and these Facts found in the Verdict, as to him, fully maintain the Indictment, and amount to Murder. But Barnes is not before the Court, he having fled (as it is said) from Justice.

Second. The next Question is, Whether the Prisoner, Huggins, is found guilty of the same Offence as Barnes; or how far it appears, by this Special Verdict, that he has been aiding and assisting to Barnes in the committing of these Facts?

In the Indictment the Offence is as strongly charged upon Huggins as upon Barnes. The Indictment charges, that the Prisoner at Bar, during the Imprisonment of Arne in the said Room (the Situation and Condition of which the Indictment expressly charges Huggins to have the Knowledge of), on the seventh of November, *et diversis diebus et vicibus*, during that Imprisonment, feloniously, voluntarily, and of his Malice aforethought, was present, aiding, abetting, comforting, and assisting the said Barnes, the said Arne feloniously, and of his Malice aforethought, to kill and murder, &c. which if found by the Verdict, would certainly be Murder in the Prisoner. But there is a great Difference in the finding the Verdict. As to Huggins, the Jury have only found these Facts, *viz.* That he had the Office of Warden of the Fleet, &c. granted to him by Letters Patent of 22 July, 12 Ann. to hold for his Life, and to execute by himself or his Deputy: That he, 1 Sept. 12 Geo. I. and before and from thence to 11 Jan. 12 Geo. I. was Warden of the Fleet: That Thomas Gybbon was, and for all that Time acted as his Deputy in that Office: That James Barnes was for all that Time Servant of Gybbon, and acted under him about the Care of the Prisoners, and particularly about the Care of Arne: Then they find, that Barnes assaulted and carried by Force the said Arne into the Room, and kept him there against his Consent, *prout in the Indictment*, forty-four Days: Then they find the Situation and Condition of the Room, whereby it was very unwholesome, and dangerous to the Life of any Person kept therein: That Huggins, during the Imprisonment of Arne in that Room, *viz.* for fifteen Days before Arne's Death, knew that the Room was then lately built, and that the Walls were made of Brick and Mortar, and were then damp; but whether he knew it the seventh of September, ignorant: That Arne, the tenth of September, 12 Geo. I. by Durefs of Imprisonment, became sick, and languished to the twentieth of October, and then died by Durefs of Imprisonment in the said Room: That during the Imprisonment of Arne in that Room, *viz.* per spatium quindecim dierum ad minus before his Death, Huggins was once present at that Room, and then saw the said Arne in that Room, *sub duritie imprisonmenti prædicti ac adunc et ibidem se avertit*, and the said James Barnes, the same Time as Huggins turned himself away, locked the Door; the said Arne, at the Time when the said Door was locked by Barnes, being in the said Room, *sub duritie imprisonmenti prædicti*; and that Arne remained under that Durefs till his Death: That Huggins acted sometimes as Warden, during the Time Gybbon was Deputy: But it is not found that he acted as Warden during the Confinement of Arne.

The Judges are all unanimously of Opinion, that the Facts found in this Special Verdict do not amount to Murder in the Prisoner at the Bar; but as this Special Verdict is found, they are of Opinion that he is not guilty. Though he was Warden, yet it being found that there was a Deputy, he is not, as Warden, guilty of the Facts committed under the Authority of his Deputy. He shall answer as Superior for his Deputy civilly, but not criminally. It has been settled, that though a Sheriff must answer for the Offences of his Gaoler civilly, that is, he is subject in an Action to make Satisfaction to the Party injured, yet he is not

to answer criminally for the Crime of Murder, if he is criminally punishable who immediately does the Act. *See* *Reg. v. Bland*, 12 Mod. 645. So that if a Man is found to have done the Act, it is done by the Command or Direction of the Prisoner, the Prisoner is criminally punishable for the Crime of Murder. In this Case the Fact was done by Barnes; and it so appears in the Special Verdict, that the Prisoner at the Bar ever commanded, or directed, or consented to this Dureff of Imprisonment, which was the Cause of Arne's Death. 1. No Command or Direction is found. And 2. It is not found that Huggins knew of it. That which made the Dureff in this Case was, 1. Barnes's carrying and putting, and confining Arne in this Room by Force and against his Consent. 2. The Situation and Condition of this Room. Now it is not found that Huggins knew of these several Circumstances, which made the Dureff. 1. It is not found that he knew any thing of Barnes's carrying Arne thither. 2. Nor that he was there without his Consent, or without proper Support. 3. As to the Room, it is found by the Verdict, 1. That the Room was built of Brick and Mortar. 2. That the Walls were *velde bumide*. 3. That the Room was situate on the common Sewer of the Prison, and near the Place where the Filth of the Prison and Excrement of the Prisoners were usually laid, *ratione quorum* the Room was very unwholesome, and the Life of any Man kept there was in great Danger. But all that is found with respect to the Prisoner's Knowledge is, that for fifteen Days before Arne's Death he knew that the Room was then lately built, *recentior*; that the Walls were made of Brick and Mortar, and were then damp. But it is not found, nor does it appear, that he knew they were dangerous to a Man's Life, or that there was a Want of necessary Support. Nor is it found that he directed or consented that Arne should be kept or continued there. The chief Thing relied upon is, that the Verdict finds, that once the Prisoner at the Bar was present at the Room, and saw Arne *sub duritie imprisonmenti predicti, et se advertit*, &c. which, as was objected, made him an Aider and Abettor. But in Answer to this, 1. Being present alone, unless he knew all the Circumstances, and directed that Arne should continue, or at least consented that he should, cannot make him an Aider or Abettor in the Murder. *Kelynge* 113. A Man may be present, and be entirely innocent. He may be casually present. 2. The Verdict is, *vidit sub duritie imprisonmenti predicti*. He might see him, and see him while he was *sub duritie imprisonmenti predicti*, that is, while he was in Fact under the Dureffs by Barnes; but it does by no means follow from thence, that he knew that the Man was under this Dureff, and it is not found that he did know it. It was objected, that if he saw the Man under this Dureff he must know it, and it was his Duty to deliver him. But we cannot take Things by Inference in this Manner. The *vidit* does not imply a Knowledge of the several Facts that made the Dureff. If the Nature of this Dureff be considered, it is impossible that it should be discovered by one Sight of the Man. It consists of several Ingredients and Circumstances, that are not necessarily to be discovered upon Sight: For though he saw Arne in the Room, yet by the View he could not tell that he was there without his Consent, and by Force, or that he wanted necessary Relief. It is not found that the Man made any Complaint to him, or that any Application was made to him on the Man's Behalf. If he was there with his Consent, it would take off the Dureff. His seeing is but Evidence of his Knowledge of these Things at best, and very poor Evidence too. And therefore the Jury, if the Fact would have borne it, should have found that Huggins knew that Arne was there without his Consent; and that he consented to and directed his Continuance there. Which not being done, we cannot intend these Things, nor infer them. For in Special Verdicts in criminal Cases the Court must never intend nor infer Facts, but judge upon the Facts found, and not on the Evidence of the Facts. *Kelynge* 78. Whether a Man is aiding and assisting in Murder or no is matter of Fact, and ought to be expressly found by the Jury, *Kelynge*, 111. *Rex vers. Plumme*. It does not appear by the Special Verdict there that Glover, or the Person unknown, who shot off the Gun, did discharge it against any of the King's Officers, but it might be for aught that appears for another Purpose: Though upon the particular Circumstances in the Special Verdict there are Things found which were a sufficient Evidence, that the Gun was discharged against the King's Officers, and so it might be reasonably intended, considering they were all armed, and in Prosecution of an unlawful Act in the Night, which they designed to justify and maintain by Force; especially when the Gun was shot off upon the Watchword given; and as the King's Officers were endeavouring to seize the Wool; the Jury thereupon might well have found that the Gun was discharged against the King's Officers. But since they had not found it, the Court were confined to what they had found positively; and were not to judge the Law upon Evidence of a Fact, but upon the Fact when it is found. See *Kelynge*, 118.

This Case was so well argued on both Sides, that some Objections on the Part of the Crown must be taken notice of, though they are already in a great measure anticipated. As,

1. That Huggins, as Warden, though he had made a Deputy, had still the Care of the Prisoners; and it was incumbent on him to see that there was no illegal Dureff: And to explain what the Law means by Dureffs, *Brit. cap. 11. fol. 18.* If a Prisoner is brought nearer to Death and farther from Life *per dure gard del keeper*; and *Staunf. P. C. lib. 1. cap. 35.* If he keeps him more strictly than of Right he ought, it is Dureff. And the Dureff need not be by the Hand of the Gaoler; for if it is done with his Privy, it will affect him. But that is a Mistake; for when an Officer has Power to make a Deputy, and has appointed a Deputy, he has discharged himself of the whole Care: The Deputy has the whole Power, and it is incumbent upon the Deputy till the Principal resumes his Office. Indeed, when the Principal comes to execute his Office himself, the Power of the Deputy ceases; but a bare accidental coming to the Place will not determine the Deputation, unless he comes with an Intent to resume his Office. The Case of a *Disseise* coming to dine with a *Disseisor*, or to see his Pictures, may be very properly compared to this.

"I take it that the Point on which the Case turned was this, it did not appear from any of the Facts found, that the Gun was discharged in Prosecution of the Purpose for which the Party was assembled. But had it been positively found, that it was discharged against the Officer or his Assistant, the Court, upon this finding, might, without encroaching on the Province of the Jury, have presumed that it was discharged in Prosecution of their original Purpose. In Cases so circumstanced, *Res ipsa loquitur*." *Foster's Reports*, p. 352.

But his Consent to this Dureff is not found; it entirely depends on his seeing the Man, which does not appear in the Verdict, for want of his Knowledge of the particular Facts.

3th Objection. When he was present, the Power of his Deputy ceased; and then he might have eased the Man of his Dureff, and his suffering him to continue afterwards under the same Dureff infers that he knowingly suffered him to continue till his Death; and his not reforming this Abuse implies his Consent to it. But these Inferences are by much too strong; and the not reforming an Abuse does by no means infer a Consent to all the Consequences of it.

4th Objection. A Person absent may be Principal in Murder, as in the case of poisoning. An Infant was laid in a Hog-stye, and a Sow eat it, and held Murder, *Palsgrave*, 247, 548. The same Opinion in the case of a sick Man laid in the Cold. So in the case of laying an Infant under Leaves in an Orchard, and a Kite struck it, *Poph.* 13. *Qw.* 98. *Hale P. C.* 53. There the Person who did the Act occasioned the Death; but in this Case no Act was done by the Prisoner at the Bar. There are indeed Cases of Murder where no Act was done by the Persons guilty, as the letting loose a wild Beast, which the Party knows to be mischievous, and he kills a Man. 3 *Edw. III. corone* 311. *Staunf.* 17. *Crompt.* 24. 2. the Owner of the Beast is guilty of Murder. In Answer to those Cases, there is a Difference between Beasts that are *feræ natura*, as Lions and Tygers, which a Man must always keep up at his Peril, and Beasts that are *mansuetæ natura*, and break through the Tameness of their Nature, such as Oxen and Horses. In the latter Case an Action lies, if the Owner has had Notice of the Quality of the Beast; in the former Case an Action lies without such Notice. As to the Point of Felony, if the Owner have Notice of the mischievous Quality of the Ox, &c. and he uses all proper Diligence to keep him up, and he happens to break loose and kills a Man, it would be very hard to make the Owner guilty of Felony; but if through Negligence the Beast goes abroad, after Warning or Notice of this Condition, it is the Opinion of *Hale (H. P. C. vol. 1. 431.)* that it is Manslaughter in the Owner. And if he did purposely let him loose and wander abroad, with a Design to do Mischief; nay, though it were but with a Design to fright People and make Sport, and he kills a Man, it is Murder in the Owner.

5th Objection. It is found that Barnes shut the Door in the Presence of Huggins; and therefore the continuing of Arne under that Confinement will affect Huggins. But there is no Consent found to his Confinement. What is found is, at most, but Evidence of a Consent; and even not that, it is only *vidit et se advertit*.

6th Objection. It is not necessary for the Jury to find the Consent in express Words, and if Facts are found that amount to a Consent, the Court will judge it a Consent. As in the Case of Malice, the Court will judge it upon the Facts found; and Malice is an Act of the Mind as well as Consent. To this it is answered, that Malice is Matter of Law, and proper for the Court to judge, but the Consent of one Man to the malicious Acts of another, is Matter of Fact which ought to be found by the Jury. And here is no Consent found, nor that Huggins aided or abetted Barnes; nor is there any positive Fact found, that must necessarily be construed an aiding and abetting.

There is another Matter which the King's Counsel insisted upon, That if the Court were of Opinion that they could not give Judgment upon the Facts found in this Verdict, that the Prisoner was guilty of Murder; that yet the Verdict was so uncertain, as that they could not give Judgment of Acquittal: And therefore, that a *venire facias de novo* ought to go. And this brought it under the Consideration of the Judges, whether a *venire facias de novo* ought to be granted in this Case. And to speak to that Point, the Counsel on both Sides were heard before all the Judges on Wednesday the 24th Instant.

It was said by the Counsel for the King, that they spoke to this Point without Prejudice. For they insisted, that as to the Verdict itself there were sufficient Facts found affecting the Prisoner, to induce the Judges to be of Opinion that they amounted to Murder. But for Argument's Sake, in case the Judges should be of Opinion, that they were too uncertain to found a Resolution upon, that the Prisoner was guilty of Murder, then they argued that a *venire facias de novo* ought to go, though it was in a capital Case.

1. In a civil Case, if a Verdict is found so uncertainly and ambiguously as that no Judgment can be given, a *venire facias de novo* must issue. *Co. Li.* 227. 2 *Roll. Abr.* 693. *Venn. vers. Howall.* *Cr. Car.* 322.

It was observed that the Book of *Co. Li.* 227. speaks of Verdicts in general, and does not say in what Cases: But as to civil Cases there is no Doubt.

2. In criminal Cases Writs of *venire facias de novo* have been granted. *Co. Inter.* 393. *b. Hil.* 4. *Car. I. B. R. rot.* 32. *Rex vers. Fisher.*

3. In capital Cases a *venire facias de novo* must go. 1. In Cases of Mistrial. 6 *Co.* 14. *a. Arundel's* Case, the Point agreed. 2. For Misbehaviour of the Jury in giving in their Verdict. *Hil.* 8 *Hen. VII. rot.* 3. *placit. reg. Rex vers. Wayner.* Agreed. 3. As to granting a *venire facias de novo*, after a Special Verdict found, they were so candid as to own, that tho' there was Search made with the greatest Diligence, yet they could not find one Instance, nor so much as an Opinion of a Judge, except what was said by Lord Chief-Justice *Holt*, in the Case of the *King vers. Keitt.* *Comberb.* 408. *Holt* says, "I should not be much against a *venire de novo*." (*Comyns* 17.) And this was remembered by some others that heard that Opinion. The Jury had found in that Case that the Prisoner had killed the Man; but it did not certainly appear whether the Fact was Murder or Manslaughter. Mr. Attorney General insisted, that if there was such an Uncertainty, as that no Judgment could be given in a capital Case; the same

Reason

Reason held in such Case as in civil and other criminal Cases; tho' there is no Precedent of it as yet; for *ubi eadem est ratio, est eadem lex*. And therefore, supposing (for in this it was argued upon a Supposition) that the Verdict was too uncertain to give Judgment against the Prisoner, they insisted that a *venire facias de novo* ought to go.

But the Judges came to no Resolution, that a *venire facias de novo* could not issue after a special Verdict in any capital Case; it being unnecessary for them to determine that Question: For as every special Verdict depends upon the particular finding of the Verdict, so the present Question relates only to the present Verdict before us as found. And as to that we were all of Opinion, that this Verdict was not so uncertain as that Judgment could not be given upon it. For the Facts found are all positively found; but those Facts in the Nature of them joined together, are not sufficient to make the Prisoner guilty of Murder. And if so, then the Prisoner must be acquitted; for it is not that the Verdict is uncertain, but it is not full enough to convict him. Perhaps the Jury might have found other Facts which they have not, but the Court can judge only upon what is found. (*Kelyng*, 78, 79.) We all agreed in the Case of *Green and Bedell*, on a special Verdict, that the Verdict was not full enough as to them, for us to

judge it Treason in them; because the Verdict only found that they were present, and found no particular Act of Force committed by them; and did not find that they were aiding and assisting to the rest. And it is possible they might be there only out of Curiosity to see; and whether they were aiding and assisting is Matter of Fact, which ought to be expressly found by the Jury, and not left to the Court upon any colourable Implication; and accordingly those two Persons were discharged. And yet as to *Green*, he was found to be among the Persons assembled, &c. calling up his Cap, and hallooing with a Staff in his Hand; and that whilst he was among them he was knocked down by a Party of the King's Soldiers that came to suppress them; and was then taken. And as to *Bedell*, it was found that he was there, and being pursued by one of the King's Soldiers, called out to the rest of the Company to face about, and not to leave them (a).

Upon the whole, there is no Authority against the Court's giving Judgment of Acquittal, upon a Verdict that is not sufficient to convict; and therefore this Verdict not finding Facts sufficient to make the Prisoner guilty of Murder, he must be adjudged not guilty. And he was discharged.

(a) *Strange*, in his Reports, vol. II. p. 888. after mentioning this Case of (Messengers) *Bedell and Green*, in the Opinion delivered by the Chief-Justice, adds to it, (from *Kelyng*, p. 66.) "On a Special Verdict it was found, that *Thompson* and his Wife were fighting, and *Dawes* endeavouring to part them was killed by *Thompson*; and it not being found, that *Thompson* knew *Dawes* intended only to part them, it was held Manslaughter, without sending it back to the Jury to be certified of his Knowledge. "These are Cases directly in Point as to this Head; and I must observe that *Plummer's* Case was after the Case of *Keit*, wherein *Holt*, Chief-Justice, had had this Point under "his Consideration."

XII. The Trial of THOMAS BAMBRIDGE, Esq. late Warden of the Fleet, for the Murder of Mr. ROBERT CASTELL, before the Right Hon. Sir Robert Baylis, Knt. Lord-Mayor of the City of London, the Hon. Mr. Justice Page, the Hon. Mr. Baron Carter, and Mr. Serjeant Raby, Deputy-Recorder; with other of His Majesty's Justices of the Peace for the City of London and County of Middlesex, at the Sessions-House, in the Old-Bailey, May 22, 1729.

Die Martis, 20^o Maij, 1729.

Proclamation was made for all Persons concerned to attend.

Clerk of Arraignment.

YOU good Men that are impanelled to Enquire, &c. answer to your Names, and save your Fines.

Clerk of Arraignment. *Thomas Bambridge*, hold up thy Hand. (*Which he did*.)
Clerk of Arraignment. Thou standest indicted, &c.

Clerk of Arraignment. How sayest thou, *Thomas Bambridge*, art thou Guilty of the Felony and Murder whereof thou standest indicted, or Not Guilty?
Mr. *Bambridge*. Not Guilty.

Clerk of Arraignment. How wilt thou be tried?

Mr. *Bambridge*. By God and my Country.

Clerk of Arraignment. God send thee a good Deliverance.

Die Jovis, 22^o Die Maij, 1729.

Proclamation was made for Information.

Clerk of Arraignment. Thou the Prisoner at the Bar, these Men that thou shalt hear called, and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death, therefore if thou wilt challenge them, or any of them, thy Time is to speak as they come to the Book to be sworn, before they are sworn.

Then the Pannel was called over, and Mr. *Bambridge* challenged twenty.

Mr. Justice *Page*. You have challenged the full Number allowed by Law, without any Reason assigned, now take care.

Then the Jury sworn were as follow:

George Baker,	Oliver Slowcock,
John Goodinch,	John Nemes,
Robert Hampshire,	Thomas Playseed,
Richard Mason,	William Mills,
William Bernard,	Robert Everett,
Roger Penny,	Moses Freeman.

Clerk of Arraignment. Hold up thy Hand. (*Which he did*.)

Clerk of Arraignment. You, Gentlemen of the Jury, look upon the Prisoner, hearken to his Charge, he stands indicted by the Name of *Thomas Bambridge*, &c. (prout in the Indictment *Mutatis Mutandis*.)

Mr. *Bambridge*. I desire the Indictment may be read in Latin, as it is.

Mr. Justice *Page*. That you shall have done.

Mr. *Holland*. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King. This, Gentlemen, is an Indictment against *Thomas Bambridge*, Esq. late Warden of the Fleet Prison, for the Murder of Mr. *Robert Castell*; and the Indictment sets forth, That *Thomas Bambridge*, upon the 14th of November, had the Care and Custody of the Prisoners in the said Prison, but being a Man of a cruel Temper, did upon the 14th of November last past, assault the said *Robert Castell*, and carry him to *Richard Corbett's*, a Spunging-house, and at the Time of this Imprisonment, one *Joseph White* was sick of the Small-Pox, and Mr. *Castell* never had them; that Mr. *Castell* several Times desired he might not be there, for that he was afraid if he should catch it, it would be his Death. That from the 16th of November to the 12th of December following, *Bambridge* forced him to continue there; and that *Castell* (after his Request made to *Bambridge* to be removed from that Place, and Notice had been given to *Bambridge*, that the Person was sick of the Small-Pox) fell sick of the Small-Pox, and languished under it in the same House until December 12, and then died: Therefore the Indictment concludes, that the said *Thomas Bambridge* did feloniously and maliciously murder the said *Robert Castell*, against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment the Defendant pleaded Not Guilty; but if the Fact is proved, I don't doubt but you will find him Guilty.

Mr. Serj. *Cheshire*. My Lord, and you Gentlemen of the Jury, *Thomas Bambridge* stands indicted for the Murder of Mr. *Robert Castell*, a Prisoner then in his Custody. Gentlemen, Prisoners must be treated with Hu-

manity and Tendernefs, unless unruly, and then the Gaoler has an Authority to restrain them; but those that behave well, he has no such Authority over. This Person came to the Fleet the 28th of June, as will be shewn by the Books of the Warden, and *Bambridge* had been a Deputy Warden some Time before. I wish he had not learned to treat People with Severity. On the 30th of September he came to be Warden in right of himself, and Mr. *Castell* had performed every Thing that was necessary; for the Liberty of the Rules had given Security, and to continue that Liberty of the Rules, found additional Security, Security to his Satisfaction, approved on by the Clerk of the Enquiries, yet on the 14th of November, he was forced into *Corbett's*; and I must submit it to you, my Lord, if it is not contrary to Law, as he lodged in the Rules, at one Mr. *Underwood's*, to carry him to a Spunging-house, Houses where they make a Property of all Prisoners. 'Tis the Duty, Gentlemen, of a Gaoler, that has Prisoners in his Custody, when he thinks they cannot be continued safely in the Rules, to put them into Prison, and not into Spunging-houses, where large Reckonings are run up upon them. Their Method is, Gentlemen, to make the Security uneasy, and then to tell the Prisoners that they shall be carried into Spunging-houses, till they can work them up to a Temper to pay such Sums of Money that they want to get from the unhappy Prisoners. Gentlemen, Mr. *Castell* was given to understand, that a Man was ill of the Small-Pox in the same House, and Mr. *Castell* had never had them, and said, *he should die if he had, let me not be carried into this House*. This did not take Effect, *Bambridge* insisted upon his renewing his Security, and when he was carried there, *Savage* went from him to *Bambridge*, and told him that Mr. *Castell* never had the Small-Pox, and that one *White* was ill of them, and begged that he might be carried back into his Lodgings, or into the Gaol. One would have thought *Bambridge* should have had some Consideration of him, but he had no Answer to his Satisfaction; he continued there very melancholy till the 4th of December, and then the Distemper took him; he sickened with the same, the Danger increased, and he died on the 12th, so that it was apparently the Occasion of his Death. It was *Bambridge's* Duty, when he was informed the Distemper was in the House, to have removed him. This is the State of the Evidence, and as we shall be able to prove the Facts, I doubt not but you will find the Defendant Guilty.

Mr. Attorney-General. My Lord, and you Gentlemen of the Jury, *Thomas Bambridge* stands indicted for the Life of an unhappy Man, who died under his Custody. As the Law has armed Gaolers with a sufficient Authority, for the safe Custody of their Prisoners, and for the securing their Properties, so the Law has taken Care that they shall not put any Prisoner into hard Durefs, and if the Man dies, the Life of the Prisoner lies to the Gaoler, and whether the Person dies being so confined, or whether it was the Distemper occasioned by means and by reason of his illegal Durefs, I submit it to your Lordship's Direction, to be Murder; for where actual Force should be committed, and the Offender does an unlawful Act, by which Death ensues, I must submit it whether, being mixed with actual Force, it is not Murder. This is a particular Case of this Prisoner, for he had given Security for the Enjoyment of the Indulgence of the Liberty of the Rules, during the Time he was in those Lodgings; but for what Reason does not appear, that *Bambridge* ordered *Corbett* to take him out, and not to bring him into Prison, but carry him into *Corbett's* House, that will appear to be an illegal Act of imprisonment; for by the Statute 22d Charles II. it is provided, no Gaoler, or other Officer, having Prisoners in his Custody, shall carry them to any public Victualling-House; therefore *Bambridge* ordering Mr. *Castell* to be carried to a Victualling-House, and not into the Prison, is an illegal Act, and the Consequence of that, I apprehend to be an illegal Confinement: At the Time when carried there, *White* being sick of the Small-Pox, it will appear to you, Gentlemen, that *Bambridge* was acquainted that the Small-Pox was in the House, (it was a contagious Distemper) and that Mr. *Castell* was afraid of catching it. Frequent Messages were sent to desire he might be removed, and it will appear that Mr. *Castell* did personally apply to

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Bambridge

Bambridge himself at Corbett's; after this, the Small-Pox being mentioned to be in the House when Bambridge was in Company with Mr. Castelli, he said he never had had them, and if he caught the Contagion, it would kill him, and desired to be removed; but Bambridge refused to let him go, and continued the unlawful Durefs upon Castelli; he did catch the Distemper, and of that Distemper, so taken into Corbett's, under this Durefs, died. If this Matter is proved, it is a point of Law, if it is not Murder; as to the Fact, it must appear by Evidence, and if my Brief be true, it will be fully made out to you. If the Gaoler does so treat a Prisoner to put him in hazard of his Life, and by such Durefs he dies, I submit it whether the Gaoler is not guilty of Murder.

Mr. Sol. Gen. We will call the Witnesses to prove the Facts.
Call Richard Longborne (who was sworn), and produced a Copy of Bambridge's Patent.

Mr. Sol. Gen. Where had you it from?—Mr. Long. From the Rolls.

Mr. Sol. Gen. Is it a true Copy?—Mr. Long. It is a true Copy.

Mr. Sol. Gen. Deliver it to the Clerk to be read, (which he accordingly did) and it appeared to be dated the 30th of September, in the second Year of his present Majesty.

Call Thomas Cotton. (Who was sworn.)

Mr. Sol. Gen. Mr. Cotton, what Officer are you belonging to the Fleet Prison?—Mr. Cot. I am Clerk of the Papers.

Mr. Sol. Gen. Produce the Commitment Books of the said Office, and see when Mr. Castelli was committed Prisoner.

Mr. Cot. He was committed the 15th of July 1728, upon Mesne Process.

Mr. Sol. Gen. When was he charged in Execution?

Mr. Cot. The 9th of November following, for 180l. at the Suit of William Waring.

Mr. Bambridge. I do not hear Mr. Cotton, and therefore desire he may raise his Voice (upon which the Court admitted Mr. Bambridge to come to the inner Bar); I must observe, my Lord, the Writ was brought in 1726, and entered in 1728.

Call Richard Corbett. (Who was sworn.)

Mr. Sol. Gen. Mr. Corbett, what House do you keep?

Mr. Cor. A Publick-House.

Mr. Sol. Gen. How long have you lived there?

Mr. Cor. Eleven Years.

Mr. Sol. Gen. Did you know Mr. Castelli was in your House?

Mr. Cor. Yes.

Mr. Sol. Gen. Who brought Mr. Castelli to your House?

Mr. Cor. Myself, his Security sent for me to the Rainbow Coffee-House.

Mr. Sol. Gen. Where was he before he was carried to your House?

Mr. Cor. At his own Lodgings.

Mr. Sol. Gen. Where was that?

Mr. Cor. At Mr. Underwood's, in the Rules of the Fleet.

Mr. Sol. Gen. Now go on.

Mr. Cor. My Lord, the Security sent for me to the Rainbow Coffee-House to take up Mr. Castelli; but having some Respect for Mr. Castelli, I sent to him to let him know that his Security intended to surrender him, and afterwards, at five or six o'Clock in the Evening, the Security sent for me again to the King's-Arms Tavern (where Mr. Castelli was) to surrender him, and I told them I would not take Mr. Castelli into Custody without I was paid; and they gave me Half a Guinea, and then asked me, Why I did not lock him up? Said I, He is my Prisoner now, not yours, and I left him there, and went to the Judge's Chambers; whilst I was gone, a Servant was sent to my House to have a Fire made and a Bed got ready for Mr. Castelli.

Mr. Sol. Gen. How came he to go to your House?

Mr. Cor. It was at his own Request.

Mr. Sol. Gen. How long did he continue there?

Mr. Cor. Till he died, which was on the 12th of December following.

Mr. Sol. Gen. Was one White there?—Mr. Cor. Yes.

Mr. Sol. Gen. How long?—Mr. Cor. A considerable Time. White had been well about 14 Days before Mr. Castelli came.

Mr. Sol. Gen. Was Bambridge there?

Mr. Cor. He was there several Times.

Mr. Sol. Gen. Did Mr. Castelli ever desire you to go to Mr. Bambridge?

Mr. Cor. He did desire me to go to Bambridge, and said he was afraid, he had never had the Small-Pox, for if he had, it was when he was very young; and I went to Bambridge to tell him, that Mr. Castelli desired to go to his Lodgings.

Mr. Sol. Gen. When was this?

Mr. Cor. Nine or ten Days after the Security had surrendered him.

Mr. Sol. Gen. What did Mr. Castelli tell you to say to Mr. Bambridge?

Mr. Cor. He told me to tell Mr. Bambridge he was afraid of the Small-Pox, and to solicit him to let him go to his Lodgings; and I went accordingly to Mr. Bambridge, at the King's-Arms, on Ludgate-Hill, and did solicit him to let Mr. Castelli go to his Lodgings, and Bambridge made answer to me, that he could not let a Man go, that was charged in three Executions, without Security.

Mr. Sol. Gen. What was the Reason you told Bambridge that Mr. Castelli never had the Small-Pox, and desired to go to his Lodging at Ludgate-Hill?

Mr. Cor. I told Bambridge that one White had the Small-Pox.

Mr. Sol. Gen. What Room was it Mr. Castelli died in?

Mr. Cor. I have kept a Club in the Room where Mr. Castelli died.

Mr. At. Gen. When did you first acquaint Mr. Bambridge with Mr. Castelli's being at your House?

Mr. Cor. The 15th of November, the next Day.

Mr. At. Gen. What said you to Bambridge?

Mr. Cor. I told him Mr. Castelli's Security had surrendered him; and Bambridge asked, Where is he? I said, At my House; to which Bambridge answered, That was well.

Mr. Bambridge. Be pleased to ask, my Lord, if Corbett had any Directions from me to take Mr. Castelli into Custody.

Mr. Justice Page. Corbett, answer that Question.—Mr. Cor. I had not Mr. Bam. When was I admitted into my Office?

Mr. Cor. On the 15th of December.

Mr. Bam. I desire Mr. Corbett to be asked, if he was not in Court when I qualified myself for the Place, and desire he may give an Account of it.—Mr. Cor. I was in Court.

Mr. Justice Page. I cannot admit him to give an Account of what was done in Court, for that must appear by the Records thereof.

Mr. Bam. My Lord, I desire Mr. Corbett may acquaint you what part of the House Mr. Castelli lay in, and what part White.

Mr. Cor. White lay in the old House, in the Garret, and Mr. Castelli in a House newly taken in, on the first Floor.

Mr. Justice Page. Had Mr. Castelli and White any Communication together?

Mr. Cor. I never suffered White to come down for eight Weeks.

Mr. Justice Page. How high was the House where he lay?

Mr. Cor. Three Stories.

Mr. Baron Carter. How long was it before White went out of his Chamber after Mr. Castelli was there?

Mr. Cor. Not till six Weeks after Mr. Castelli was dead.

Call John Savage. (Who was sworn.)

Mr. Sol. Gen. Mr. Savage, do you know Mr. Castelli being any Time a Prisoner in the Fleet?—Mr. Savage. I was daily with him.

Mr. Sol. Gen. Do you know any thing of his being sent to Corbett's?

Mr. Sav. I was several Times in Company with him, and he seemed apprehensive of his Bail surrendering him.

Mr. Sol. Gen. Did you go to him to Corbett's?

Mr. Sav. I went to Mr. Castelli the Day after he was carried there, and he complained that he was afraid he should not get Day Rules to go out with, though it was Term-Time, to transact his Business.

Mr. Sol. Gen. Had he the Small-Pox at that Time?—Mr. Sav. No.

Mr. Sol. Gen. How soon did you go to Mr. Castelli again?

Mr. Sav. I went to him again in a Day or two, and he expressed a great Concern for fear of the Small-Pox, and said if he caught that Distemper, it would be very fatal to him; and I went to Mr. Bambridge, and told him of it, and Bambridge said he would not let him go to his Lodgings.

Mr. Sol. Gen. Was you with Bambridge at any other Time?

Mr. Sav. I was at the Coffee-House with him.

Mr. Sol. Gen. What Request did you make then?

Mr. Sav. I don't remember any.

Mr. Sol. Gen. How many Times did you go to Bambridge?

Mr. Sav. Four Times I went to him, and the second Time I mentioned Mr. Castelli's Fear of having the Small-Pox.

Mr. Sol. Gen. Did you see Mr. Castelli after he had the Small-Pox?

Mr. Sav. I did not see him, in regard to some of my own Family who had not had them.

Mr. At. Gen. Mr. Castelli was carried to Mr. Corbett's the very Day he was surrendered, pray what was it he desired at that Time?

Mr. Sav. He said it was a great Misfortune not to have the Benefit of Day Rules to negotiate his Business with his Friends.

Mr. At. Gen. When did you first go to Mr. Castelli?

Mr. Sav. The next Day after he was carried there, and it was mentioned that Mr. Castelli was fearful of having the Small-Pox.

Mr. At. Gen. Was not that the first Day that he was carried there?

Mr. Sav. I am not sure it was the first Day.

Mr. At. Gen. How did you hear it?

Mr. Sav. I had it from Mr. Castelli the next Day after, or the Day after that.

Mr. At. Gen. When you went first to Mr. Bambridge from Mr. Castelli, what did you desire?

Mr. Sav. I did desire that he might have the Benefit of the Day Rules, and Mr. Bambridge said he could not, being charged in Execution to the amount of 900l.

Mr. At. Gen. When did you go to Bambridge?

Mr. Sav. I believe I went in a Day or two after Mr. Castelli was carried in, and then mentioned Mr. Castelli's Fears of having the Small-Pox.

Mr. At. Gen. Did you say any thing of the Small-Pox being in the House?—Mr. Sav. I knew nothing of them.

Mr. At. Gen. How came you to talk of the Small-Pox to Bambridge?

Mr. Sav. I heard it from Mr. Castelli, that the Small-Pox was there.

Mr. At. Gen. What was the Reason of Mr. Castelli's Fear, and Message to Bambridge?

Mr. Sav. Mr. Castelli told me the Small-Pox was there at Corbett's.

Mr. At. Gen. What did you tell Bambridge?

Mr. Sav. I told Bambridge that Mr. Castelli was fearful of having the Small-Pox, and that he desired to be carried to his own Lodgings.

Call Mary Corbett. (Who was sworn.)

Mr. Serj. Chesb. Mrs. Mary Corbett, you are Wife of Mr. Corbett?

Mrs. Cor. Yes.

Mr. Serj. Chesb. When was Mr. Castelli brought to your House?

Mrs. Cor. The 14th of November, at ten o'Clock at Night, and a Drawer came from the Tavern, and brought a Message to have a Fire made, and a Bed prepared for Mr. Castelli.

Mr. Serj. Chesb. Where was the Message brought from?

Mrs. Cor. The Message was from the King's-Arms Tavern.

Mr. Serj. Chesb. Did Mr. Castelli come?—Mrs. Cor. Yes.

Mr. Serj. Chesb. Was White there?

Mrs. Cor. Yes.

Mr. Serj. Chesb. How long had White had the Small-Pox?

Mrs. Cor. I believe he had had the Small-Pox ten Days.

Mr. Serj. Chesb. Was there any Mark of the Small-Pox remaining?

Mrs. Cor. He kept the Scars on.

Mr. Serj. Chesb. How long was he sick?

Mrs. Cor. Ten Days.

Mr. Serj. Chesb. Did he sit up?

Mrs.

Mrs. Corbett. He got up every Day.

Mr. Serj. Chesbire. Pray, if they are a good Sort, do they not turn in nine Days?—Mrs. Corbett. Yes.

Mr. Serj. Chesbire. So that the Day after the Small-Pox had turned, Mr. Castell came into your House: How long had Mr. Castell been in your House before he had the Small-Pox?

Mrs. Corbett. Mr. Castell had not the Small-Pox till about eight Days after he came to my House: I was by chance speaking of the Small-Pox, and saying a Person in the House had them, and Mr. Castell said he was very sorry for it, because he had never had them.

Mr. Serj. Chesbire. Did he then desire any thing of you or your Husband, as to speaking to Mr. Bambridge?

Mrs. Corbett. Mr. Bambridge was in the Room at the same Time.

Mr. Serj. Chesbire. What did Mr. Castell say?

Mrs. Corbett. He desired that he might go home to his Lodgings with a Keeper, and Bambridge said in answer, he never knew any thing of that kind done.

Mr. Serj. Chesbire. Did you give any Instance?

Mrs. Corbett. I told him that it happened when Mr. Conway, a Master in Chancery, was committed to the Fleet Prison, and there was no Convienency in the Prison, nor at my House, and then Mr. Gybbon sent a Keeper with him to his Lodging.

Mr. Serj. Chesbire. What did Bambridge say then?

Mrs. Corbett. He said no more.

Mr. Serj. Chesbire. During the Time Mr. Castell was at your House, were there any Securities given?

Mrs. Corbett. Yes, I believe there were, for Mr. Castell said his Securities were come, and said only for Codnor's coming with Bonds, and Codnor told me there was Security given.

Mr. Serj. Chesbire. Do you know nothing but what Codnor said?

Mrs. Corbett. I saw two Men there, whose Names I do not know, in order to give Security.

Mr. Serj. Chesbire. Do you know that they gave Security?

Mrs. Corbett. I saw Codnor, the Deputy Clerk of the Papers, go up Stairs with some Papers, which Mr. Castell said was his Bonds.

Mr. Serj. Chesbire. Did you hear Bambridge say, or own, that Codnor had taken Security?—Mrs. Corbett. No.

Mr. Serj. Chesbire. How long was this after Castell came to your House?

Mrs. Corbett. About ten Days.

Mr. Serj. Chesbire. Do you remember the Time how long after he sickened and died?

Mrs. Corbett. He sickened on the 4th Day of December, and died on the 12th.

Mr. Serj. Chesbire. What did he die of?

Mrs. Corbett. Of the Small-Pox.

Mr. Att. Gen. What was the Request of Mr. Castell, when he had the Conversation with Mr. Bambridge at your House?

Mrs. Corbett. His Request to Mr. Bambridge was, to be moved to his own Lodgings with a Keeper.

Mr. Att. Gen. Did he agree or refuse?

Mrs. Corbett. His Answer was, he never knew any thing of that kind done.

Mr. Att. Gen. When was Mr. Castell first brought into your House?

Mrs. Corbett. On the 14th of November, about ten o'Clock at Night.

Mr. Lee. Was you in Company at the Tavern?—Mrs. Corbett. No.

Mr. Lee. How long after your Husband was gone there, did you receive the Message about Mr. Castell's coming?

Mrs. Corbett. An Hour and an Half.

Mr. Lee. Who brought him to your House?

Mrs. Corbett. He came in Custody, but I did not see him.

Mr. Lee. How long was it after that Mr. Bambridge came to your House?

Mrs. Corbett. In about a Week.

Mr. Lee. Did you hear Bambridge say any thing when he was at that Time at your House?

Mrs. Corbett. He did not say any thing to me.

Mr. Lee. Are you sure of it?—Mrs. Corbett. Yes.

Mr. Lee. White lay ill of the Small-Pox then, was it in the same Stair-case?

Mrs. Corbett. They went up the same Stair-case, but Mr. Castell lay in the new House one Pair of Stairs, and White in the old House three Pair of Stairs.

Mr. Lee. How long was it after Mr. Castell had been at your House, that you mentioned White's having the Small-Pox?

Mrs. Corbett. About a Week after he had been there, I said to Mr. Castell (Mr. Bambridge being by) that there was one in the House had the Small-Pox; to which Mr. Castell replied, I am sorry to hear it, for I never had them.

Mrs. Lee. How long had White been ill before you happened to speak of his Illness to Castell?

Mrs. Corbett. To the best of my Remembrance eight Days.

Mr. Bambridge (showing a Paper to Mrs. Corbett) says, Mrs. Corbett, pray look on that Paper.

Mrs. Corbett. I have, and remember the Coroner's coming to my House, but did not know who he was.

Mr. Just. Page. If you intend to produce any Evidence in respect to the Inquest, she is not a proper Person; for that you must produce the Coroner himself.

Mr. Bambridge. My Lord, I shall submit, and desire Mrs. Corbett may repeat what she said in relation to Mr. Conway.

Mr. Just. Page. Mrs. Corbett, pray repeat that.

Mrs. Corbett. My Lord, Mr. Conway was at a Friend's House on Ludgate-Hill, and the Reason was, the Gaol was very full, and there was no Room at my House, and Mr. Gybbon sent a Keeper with him to his Lodging, but that in two Nights and two Days, when there was Room, he came there.

Mr. Just. Page. Do you know of your own Knowledge, what House he was at?

Mrs. Corbett. No, I do not, but that he was kept in the Rules of the Prison, with a Keeper, till he was brought to my House.

Mr. Bambridge. My Lord, I desire she may acquaint you what sort of Intimacy there was between Mr. Castell and myself?

Mrs. Corbett. Mr. Bambridge used to be at a Club at my House, where some Persons met, and among them Mr. Castell, and I always thought him and Mr. Bambridge to be friendly together.

Mr. Bambridge. When Mr. Castell spoke about enquiring after new Securities, what Answer did I make?

Mrs. Corbett. That you would take the Security as it came.

Mr. Bambridge. When I was speaking to a Gentleman, who told me Mr. Castell was sick of the Small-Pox, what did I say?

Mrs. Corbett. You said, that you was very sorry to hear it, and that Mr. Castell should trifle with you, and himself too, about the Securities.

Mr. Bambridge. When Mr. Castell applied about Securities, what did I say?—Mrs. Corbett. You said it should be done.

Mr. Bambridge. Was it not esteemed a Favour, or Part of Friendship?

Mrs. Corbett. It was.

Mr. Bambridge. Was you by when Mr. Castell desired to go to his Lodgings on Ludgate-Hill?—Mrs. Corbett. I was.

Mr. Bambridge. What was the Reason of Mr. Castell's desiring to go?

Mrs. Corbett. I believe he was afraid of the Small-Pox.

Call Richard Corbett again.

Mr. Just. Page. Mr. Corbett, you said that White was recovered of the Small-Pox fourteen Days before Mr. Castell was brought to your House; are you certain of that?

Mr. Corbett. I heard so, my Lord, I never went up to see him, and the Nurse is here, and can inform your Lordship better.

Mr. Just. Page. You may go, you know nothing of it.

Call Hannah Stretch. (Who was sworn.)

Mr. Sol. Gen. Mrs. Stretch, was you sent for to Mr. Castell when he was ill?—Mrs. Stretch. Yes.

Mr. Sol. Gen. When did you leave White?

Mrs. Stretch. Some time in November last.

Mr. Sol. Gen. Was you Nurse to Mr. Castell?—Mrs. Stretch. I was.

Mr. Sol. Gen. Do you know how Mr. Castell got the Small-Pox?

Mrs. Stretch. I do not.

Mr. Sol. Gen. How long did you stay with White?

Mrs. Stretch. Full three Weeks, and in that Time White had not been out of his Room. I went from White on the Thursday, and was sent for to Mr. Castell on the Tuesday following.

Mr. Sol. Gen. What Condition was White in when you left him?

Mrs. Stretch. When I left him he was out of all Danger, he had taken three Doses of Physick.

Call Thomas Dawson. (Who was sworn.)

Mr. Sol. Gen. Mr. Dawson, do you remember Mr. Castell's being brought into Corbett's?

Mr. Dawson. I never saw Mr. Castell till after he was dead.

Call John Noel. (Who was sworn.)

Mr. Sol. Gen. Mr. Noel, did you know Mr. Castell?

Mr. Noel. I was a Prisoner at Mr. Corbett's when he came there.

Mr. Sol. Gen. Was one White ill of the Small-Pox then?

Mr. Noel. I never saw Mr. White, but was informed he had the Small-Pox above Stairs; I was then in the House.

Mr. Sol. Gen. Do you know how long White had them?

Mr. Noel. He was never suffered to come down in two Months after.

Call James Codnor. (Who was sworn.)

Mr. Sol. Gen. Mr. Codnor, was you concerned in the Prison of the Fleet as a Clerk?

Mr. Codnor. I did act there as Deputy Clerk of the Papers, by the Approbation of Mr. Bambridge.

Mr. Sol. Gen. Did you know of any Securities given by Mr. Castell?

Mr. Codnor. Some time in November last, in Michaelmas Term, I received Orders from Mr. Bambridge to attend Mr. Castell as often as his Security should come to him to compleat his Bonds, who had then three Securities, and I received three Habeas Corpus very soon one after the other, and Mr. Castell could not get the Bonds signed so soon till Execution came against him, and then the Security was objected to, because a greater Charge came against him.

Mr. Serj. Chesbire. What were those Bonds that had been given?

Mr. Just. Page, } We cannot admit you to ask any Questions as to
and } the Bonds, unless you had applied to Mr. Bambridge for them, and he had refused to deliver them.
Mr. Bar. Carter. } Then the Prisoner was directed to proceed in his Defence.

Mr. Bambridge. I have a great many Witnesses to prove my Regard for Mr. Castell, if occasion; but shall submit the rest to the Evidence given for the Crown.

Mr. Just. Page. You may go on if you think fit.

Mr. Bambridge. No, my Lord, I will submit the whole.

Mr. Just. Page. Gentlemen of the Jury, Mr. Bambridge stands indicted for the Murder of one Mr. Castell. If this has not been proved, Gentlemen, you are not to find the Man Guilty. That the Evidence for the Crown is not sufficient to find him Guilty, for so far from being Guilty, Mr. Castell desired to come there, and the Warden, if he is apprehensive that a Man will run away, then it is the Duty of a Warden to carry him to a Place of safe Custody. It is said, indeed, that when Mr. Bambridge came to Corbett's, in about eight Days after Mr. Castell was carried there, Mr. Bambridge was by, and Mr. Castell expressed his Fear of having the Small-Pox, and desired to be removed to his Lodging, but then he never asked to go into the Custody of the Gaol. Mrs. Corbett indeed said, that one of the Masters in Chancery, Mr. Conway, was allowed to be at his Lodging two Days before he was carried to the Gaol, but the Reason was, there was no Room in the Gaol. Gentlemen, the Gaoler must keep his Prisoners as well as he can, for they must not be put like Hogs together. Gentlemen, here was Execution upon Execution, which came to the Sum of 900l. therefore it was requisite to have him in a Place of Safety. Another Witness says, that the Deputy Clerk of the Papers was ordered by Mr. Bambridge at all Times to attend Mr. Castell about his Securities, and so far from the Prisoner's having a malicious Intent, that there was no Quarrel, no ill Nature, no Difference, and they met frequently at Corbett's at a Club, and there was no Quarrel, but always a Friendship between them. And when Bambridge heard that he had the Small-Pox, he declared that he was sorry that Mr. Castell had them, and that he had trifled with himself and him about

the Securities. It must appear, Gentlemen, to you, that Mr. *Castell* was murdered maliciously, to find the Prisoner Guilty; if it appears otherwise, you must acquit him.

Clerk of Arraignment. How say you, is *Thomas Bambridge* Guilty of the Murder whereof he stands indicted, or not Guilty?

Foreman of the Jury. Not Guilty.

Upon this Acquittal, *Mary*, the Widow of Mr. *Robert Castell*, brought an Appeal against the said *Thomas Bambridge* and *Richard Corbett*, for the Murder of her Husband. We shall here give the Trial on the Appeal, though it is not in the Order of Time, yet as it relates to the same Fact, is proper to follow the Trial of *Bambridge* for the Murder.

What follows first, is a short Account of the Proceedings previous to the Trial, on the Appeal.

Hilary Term, 3 Geo. II.

Castell, Vid. vers. Bambridge, et Corbett.

The Defendant *Bambridge*, having been prosecuted on the Report of the Committee of the House of Commons, for the Murder of the Plaintiff's Husband, who was a Prisoner in the Fleet, under the Custody of *Bambridge* the Warden, and having on the Trial been honourably acquitted, upon the Prosecutor's own Evidence, was followed with an Appeal, to which *Corbett*, who on the Cross Examination appeared to be a material Witness for *Bambridge*, was now also made an Appellee; and the Writ of Appeal running *quia Maria Castell vidua fecit nos secur de clamore suo prosequendo per Thom' Wagstaffe et Peston Stracey*, contrary to the usual Form, which is, *si the Appellant fecerit nos* (i. e. the King) *secur* Application was made to the Lord Chancellor King, to supersede this Writ, upon Affidavit that the Appellees were both in Custody upon it, but that no Security had been given, and the Writ reciting it as an Act done before the Emanation of it, the Sheriff had not taken any, as he would have done if it had been put by way of Condition, *si fecerit*. And it was argued by me that the Statute of *Westminster 2. C. 12.* giving the Appellee a Remedy against the Appellant, her Pledges, and Abettors, it was not a Matter of Form, but Security should be entered into by Persons of Ability; to which it was answered by Mr. Attorney-General, that it was sufficient if there were Pledges at any Time before Judgment. Sir T. Jones, 154. 9. Coke, Dr. Hufsey's Case. Croke Jac. 413.

To this it was replied, that at that rate the Appellee would never have any Remedy against the Pledges; for if he was convicted, he would be intitled to none, and if he was acquitted, the Appellant would never pray Judgment, and it would be an Artifice to elude the Law.

Notwithstanding all which the Chancellor would do nothing in it, but said, if the *quia fecerit vos* was wrong, we might have Advantage of it, and so refused to make any Order.

Upon the first Day of *Michaelmas Term* last, the Writ being returned, and the Appellees both brought by *Habeas Corpus*, and turned over to the King's Bench, it was there moved to have the Proceeding set aside, upon the same Affidavit of there being no Pledges; and the Court here were of Opinion it was a very good Objection, and a Foundation to supersede the Writ; but then they said, it was not in their Power, who were to take the Writ as they found it, and not to hear Affidavits, to contradict the Suggestion of the Writ; and therefore the having Security, being recited as an Act done, they must take it so, and could not relieve.

Upon this the Appeal was arraigned, setting forth that the Appellant's Husband was a Prisoner in the Fleet, under the Custody of *Bambridge*

the Warden, who made an Assault upon him, and contrary to his Will carried him to the House of *Corbett*, a Victualling-house within the Fleet, and there imprisoned him, where one *White* then lay ill of the Small-Pox, which *Castell* had never had; that the Appellees had Notice of this, and were desired to suffer him to remove to another Place in the Prison, which they refused, and afterwards *Castell* fell ill of the Distemper, and died in *Corbett's* House; whereby the Court concludes, the Appellees were Guilty of Murder.

Without staying for a Copy of the Declaration, the Appellees instantly plead Not Guilty, and their Plea was rehearsed in French, and Issue joined.

Then it was moved, that the Appellees might be bailed; and, upon Debate, the Court were of Opinion to bail *Bambridge*, and not *Corbett*; and the Reason they gave was, that *Bambridge* had been acquitted, which was a strong Presumption of Innocence; and the Judge before whom he was tried, had certified that he was very well satisfied with the Verdict, and they said they would bail him in all Cases after an Acquittal; and that was the Reason they denied to bail in *Slaughterford's* Case, because *Holt*, Chief-Justice, had sent out the Jury again, to consider whether they would stand to their Verdict of Acquittal; and when they insisted upon it, he himself ordered the Appeal.

But as to *Corbett*, there was no Foundation to bail, for they denied that it was of Course to bail in an Appeal; so *Bambridge* was bailed by two Persons, *Corpus pro Corpore*, who justified in 1000*l.* each. And it was agreed, that in an Appeal by Writ, on the Civil Side, two Bail only are required; but had it come on the Crown Side by *Certiorari*, there must have been four.

Then it was moved to fix a Time for the Trial, the Appellees offering to take short Notice; but it being by Original, there was a Necessity to have fifteen Days between the *Teste* and the Return of the *Distingas*, and they could not be tried on the *Venire*, because being in London, there could be no Trial at Bar, (the Citizens not being to be brought out of the City) and as it must be tried at *Nisi Prius*, there must be a *Distingas*.

Towards the latter End of the Term it was moved, that the Appellees might be discharged, there being a Discontinuance, for that no *Venire* had been taken out; and in Appeals, which are a recent Prosecution, every Delay is a Discontinuance: and *Cro. Jac.* 283. *Yelv.* 204. were cited. But upon Consideration the Court held, that it was not necessary to take out the Writ and make it returnable the soonest it might be, though it must bear *Teste* the Day the Issue is joined; and then the Appellant took out a *Venire*, *Teste* 23d October, and returnable the 25th of November, which the Court looked upon as an affected Delay, and therefore admitted the other Appellee, *Corbett*, to Bail. They said it appeared he might have been tried the Sitting after the Term, and then upon his Acquittal, he must have been instantly discharged by the Judge of *Nisi Prius*, according to the Statute 14 H. VI. C. 1.

Both being thus out upon Bail, appeared on the several Continuance Days, according to their Recognizance, and the Appellant also appeared; and in the Beginning of this Term the Appellees moved for a Rule on Mr. *Tanner*, the Officer who keeps the Records at the Old Bailey, to attend the Trial with the Record of *Bambridge's* Acquittal; he not being allowed a Copy of it. But the Court refused to make any Rule, and said, if it was brought it could be no Evidence. *Strange's Reports*, Vol. II. 854.

XIII. The Trial of THOMAS BAMBRIDGE, Esq. and RICHARD CORBETT, at Guildhall, London, on an Appeal for the Murder of Mr. Robert Castell, before the Right Hon. the Lord Chief-Justice Raymond, January 26, 1729-30.

Mr. Filmer.

MAY it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Appellants. This is an Appeal of Murder, brought by *Mary Castell*, against the Defendants *Thomas Bambridge* and *Richard Corbett*, for the Death of her late Husband. The Declaration sets forth, that upon the 14th of November, in the Second Year of his present Majesty, the said *Thomas Bambridge* was Warden of the Prison of the Fleet, and having the Custody of the Prisoners, did make an Assault, and with Force and Arms, and Malice aforethought, did carry and convey him to a Victualling-house, being the Defendant *Corbett's* Mansion-house, and did detain him there till the 12th of December, against his Will, and without his Consent; and that one *Joseph White* was then sick of the Small-Pox, and that *Robert Castell* had never had the Small-Pox. That on the 16th of November, *Robert Castell* requested they would not detain him, and gave the Defendants Notice that *White* was sick of the Small-Pox, and that he *Castell* had never had the Small-Pox, and that he was afraid of his Death from this Distemper; notwithstanding which, the Defendants imprisoned and detained him from the 16th of November to the 12th of December, and forced him to remain all that Time in the said House: And further sets forth, that on the 4th of December he began to grow sick, and languished to the 12th of the same December, and on the 12th died; so that the Defendants, with Malice aforethought, killed *Robert Castell* aforesaid, the Husband of the said *Mary Castell*. To this Declaration the Defendants have pleaded Not Guilty, but if we prove the Facts you will find them Guilty.

Mr. Reeves [afterwards Lord Chief-Justice of the Common Pleas]. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Widow. This is an Appeal of Murder, brought by her against the two Defendants, *Thomas Bambridge* and *Richard Corbett*. *Bambridge*, Gentlemen, is laid to be Warden of the Fleet, and *Corbett* a Person that kept a Spunging-house, where Prisoners were sometimes kept. It was for his Advantage to have Prisoners brought to his House, in order to get Money of them. Mr. *Castell*, Gentlemen, was so unfortunate to become a Prisoner under the Controul of *Bambridge*, and *Bambridge* was Head Warden. He came in a Prisoner before *Bambridge* was Warden, in June 1728, and at that Time Mr. *Huggins* was Warden; and after being

a little Time in Prison, Security was given to Mr. *Huggins* for Mr. *Castell's* having the Liberty of the Rules. The first Action was at the Suit of one *Waring*, for 186*l.* tho' there was only 86*l.* due, and so sworn: another Cause was for 15*l.* at the Suit of another Plaintiff, so that the whole Charge against him then was 86*l.* due to *Waring*, and 15*l.* due to the other Plaintiff; so that Security was given upon his coming in; there was a Bond entered into by two sufficient Persons in the penal Sum of 200*l.* only; after, further Charges came against him in the Time of *Bambridge*. We shall shew you the Time when *Bambridge* became Warden, which was on the 30th of September 1728, in the Second Year of his present Majesty, then it was he was appointed Warden in his own Right, tho' some time before he came in his own Right; on the 30th of September he was sworn in, tho' on the 28th he was Warden, and acted in his own Right. Gentlemen, a little while after *Bambridge* came to be Warden, a Sum of Money 125*l.* *Castell* received; after this Money was paid to *Castell*, *Bambridge* knowing of it, contrived how to get some of this Money, and *Corbett* was to go Shares. It was this View of getting something from *Castell*, that was the Cause of the Demand for farther Security; and it was given: But some other Charges coming in, he gave a Bond for 800*l.* there was one of 200*l.* given before, and now it came to be 800*l.* then there was a third Security demanded, and given for 1000*l.* so that then the three Bonds as Security to the Warden, were 200*l.* 800*l.* and 1000*l.* these together made up the Sum of 2000*l.* for Security to be a true Prisoner to the Warden, and at that Time there was not 400*l.* due; one would have thought that when the Warden had 2000*l.* Security for 400*l.* this would have been sufficient; but that was not the Business intended, there was something farther to be done; for notwithstanding this ample Security, *Castell* was to be taken up, as they pretended, till he gave farther Security to the Warden, the Defendant *Bambridge*. Gentlemen, the Time of his being taken up was the 14th of November; the 28th of September *Bambridge* became Warden, Mr. *Castell* had then the Liberty of the Rules, and lodged at one Mr. *Underwood's* in the said Liberty. *Corbett* he took him up (it becomes them to shew by what Authority), and was for carrying him away; *Castell* expostulated with *Corbett*, and asked him by whose Authority he did it? *Corbett* said he did it by the Direction of the Warden. Gentlemen, when he was taken up, he was carried away from his Lodging, contrary to his Will, to the King's-Arms Tavern, and from thence in the Evening

...from thence, and carried him to the King's Arms Tavern; there he was continued till the Evening, that during his Continuance there, he sent for a Person who will appear here as Witness, who went to the Defendant Bambridge at the Desire of Castell, and he desired him to acquaint Bambridge, that he found there was an Intention of carrying him to Corbett's, and that the Small-Pox was there, and he never had them, and was afraid of catching them, and begged of Bambridge that he would not let him be carried there: The Witness accordingly went to Bambridge, and told him of the Request of Castell, but before he came back Mr. Castell was carried to the House of Corbett, and when he found him there (and was going on) —

Mr. Fazakerley. He found him at the Tavern when he came back.

Mr. Lee. The Difference, Gentlemen, is this, that this Person at the Request of Castell went to Bambridge, and upon his Return (the Fact is that he found Corbett and Castell at the King's Arms Tavern) said, that upon his Application to Bambridge he could get no Answer, no Directions that Castell should not be carried there. Castell, his Fear continued upon him, and the same Witness went next Day to Bambridge, and petitioned for the same thing, but could get no Satisfaction from Bambridge. We have Accounts of several other Applications, but without Answer to the purpose, and particularly one from Castell himself. When Bambridge came to Corbett's House, it was that Castell complained to him himself of the Hardship of being confined there, and desired Bambridge to let him go to his Lodgings with a Keeper, or into the Walls of the Gaol, which he chose much rather, from the Fear he had of catching the Small-Pox: The Answer then given by Bambridge to Castell was, that he should neither go into the Gaol (tho' there was Room enough), or go to that other Place. Gentlemen, it must be under the Fear and Apprehension Castell had of catching the Small-Pox, that he made this Request. How a Man could appear with so much Inhumanity I can't conceive, for Bambridge himself said, upon a time when he was at the Tavern with Castell, that he never saw a Man so much shocked at the Small-Pox; notwithstanding which, when Castell complained to him, and desired to be removed from Corbett's, this was Bambridge's Answer to him then, That he should not go into the Prison or any where else, unless he had a Sum of Money for going.

Gentlemen, the whole of his Charge at this time was under 400*l*. He was committed in June 1728; on the first of December Security was found for no less than 5200*l*. the first Bond was for 200*l*. the next 800*l*. the third 1000*l*. a fourth 1000*l*. and the fifth 2000*l*. Notwithstanding these Bonds were given on the first Day of December, this Man was still continued a Prisoner, and I must submit it to your Lordship, whether he was not continued in such a Manner as to make it Duress. By the Statute of 28 of K. C. II. no Man is to be carried to a Spunging-house without his own Request. He was kept, Gentlemen, in this Place even after the fifth Bond was given three Days, and on the 4th, which was the 4th of December, he took the Distemper. This Gentleman was so much affected with the Hardship of his Case, that he often complained of this Usage, and of Bambridge in particular; and in his last Words, when he lay upon his Death-bed, when it can hardly be imagined, that any thing could come from a Man but Truth, then his constant Declarations were, that his Death was owing to Bambridge.

This, Gentlemen, is the Nature of the Case, and we will beg leave to call our Witnesses, and if they come up to Proof, it must be thought the Widow has done very right; and though Corbett, when he appeared as a Witness, did not give Satisfaction, (I would not say it, if it was not in my Brief) yet probably the Witnesses now called will give you Satisfaction why Corbett did not give Satisfaction.

Call Robert Reading (who was sworn, and produced a Copy of the Patent creating Thomas Bambridge Warden of the Fleet).

Mr. Reeves. Did you examine that? — Mr. Reading. Yes.

Mr. Reeves. Is it a true Copy? — Mr. Reading. Yes.

[Then the Clerk read so much of the Copy of the Patent as to prove Mr. Bambridge Warden of the Fleet.]

John Noel (Deputy to the Clerk of the Papers) was sworn, and produced the Commitment-Books of the Fleet Prison.

Mr. Reeves. Do you know that Bambridge acted as Warden of the Fleet Prison? — Mr. Noel. I always apprehended he did act.

Mr. Fazakerley. Do you know of the Commitment of Mr. Castell?

Mr. Noel. Yes, it is in that Book (which he had before produced).

[Then the Clerk turned to, and read the Entry in the Book.]

Clerk. Decimo Octavo Die Junii 1728.

Mr. Noel. There are several other Entries (reading again).

Clerk. One Hundred and Eighty Pounds, sworn to be Eighty-six Pounds.

Lord Chief-Justice. The Writ was made for 180*l*. Penalty. Read on.

Clerk. William Thomas.

L. C. J. It is necessary for me to take notice of all the Commitments.

Mr. Strange. To see the Sums before the 14th of November.

Mr. Fazakerley. First is 86*l*.

Mr. Kettleby. 'Tis sworn to 86*l*. and upwards, for that is sufficient to hold to Bail.

L. C. J. How much is that on the 9th of July?

Clerk. The 9th of July is 20*l*.

Mr. Strange. How much that Debt is, don't appear.

L. C. J. Don't go on so fast.

Clerk. — Dis — 212*l*. — George Colvert.

L. C. J. That is another.

Clerk. Another 20*l*. the 13th of October. — Waring 180*l*.

Mr. Fazakerley. That is the same.

Mr. Serj. Darnell. The first appears to be on Bond.

Clerk. There is 180*l*. Principal; 3*l*. 10*s*. Costs.

Mr. Fazakerley. That is the same.

Clerk. Twenty-third of November, — Execution at the Suit of Thomas — 19*l*.

Mr. Strange. He is charged in Execution likewise on Colvert's.

Mr. Reeves. That is after being taken up.

Mr. Fazakerley. Do you know Corbett's House?

Mr. Noel. Yes.

Lord Chief-Justice Raymond. What were the last Bonds?

Mr. Reeves. One was for 1000*l*. the other for 2000*l*. Gentlemen, this last Bond was given in the Beginning of December; he was kept in Custody till the Time of giving the fifth Bond, which was the Beginning of December; and notwithstanding the fifth Bond was given, he was kept in Custody three Days after; at last he had some Apprehension of having his Liberty, and upon the 4th of December there was an Order sent to his Lodging, as he had before, to get them ready; but he was disappointed, having thought he had done every thing that was reasonable, but it happened unfortunately, that on the 4th of December having been confined in this House under the Terror of that Distemper, he fell ill, and on the 12th of December died of that Distemper. We say, Gentlemen, that his Death was occasioned by his unlawful Imprisonment, and that the Hardship he suffered was the occasion of his Death. If you shall be of Opinion on the Circumstances, that this Apprehension of him served only to get Money from him, it will be Duress. There is one Witness that heard the Conversation between Castell and Bambridge at Corbett's, and the Witness will tell you, that Castell did expostulate with Bambridge, that he was in danger of his Life, and that he should catch the Distemper and die, and desired then to be carried to the Prison or any other Place, and not to be in the Place where his Life was in so much danger; and his Answer was, that he should neither go into the Prison, nor to such Place, without such a sum of Money; it was not to get Security as before. If we prove this to be the case, we prove the Declaration, and you must find the Defendants Guilty.

Mr. Lee [afterwards Lord Chief-Justice of the King's-Bench]. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Appellant. This poor Woman has for some time staid, in hopes to see that this Affair would have appeared in a true and just Light at a former Trial, had against one of the Prisoners, in which the other Prisoner who now appears here, was examined as Witness. The Appellant waited with great Satisfaction, under a Belief that the Truth of the Fact would have appeared at that Trial, and did not commence her Appeal, nor would she if she could have received Satisfaction on the former Trial. Gentlemen, she did not receive that, and therefore was at liberty to bring her Appeals; for, by the Statute of Harry VII. it is provided, that notwithstanding any Prisoner is tried and acquitted, that the Party Appellant has a Right to a full and entire Examination into the Fact. That Act of Harry has preserved that Right, notwithstanding he was before acquitted; and, as I apprehend, the Affair now stands as open as if nothing had been done. This being the case, the Matter, Gentlemen, for your Consideration will be, how far, by the Witnesses, we are able to satisfy you in respect to your Apprehension of the Manner of her Husband's coming to his Death. It has been opened to you, Gentlemen, that Mr. Castell was a Prisoner in the Fleet, and that the Defendant Bambridge was acting Warden in June 1728; the Defendant, Corbett, was by his Office a Tipstaff, and as such was under the Direction of the Warden. When Prisoners are out upon the Rules, the Tipstaff is the proper Officer for taking them into the Fleet, and that to be under the Warden's Direction, and Corbett was such a Tipstaff. This Castell being committed in June 1728, (he was a Gentleman that lived in good Figure) did procure Security in July, and a Bond was given in the Penalty of 200*l*. and another 800*l*. and a third 1000*l*. Gentlemen, he was out of Gaol upon this Security, and the Warden was satisfied as to his being abroad, but on the 14th of November he was taken up. On the 3d of October before this, Gentlemen, he received a Sum of 125*l*.; on the 22d of October, according to my Instructions, this came to the Knowledge of the Defendant Bambridge, then came these Demands of fresh Security; it was very likely the Means to insist upon having Money in hand or fresh Security; notwithstanding this, upon the 14th of November, Corbett came to his

Mr. Penakerley. What kind of a House is it? Were the Prisoners kept there by *Bambridge's* Order?

Mr. Noel. I was there Prisoner from the 23d of October for two Months, and never saw any Thing exacting, but very humane.

Mr. Penakerley. Is it not a public Victualling-house?

Mr. Noel. They have Victuals and Drink.

Mr. Serj. Darnell. This is very material. I will ask you a Question or two, you was at *Corbett's* two Months?—Mr. Noel. Yes.

Mr. Serj. Darnell. I ask you whether you found any Exaction or Oppression?

Mr. Noel. I never found any to any body, but they visited Mr. *Castell* with a deal of Respect and Humanity.

Mr. Serj. Darnell. When was you carried there?

Mr. Noel. The 23d of October, 1728.

Lord Chief-Justice. How long did you remain there?

Mr. Noel. I staid there till the 19th of December.

Lord Chief-Justice. Was this one of the Houses that always remained to the Warden as Part of the Gaol?

Mr. Noel. My Lord, I have heard so.

Lord Chief-Justice. Was you at *Corbett's* House all the Time Mr. *Castell* was there?—Mr. Noel. Yes.

Lord Chief-Justice. Do you know the Time of his taking his Illness?

Mr. Noel. He was taken ill on the 4th of December, and died on the 12th.

Lord Chief-Justice. Do you remember *Joseph White*?—Mr. Noel. Yes.

Lord Chief-Justice. Were they in the same House?

Mr. Noel. No, my Lord; *White* lay up three Pair of Stairs in one House, and Mr. *Castell* one Pair of Stairs in the other.

Lord Chief-Justice. I ask you if *White* was ever suffered to come down Stairs?

Mr. Noel. I have heard express Orders, that *White* should never come down, and nobody go up to him, for fear any body should catch it.

Lord Chief-Justice. I ask you, according to the best of your Observation, whether he ever came out of his Room?

Mr. Noel. I believe he never did, except one Time; and then he came to speak to me.

Lord Chief-Justice. Was *Castell* there then?

Mr. Noel. No, my Lord; I believe he never was nearer to him than my Room.

Mr. Strange. I desire he may describe the Situation of *Corbett's* House.

Mr. Noel. There are two Houses laid into one.

Mr. Strange. Where did *White* lie?

Mr. Noel. *White* lay three Pair of Stairs in one House, and Mr. *Castell* one Pair of Stairs in the other.

Mr. Strange. When did Mr. *Castell* first come to *Corbett's*?

Mr. Noel. *Castell* first came into *Corbett's* the 14th of November.

Mr. Fazakerley. My Lord, if they ask Questions to a particular Point, I hope they will not examine him to different Facts.

Lord Chief-Justice. I cannot interrupt them; you will have an Opportunity to reply: They are intitled to it.—Where did *Castell* lie?

Mr. Noel. Mr. *Castell* lay in one House, up one Pair of Stairs, and *White* in the other, up three Pair of Stairs.

Lord Chief-Justice. When did Mr. *Castell* come to *Corbett's*?

Mr. Noel. The 14th Day of November.

Mr. Strange. How long was *White* well before *Castell* came there?

Mr. Noel. He never had been down, but I believe he might have come down.

Mr. Strange. Did *White* continue up Stairs all the Time Mr. *Castell* was there?—Mr. Noel. Yes.

Mr. Strange. What was the Reason of his being kept there? There might be other People that had not had them. Did you ever see *White* come down during that Time?

Mr. Noel. *White* came down two or three great Stairs.

Mr. Strange. Who took care of Mr. *Castell*?

Mr. Noel. *Corbett* and his Spouse.

Mr. Strange. During the Time he was ill, did he complain?

Mr. Noel. He never complained for any Thing, but said he was very uneasy at having the Small-Pox.

Mr. Strange. Who took care of him?

Mr. Noel. All the Family took care of him.

Mr. Strange. Did you ever see *Bambridge* in Company with Mr. *Castell* at *Corbett's*?

Mr. Noel. I never saw Mr. *Bambridge* in Company with Mr. *Castell*, but Mr. *Corbett* I have.

Mr. Strange. Was there a Club there?—Mr. Noel. Yes.

Mr. Strange. Did you see *Bambridge* and *Castell* together at that Club?

Mr. Noel. No.

Mr. Strange. Where did *Castell* lie?

Mr. Noel. *Castell* lay in a Room by himself; he had a Room fitted up on purpose.

Mr. Kettleby. Do you know whether when Mr. *Castell's* Wife was sent to, she did come to him, or not?

Mr. Noel. I have heard *Corbett* say, that his Widow was sent to, but did not come.

Lord Chief-Justice. That is no Evidence.

Mr. Kettleby. Do you suppose you should have seen her if she had come?

Mr. Noel. I should have seen the Woman.

Mr. Kettleby. What Sort of a Room was Mr. *Castell* in?

Mr. Noel. A very convenient Room, very near as big as this Court.

Mr. Serj. Eyre. How came Mr. *Castell* first to be brought to *Corbett's*?

Mr. Noel. The Body of *Castell* was surrendered, his Security told me so.

Lord Chief-Justice. That is not Evidence.

Mr. Lee. Was you frequently with *White*?

Mr. Noel. No; only that Time.

Mr. Lee. Was Mr. *Castell* taken ill before or after that Time?

Mr. Noel. I cannot tell whether he was sick before or after.

Mr. Lee. Did you use to be with Mr. *Castell*?—Mr. Noel. Sometimes.

Mr. Lee. Was you with *Castell* the same Day you saw *White*?

Mr. Noel. I cannot recollect whether I saw *Castell* the same Day or not.

Mr. Lee. Was there one or two Stair-Cases?

Mr. Noel. There were two Houses laid into one, but one Stair-Cafe.

Mr. Lee. Was not the Passage near *Castell's* Room?

Mr. Noel. The Passage comes by the Head of the Stair-Cafe?

Mr. Lee. Must not all those that go to the Newbery-Block go by *Castell's* Room?—Mr. Noel. Yes.

Call ——— *Sinclair* was called and sworn.

Mr. Fazakerley. Do you know *Corbett's* House?

Capt. *Sinclair*. Upon the 14th of December, 1727.

Mr. Fazakerley. Sir, do you know this House of *Corbett's*?

Capt. *Sinclair*. Yes.

Mr. Fazakerley. Was you there in September, October, November, or December, 1728?

Capt. *Sinclair*. I was not brought in then, I was fifty-two Days at *Corbett's* House.

Mr. Fazakerley. How was you used then?

Capt. *Sinclair*. I must submit it to the Court, whether, as I have a Prosecution against *Bambridge*, what I may say may not prejudice myself; whether any Thing I say now may not be prejudicial to me.

Lord Chief-Justice. It is impossible for me to tell you. If you say any Thing that they can make use of, without doubt they will.

Mr. *Bambridge*. I desire, my Lord, the People may be kept from the Witnesses behind.

Lord Chief-Justice. If you hear any body prompt the Witnesses, they shall be removed.

Mr. Filmer. We desire to know what Sort of a House *Corbett's* is?

Capt. *Sinclair*. I was carried to Mr. *Corbett's* House contrary to my Inclinations; when I was there I was put in a Garret, with some of the Domestics.

Mr. Serj. Darnell. It is not proper Evidence.

Lord Chief-Justice. Let me know what it is; I don't know whether it is material or not.

Mr. Lee. My Lord, the Witness is come to give you an Account of this House; that it is a Victualling-House.

Capt. *Sinclair*. It is a Victualling-house and Spunging-house, and they take exorbitant Sums of Money. I was there from the 14th of December, 1727, till the 3d of February following.

Lord Chief-Justice. I think you say it was a public Victualling-house and Spunging-house?—Capt. *Sinclair*. Yes, my Lord.

Mr. Reeves. I desire you'll inform my Lord and the Jury, whether it is continued the same Sort of House since?

Capt. *Sinclair*. There was one *Blackwell* there.

Lord Chief-Justice. When was that?

Capt. *Sinclair*. In the Month of January, 1727.

Lord Chief-Justice. That is not Evidence. Do you know nothing of this House since 1727?

Capt. *Sinclair*. Since I have been discharged I have not been in the house; but when I was there, I was obliged to pay one Shilling a Night for a Bed.

Lord Chief-Justice. That was a very wrong Thing, but that was in 1727?

Capt. *Sinclair*. Yes.

Mr. Serj. Eyre. Let me ask you one Question. You call it a Victualling-house and a Spunging-house; what is a Spunging-house?

Capt. *Sinclair*. Those that take exorbitant Fees.

Mr. Serj. Eyre. Did you pay any Thing above the Fees?

Lord Chief-Justice. This is no Evidence in point of Time: You all know Evidence, and should keep to it.

Call ——— *Wilson* (who was sworn).

Mr. Reeves. Do you know *Corbett's* House?—Mr. *Wilson*. Yes.

Mr. Reeves. What Sort of a House is it?

Mr. *Wilson*. It is a Public-house.

Mr. Reeves. What do they sell there?

Mr. *Wilson*. Beer, Ale, Cyder, Wine, Punch, and Victuals.

Mr. Reeves. Was the House used for that Purpose when Mr. *Castell* was there?—Mr. *Wilson*. Yes.

Mr. Reeves. You know *Castell* was there?—Mr. *Wilson*. Yes.

Mr. Reeves. Was it then made use of for this Purpose?

Mr. *Wilson*. Yes.

Mr. Reeves. Where had Mr. *Castell* Victuals and Drink?

Mr. *Wilson*. In that House.

Mr. Reeves. Do you know the Situation of the Room where Mr. *Castell* lay?—Mr. *Wilson*. Very well.

Mr. Reeves. Do you know the Room where *White* was in?

Mr. *Wilson*. No.

Mr. Fazakerley. How much did he (Mr. *Castell*) pay a Night for his Bed?—Mr. *Wilson*. Mr. *Castell* told me ———

Mr. Strange. That is not Evidence. Had he a Room up one Pair of Stairs?—Mr. *Wilson*. The latter Part of his Time.

Mr. Strange. Was you with him often?

Mr. *Wilson*. Yes, till he had the Small-Pox.

Mr. Strange. Did his Wife come near him during the Time he was ill?

Mr. *Wilson*. No.

Lord Chief-Justice. If you are examining the Witnesses, I cannot hear. Then Mr. Strange asked the Witness some Question, which for the Noise in the Court was not heard.

Lord Chief-Justice. If you ask any Question, you must propose it to the Court.

Mr. Strange. Was you Servant to Mr. *Castell*?—Mr. *Wilson*. No.

Mr. Strange. Was you his Companion?

Mr. *Wilson*. Yes; and drank several Bottles of Wine with him; and I have heard Mr. *Castell* say, that *Cambridge* and *Corbett* were all Rogues alike.

Call ——— *Collett* (who was sworn).

Mr. Filmer. Do you know Mr. *Castell*?—Mr. *Collett*. Yes.

Mr. Filmer. Did you know of any Money he received?

Mr. *Collett*. Yes, 125*l*.

Mr. Filmer. When?—Mr. *Collett*. The 3d of October, 1728.

Mr. Filmer. Do you know of *Cambridge* being privy to it?

Mr. *Collett*. I believe he was; Mr. *Castell* told me so.

Mr. Kettleby. My Lord, that is no Evidence.

Mr. Filmer. Do you know of your own Knowledge that he knew of it?

Mr. *Collett*. No.

Mr. Lee. Where was this 125*l*. paid to Mr. *Castell*?

Mr. *Collett*. It was paid at *Woodward's*.

Mr. Lee. Where was *Woodward's*?

Mr. Lee. I saw a Draft.
 Mr. Lee. When was Woodward's?
 Mr. Lee. In Bank Alley; I thought all the World knew that.
 Mr. Lee. So Woodward paid it?—Mr. Collett. I don't know.
 Lord Chief Justice. I thought you had actually paid the Money to Mr. Collett?—Mr. Collett. I gave a Draft on Woodward.
 Mr. Lee. Was that allowed on Account, do you know?—Mr. Collett. Yes.
 Mr. Strange. You don't know what Hands it was paid into at Woodward's?—Mr. Collett. No.
 Mr. Strange. What Reason have you to believe Bambridge knew of it?
 Mr. Collett. Because I had some Difficulty in paying the Money; there was Mr. Brent, Mr. Alderman Preston, Mr. Kirley, and myself, and we were under some Difficulty, and Castell desired that one of us would go up to Bambridge; upon which Mr. Brent went up, and desired to know if he might pay the Money with Safety; then Brent came down, and gave us Satisfaction, and I paid the Money.
 Mr. Strange. The Force of their Argument is, that as soon as Bambridge knew that he had received this Money, then he pressed him to give fresh Security. If he did not know that he had Money; that Argument will not hold. How was the Note drawn?
 Mr. Collett. To Robert Castell, or Bearer.
 Mr. Fazakerley. Who was the Note payable to?
 Mr. Collett. It was payable to Mr. Robert Castell or Bearer, on Demand.
 Mr. Fazakerley. And this was allowed in Account to you by Woodward?
 Mr. Collett. Yes.
 Mr. Strange. You don't know that it came to Castell's Hands?
 Mr. Collett. No, any Porter might go and receive it.
 Mr. Lee. To whom was the Note delivered?
 Mr. Collett. To Mr. Castell.
 Lord Chief Justice. I went away with it at first as if Castell had received it.
 Mr. Lee. Brent was the Man that went up to Bambridge.
 Mr. Strange. Prove something or other.
 Mr. Bambridge. My Lord, I never had one Shilling of him.
 (Call Mr. ——— Brent, who was sworn.)
 Mr. Fazakerley. Was you present when Mr. Collett drew a Bill upon Woodward, payable to Mr. Castell?—Mr. Brent. Yes.
 Mr. Fazakerley. Do you know of any body that went to Bambridge, and what was said?
 Mr. Brent. Sir, I was jealous of Mr. Castell's Circumstances, and I asked Mr. Bambridge if there was any Judgment or Execution against Mr. Castell? and Bambridge told me he was in upon *Mesne Process*.
 Mr. Fazakerley. Did you at any Time tell him the Occasion of asking that Question?
 Mr. Brent. It is very possible I might give him some Hints, but I cannot be positive.
 Mr. Fazakerley. I desire you will recollect; it was very natural for you to speak to Bambridge, did you mention any Thing of that Money?
 Mr. Brent. I cannot say.
 Mr. Fazakerley. Did Bambridge speak to you concerning it?
 Mr. Brent. I cannot remember that he did.
 Mr. Fazakerley. Did you give him any Reasons for asking the Question?
 Mr. Brent. It is possible I might tell him some Reasons.
 Mr. Fazakerley. I desire you'll acquaint my Lord, whether Bambridge appeared to be assisting to Mr. Castell in that Affair, or have you Reason to believe him so?
 Mr. Brent. I cannot say, unless to satisfy me, I asked Mr. Castell several Questions, and Castell said, if I would ask Bambridge he would satisfy me.
 Mr. Lee. When you went up to Bambridge, when you went to enquire after Castell's Circumstances, what did you say to Bambridge?
 Mr. Brent. I have answered that Question, I cannot be positive, to be particular I cannot.
 Mr. Lee. Where was Mr. Castell then?
 Mr. Brent. I do believe Mr. Castell was with the other Company.
 Mr. Lee. Where was Bambridge, was he with the other Company?
 Mr. Brent. I believe he was not, I don't remember he was in the other Company.
 Lord Chief Justice. Was he in the same Room?
 Mr. Brent. I don't believe he was.
 Lord Chief Justice. Did you go out of that Room into another Room to Bambridge?
 Mr. Brent. I don't believe either Mr. Collett or Preston went out of the Room, but I went myself.
 Mr. Strange. Did you not go up Stairs?
 Mr. Brent. I can't say whether it was in the same Stair-case, or not; I did ask Bambridge, and he did satisfy me.
 Mr. Strange. Did you ask Bambridge if it was safe to pay Mr. Castell any Money?
 Mr. Brent. I can't be certain it was the whole I said, probably I might tell him I was negotiating the Concern.
 Mr. Fazakerley. It will follow most naturally, that the further Bonds were demanded on Purpose to extort Money. Now we shall shew, that Security was given from Time to Time, and in order to that we had given Notice to Bambridge to produce the Bonds.
 Mr. Strange. You know the other Day in the Court of Chancery it was over-ruled.
 Mr. Reeves. Here are Bonds given as a Security to a private Person; we demand the Bonds, and the Proof lies upon them to shew they have delivered them over.
 Mr. Lee. We ought to be let into Parole-evidence, to shew that we gave Notice to produce them.
 Mr. Serj. Darnell. I think you are too early.
 (Then Mr. Bendon was sworn.)
 Mr. Lee. Did you give Bambridge any Notice to deliver the Bonds?
 Mr. Bendon. Yes, I have a Copy of it in my Hand.
 Mr. Lee. What did Bambridge say to you?
 Mr. Bendon. Bambridge told me he had but one in his Custody.
 Mr. Strange. Were not the Words, that he had only one executed?
 Mr. Bendon. No.
 Mr. Strange. Tell us the very Words.

Mr. Bendon. When I gave Bambridge that very Paper (which he had then delivered to the Council)—
 Lord Chief Justice. That Paper—it must be produced.
 Mr. Lee. We desire to produce this Paper.
 Mr. Bendon. Bambridge said, to prevent any Disputes in Court, I have but one Bond.
 Mr. Strange. Who was by?—Mr. Bendon. Several.
 Mr. Strange. Did you know any of them?
 Mr. Bendon. There was one *Beatniff*, that was one of his Security.
 Mr. Strange. How many were there in all?—Mr. Bendon. Five or six.
 (Then the Paper was given into the Hands of the Clerk.)
 Lord Chief Justice. Read.
 Clerk. I do hereby give Notice, to produce on the Trial of this Cause, several Bonds entered into by the Appellant's Husband, or his several Securities, taken by you as Warden of the Fleet, or by the Clerk of the Securities, and particularly two Bonds, dated about November or December, 1728.
 Mr. Lee. Now we will call Peter Ellam. Somebody acted in the Room of Hopkins, who was Clerk of the Securities, and took a Bond wherein Peter Ellam was one of the Securities.
 (Call Peter Ellam, who was sworn.)
 Mr. Reeves. Do you know what Security was given by Mr. Castell to the Warden of the Fleet?—Mr. Ellam. I do.
 Mr. Reeves. Was you one?—Mr. Ellam. Yes.
 Mr. Reeves. Give an Account of the several Securities you knew given, the Times when, and the Sums.
 Mr. Ellam. Security was given five Times, one in July.
 Mr. Reeves. When was the first?—Mr. Ellam. In July, 1728.
 Mr. Fazakerley. How much was the Sum?—Mr. Ellam. I think 1000.
 Mr. Fazakerley. How much was the Penalty of the Bond?
 Mr. Ellam. I think it was 2000.
 Mr. Reeves. Who was that given to?
 Mr. Ellam. It was given to Hopkins.
 Mr. Reeves. Who was Warden?—Mr. Ellam. Mr. Huggins.
 Mr. Reeves. Who was Deputy-warden?
 Mr. Ellam. I do not know, I believe Bambridge.
 Mr. Reeves. Was there any other Security besides yourself? Who was the Bond given by?—Mr. Ellam. By Mr. Chambers and myself.
 Mr. Reeves. Pray, mind what I ask you. The next Bond was given, how soon?—Mr. Ellam. I believe in about four or five Days.
 Mr. Reeves. How much was that for?
 Mr. Ellam. Eight Hundred Pounds.
 Mr. Reeves. Who were put in that?
 Mr. Ellam. Mr. Curll, Mr. Chambers, and myself.
 Mr. Reeves. There was a third Bond, do you know any thing of that? Who was that given by?
 Mr. Ellam. It was given by Curll, myself, and I believe Mr. Bell.
 Mr. Reeves. Pray recollect yourself, do not be under any Mistake.
 Mr. Ellam. Mr. Curll and myself I am positive of.
 Mr. Fazakerley. Can you be positive of a third Bond; was there three?
 Mr. Ellam. I believe there was, and I signed with him.
 Mr. Fazakerley. How much was the third for?
 Mr. Ellam. The third was for 1000 l.
 Mr. Fazakerley. The third, when was that?
 Mr. Ellam. I can't remember the particular Time.
 Mr. Fazakerley. How long before Mr. Castell died?
 Mr. Ellam. A great while.
 Mr. Fazakerley. Was it before or after making the 4th Bond that he was taken ill?—Mr. Ellam. I believe it was after.
 Mr. Fazakerley. How long after?
 Mr. Ellam. I believe about the Beginning of the Term.
 Mr. Fazakerley. Then that must be in October.—Was there any more?
 Mr. Ellam. Yes.
 Mr. Fazakerley. How much was that for?
 Mr. Ellam. I think the fourth was for 1000 l.
 Mr. Fazakerley. Don't you know that it was for 1000 l?
 Mr. Ellam. I believe it was.
 Mr. Fazakerley. Who entered into that Bond?
 Mr. Ellam. There was Mr. Curll, Mr. Bell, and myself.
 Mr. Fazakerley. When was that given?
 Mr. Ellam. That was given the latter End of November.
 Mr. Fazakerley. You say that was for 1000 l.—Mr. Ellam. Yes.
 Mr. Fazakerley. You seemed to say something of a fifth Bond being given, how much was that for?—Mr. Ellam. Two Thousand Pounds.
 Mr. Fazakerley. How do you know?
 Mr. Ellam. I was present at reading it, and I took it to be 2000 l.
 Mr. Fazakerley. When was that given?
 Mr. Ellam. On the first of December.
 Mr. Fazakerley. Do you believe it was the 5th or 1st of December?
 Mr. Ellam. I believe it was on a Monday.
 Mr. Fazakerley. Who were bound?
 Mr. Ellam. There was Mr. Curll, my Brother, and myself.
 Mr. Fazakerley. What is your Brother's Name?—Mr. Ellam. John Ellam.
 Mr. Fazakerley. What was the Reason of all these Bonds being given so quick? When was the last Bond given?
 Mr. Ellam. One was given between the 24th and 25th of November, on a Saturday Night, then Mr. Castell was going to his Lodgings, and in two or three Days we went to see him, but could not find him, and they said he was at Corbett's, and we went to him there.
 Lord Chief Justice. When was this? Name the Time.
 Mr. Ellam. It was about the latter End of November, between the 26th and the last.
 Lord Chief Justice. Go on.
 Mr. Ellam. I said, Mr. Castell, what do you do here? You love a Gaol better than I do; what do you do here; what is the Reason of it? Mr. Castell said, I do not know, it is what Bambridge pleases. I said, Mr. Castell, surely your Luck is worse than any body's.
 Mr. Strange. Was Bambridge by?—Mr. Ellam. No.
 Mr. Strange. Then you may hold your Tongue.

Mr.

Mr. Fazakerley. What were the Bonds given for?
 Mr. Ellam. His Liberty.
 Mr. Fazakerley. Had he his Liberty before the last Bond was given?
 Mr. Ellam. No.
 Mr. Fazakerley. I ask you whether he had his Liberty upon the last Bond's being given?
 Mr. Ellam. No, he never was out after.
 Mr. Fazakerley. Do you know when he first took his Sickness?
 Mr. Ellam. He first took his Sickness on a Monday Morning, the first of December.
 Mr. Fazakerley. Was you a Creditor to Mr. Castell?
 Mr. Ellam. He owed me near 200 l.
 Mr. Fazakerley. Then you was his Security and Creditor at the same Time?
 Mr. Ellam. I knew him to be as industrious a Man as any one living, and that there was no Probability of getting any thing in a Gaol, so thought it was better to run the hazard.
 Mr. Serj. Darnell. Did you never apply to have him locked up?
 Mr. Ellam. No.
 Mr. Serj. Darnell. Do you know of any one else?
 Mr. Ellam. No, I never was present.
 Mr. Serj. Darnell. Do you know of the Design of his Security to put him into Prison?
 Mr. Ellam. Not that I know of, it was never mine.
 Mr. Serj. Darnell. Did Bambridge never intreat you to continue Security for him?
 Mr. Ellam. All that I know relating to that Matter is, that Chambers withdrew his Security.
 Mr. Serj. Darnell. What did Bambridge do to Chambers to have him stand as one of his Security?
 Mr. Ellam. Chambers withdrew his Security.
 Mr. Bambridge. I don't look upon that to be a proper Answer.
 Lord Chief-Justice. You must answer the Question.
 Mr. Ellam. Mr. Chappell was coming to me to tell me that Mr. Chambers would deliver him up, for that if he went out of the Rules, his Counsel advised him that the Security was liable, and I went along with Chambers to Bambridge, and Chambers told Bambridge that he would be Security no longer; upon this Mr. Castell was very uneasy, and Chambers upon cooler Thoughts determined not to give up his Security.
 Mr. Serj. Darnell. I ask you whether Mr. Bambridge did not desire Mr. Bell to continue his Security?
 Mr. Ellam. Mr. Bambridge talked very civilly at that Time.
 Mr. Serj. Darnell. I ask you whether Mr. Bambridge appeared to have a Kindness for him?
 Mr. Ellam. Bambridge told Mr. Castell, that if his Security delivered him up, he must go to Corbett's.
 Mr. Serj. Darnell. What did you do when Chambers said he would not be Security?
 Mr. Ellam. When Chambers told me he would not be Security any longer, it lay upon myself, and I went down to the Tavern then, and told them I was resolved to stand.
 Mr. Serj. Darnell. I ask you whether Mr. Bambridge persuaded you to stand, or said that he should be put into the Gaol?
 Mr. Ellam. It did appear to me that Bambridge was civil to him.
 Mr. Serj. Darnell. When was this?
 Mr. Ellam. This was before the 4th or 5th Bonds were given.
 Mr. Strange. This was after the Bonds for 800 l. and 1000 l. Tell us whether Mr. Castell did not desire that a Bed might be got there?
 Mr. Ellam. I did not know of his going there.
 Mr. Strange. Pray did not you desire Corbett to take him in Custody?
 Mr. Ellam. No.
 Mr. Strange. Was you by at any other Time?—Mr. Ellam. No.
 Lord Chief-Justice. Fix the Time; hark you, Sir, do you remember the Time when Chambers would not continue Security, I ask you if you can remember when it was?
 Mr. Ellam. I believe it was in November.
 Mr. Serj. Eyre. You say you cannot be positive as to the Day of the Month.
 Mr. Ellam. I tell you fairly, that by the Almanack it was on Monday; if Mr. Castell died that Day Se'nnight, it was Monday Se'nnight before that.
 Mr. Serj. Eyre. How long after you executed the Bond, how many Days was it before he died?
 Mr. Ellam. It must be Wednesday or Thursday.
 Mr. Serj. Eyre. You say Monday the Bond was executed?
 Mr. Ellam. Yes, it must be the first Monday, if he died on the 12th.
 Mr. Serj. Eyre. Who were the Bonds given before? Or to whom?
 Was Mr. Bambridge present?
 Mr. Ellam. I never saw Bambridge present when they were given.
 Mr. Serj. Eyre. Do you know whether you was excepted to, or remain there till better Security was given?
 Mr. Ellam. I don't know.
 Mr. Serj. Eyre. Who was there?
 Mr. Ellam. Codnor was there who acted as Clerk.
 Mr. Serj. Eyre. Were you all present when the fourth Bond was given?
 Mr. Ellam. To the best of my Remembrance, we were all present when the fourth Bond was given.
 Mr. Serj. Eyre. What say you as to the fifth?
 Mr. Ellam. As to the fifth, I believe that all the Persons were not then present.
 Mr. Serj. Eyre. You can't tell that either of you was excepted to?
 Mr. Ellam. I know no other than as Bambridge told me.
 Mr. Wynn. You said you was uneasy when Chambers said he would not stand; what did you do then?
 Mr. Ellam. I did nothing then, but went home, and next Morning resolved to stand.
 Mr. Wynn. Did you say any thing to Mr. Corbett or Bambridge?
 Mr. Ellam. No; when I went to Mr. Bambridge's Room, I went with a Design to surrender him; and when I came out, seeing Mr. Castell in so great an Agony, I resolved then not to do it.
 Mr. Wynn. What did Mr. Bambridge say?
 Mr. Ellam. He said, he believed that Mr. Castell always behaved himself within Bounds, and believed that we had no Reason to complain; and believed he would not make an Escape.

Mr. Wynn. Did he encourage you to surrender him?
 Mr. Ellam. All that he said at this Time seemed to encourage us to stand as Security.
 Mr. Wynn. When Chambers would not stand, did you take any Counter-security from any one?
 Mr. Ellam. There was a Note drawn, but I never had it; Mr. Curll had the Custody of it.
 Mr. Wynn. What was the Amount?—Mr. Ellam. I believe 100 l.
 Mr. Wynn. I ask you, whether you had not a Bill of Sale from Mr. Castell at that Time?—Mr. Ellam. No.
 Mr. Wynn. How long before?
 Mr. Ellam. I can't tell the Date; I have it by me.
 Mr. Wynn. Had you not that Bill of Sale before you executed that first Security?—Mr. Ellam. No.
 Mr. Wynn. Was it between the First and Second?—Mr. Ellam. No.
 Mr. Wynn. The Second and Third?—Mr. Ellam. Very likely it might.
 Mr. Wynn. What Month do you believe it was in?
 Mr. Ellam. November.
 Mr. Strange. Do you say the Bill of Sale was in November?
 Mr. Ellam. I can't say particularly.
 Mr. Strange. Might it not be before November?
 Mr. Ellam. I don't believe it was.
 Mr. Strange. Can you take upon you to say whether before or not?
 Mr. Ellam. I cannot.
 Mr. Strange. I desire you to see, whether that is your Name; look only on the Name.—Mr. Ellam. I take it to be my Name.
 Mr. Lee. Give it to the Officer.
 Mr. Strange. Then you are not able to say exactly the Day when Bambridge gave you Encouragement not to deliver him up; Was it before the fourth Bond was given?
 Mr. Ellam. Yes.
 Mr. Strange. There was Curll; was he a Man of Substance?
 Mr. Ellam. Yes; he has been a Housekeeper these forty Years.
 Mr. Strange. Is his Reputation to be a Man of Circumstance?
 Mr. Ellam. Yes.
 Mr. Strange. There were Bell and others?—Mr. Ellam. Yes.
 Mr. Strange. Were they Men of good Circumstances?
 Mr. Ellam. Yes.
 Mr. Strange. There was your Brother?—Mr. Ellam. Yes.
 Mr. Strange. Were they Housekeepers?—Mr. Ellam. Yes.
 Mr. Strange. Were they able to answer the Sums they stood bound for?
 Mr. Ellam. The World thinks so.
 Mr. Strange. What will you say you are worth over and above your Debts?
 Mr. Ellam. One Thousand Pounds.
 Mr. Strange. When your Debts are paid?
 Mr. Ellam. The last Time my Books were cast up, I was worth One Thousand Pounds.
 Mr. Strange. Did you say you was not worth 200 l. when in Company with Bambridge?—Mr. Ellam. No.
 Mr. Lee. 'Tis a Question enough to put any Man out of Countenance.
 Lord Chief-Justice. No Man should be obliged to discover his own Affairs.
 Call John Ellam (who was sworn).
 Mr. Lee. You was Security for Mr. Castell to Mr. Bambridge, Warden of the Fleet?—Mr. J. Ellam. Yes.
 Mr. Lee. When was it?—Mr. J. Ellam. In November last.
 Mr. Lee. Who was Security with you?
 Mr. J. Ellam. My Brother Peter Ellam and Mr. Curll.
 Mr. Lee. What was the Penalty of the Bond?
 Mr. J. Ellam. Two Thousand Pounds.
 Mr. Strange. He only says what Mr. Castell said.
 Lord Chief-Justice. He said it of his own Knowledge.
 Mr. Lee. When was the Bond executed?
 Mr. J. Ellam. I believe in November.
 Mr. Lee. You can't tell positively?—Mr. J. Ellam. No.
 Mr. Lee. Might it not be the Beginning of December?
 Mr. J. Ellam. I can't exactly tell.
 Mr. Lee. Who was the Bond executed by?
 Mr. J. Ellam. Myself and two others; I signed first, and the other two at Gravesend.
 Mr. Lee. Was you with Bambridge to tell him about it?
 Mr. J. Ellam. Yes.
 Mr. Lee. How came you to be his Security?
 Mr. J. Ellam. Mr. Castell sent to me to know if I would be Security in the Room of Mr. Chambers; I said it was a Thing I did not care for, but for him I would; this was in the Morning. Mr. Castell said, You will be Security? I said, Yes. And he said, I don't know whether Bambridge will accept of it; I beg you'll come at Night. I told him I would: I think Bambridge would not then accept of it. One Mr. Shortes was there at Night, and Mr. Castell desired he would go to Mr. Bambridge to desire the Bonds to be executed for him.
 Mr. Lee. When was Mr. Castell taken ill?
 Mr. J. Ellam. Mr. Castell was very ill in November and December.
 Lord Chief-Justice. Where was this?—Mr. J. Ellam. At Corbett's.
 Mr. Lee. Did you go to Bambridge?—Mr. J. Ellam. Yes.
 Mr. Lee. What did you say?
 Mr. J. Ellam. I asked him, whether he thought my Security sufficient in the Room of Mr. Chambers? And Mr. Bambridge said he would accept of it.
 Mr. Lee. Did you execute before your Brother?
 Mr. J. Ellam. I believe I did before Mr. Curll; and Mr. Bell executed, I believe, after.
 Mr. Lee. What was the Sum?—Mr. J. Ellam. Two Thousand Pounds.
 Mr. Lee. Was it Two Thousand? How do you know? Was it in Latin or English?
 Mr. J. Ellam. The Attorney read it; and Mr. Castell told me so.
 Mr. Lee. Was there any Person in the Bond before you signed?
 Mr. J. Ellam. There was only Mr. Curll, my Brother, and myself.
 Mr. Lee. I ask you whether there was any more besides you, your Brother, and Mr. Curll?—Mr. J. Ellam. No.
 Mr. Lee. How many Names were there in the Bond?
 Mr. J. Ellam. None but mine, my Brother, and Curll.
 Mr. Lee. How many Obligors? Do you know what I mean by Obligors?
 Mr.

Mr. J. Ellam. Yes.

Mr. Lee. Then I ask you, How many Persons Names there were besides these?—Mr. J. Ellam. There was mine, my Brother's, and Curll's.

L. C. J. That he said before.

Mr. Lee. When you was sent to Mr. Bambridge, Mr. Castell seemed very impatient to have the Bonds executed; did he complain of any extraordinary Usage?—Mr. J. Ellam. Yes.

Mr. Lee. What did he complain of?

Mr. J. Ellam. I asked him, what made him uneasy? He said, they would not let him out. Then I asked him, what was the Reason? He made answer, I suppose they want more Money of me.

Mr. Lee. Try! Name them. Can you name any body?

Mr. Ellam. I asked him again, Have you given any Money? He said, Yes, I have. I said, Pray how much have you given? He made Answer, About ten Pounds.

Mr. Serj. Darnell. What he said is not Evidence.

Mr. Fazakerley. What he said upon his Death-bed, I apprehend, is Evidence; which is what we shall examine him next to.

L. C. J. That is according to the Nature of the Question; what is declared as an actual Fact, is.

Mr. Faz. Had you any Discourse with Mr. Castell, when he lay on his Death-bed, what was the Occasion of his Death?

L. C. J. [Speaking to the Witness.] Don't be in a Hurry, take time, speak out.

Mr. J. Ellam. He asked me, what I thought the Distemper might be? I said, I cannot tell. The Doctor went down with me; what he said to the Doctor was, I am very ill.

Mr. Strange. This was before he was very ill?

Mr. Faz. When he lay in his Extremity?

L. C. J. Was he near his Death?

Mr. Faz. Did he say any thing what was the Occasion of his Death, when in Extremity?

Mr. J. Ellam. He said upon his dying Bed, that Mr. Bambridge, in not letting him go, was the Occasion of his Death.

Mr. Faz. Did he know the Distemper he died of?

Mr. J. Ellam. No.

Mr. Faz. How long after the Small-Pox came out?

Mr. J. Ellam. A Day or two.

Mr. Faz. How long did he live after?—Mr. J. Ellam. About—

Mr. Serj. Darnell. Had he an Apprehension of dying before the Distemper came out?

Mr. J. Ellam. He said, if they did not let him out it would be too late, for it would be his Death.

Mr. Serj. Darnell. This was before the Distemper came out?

Mr. J. Ellam. Yes.

Mr. Serj. Darnell. Did he know of this Distemper being there? Was he apprehensive of this Distemper?

Mr. J. Ellam. He said, if it was in any Village of any County, he would go another Way.

L. C. J. Did he know it was in the House there?—Mr. J. Ellam. Yes.

L. C. J. When was this?

Mr. Faz. The Bonds will shew; must not they produce them?

L. C. J. They must produce them, or give some Reason why they don't.

Mr. Strange. The two first were given in Mr. Huggins's Time, I don't know any thing of the other three. Bambridge was sworn the fifteenth of November, so that three were given in Mr. Huggins's Time, and two only in his—I am afraid it is a civil Action.

Mr. Lee. The Action is in a criminal Cause.

L. C. J. What do you think this is? The mixt Action is no Part of the Appeal; it is certainly a criminal Cause.

Mr. Reeves. We give it up, if we don't give sufficient Evidence after.

L. C. J. Can you go no further to fix it on him?

Mr. Reeves. We can prove that Codnor acted as Clerk of the Securities, in behalf of Hopkins.

L. C. J. What was Hopkins?

Mr. Reeves. Hopkins was Clerk of the Papers, and not being well, employed one Codnor, who proves that Peter Ellam entered into several Bonds.

L. C. J. You say he was not sworn in till the 15th of November, the Patent bears Date the 30th of October; let John Ellam be called again, he was the last Witness.

Mr. Reeves. If your Lordship pleases, we will call Peter Ellam, for he executed all the Bonds.

Then Mr. Peter Ellam was again called.

Mr. Reeves. When you executed these Bonds, who was present, and assisted in behalf of the Warden?

Mr. P. Ellam. Hopkins was to the two first, Codnor to the three last.

Mr. Reeves. Who did Codnor act for?

Mr. P. Ellam. I always understood he acted for Hopkins.

Mr. Reeves. Who did you think was the Clerk?

Mr. P. Ellam. I thought Hopkins.

Mr. Reeves. What was the Reason he was not there?

Mr. P. Ellam. It was reported he was sick.

Mr. Reeves. Who was the Bond delivered to?

Mr. P. Ellam. To Codnor.

L. C. J. Who was allowed to be the Master?

Mr. P. Ellam. Bambridge.

Mr. Faz. Was it so in the three last?

Mr. P. Ellam. I think so.

Mr. Faz. Was Codnor there when the last Bond was given?

Mr. P. Ellam. Yes.

Mr. Serj. Darnell. What Bonds do you speak to?

Mr. P. Ellam. The third and fourth, and I think the last.

Mr. Serj. Darnell. How many were bound in the last?

Mr. P. Ellam. Myself, Mr. Curll, John Ellam, and Mr. Bell.

Mr. Serj. Darnell. What is become of the Bonds?

Mr. P. Ellam. I don't know.

Mr. Serj. Darnell. Should you know it if you should see it again?

Mr. P. Ellam. I believe I should.

L. C. J. Had you any Discourse with Mr. Bambridge about the third and fourth Bonds?

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Mr. P. Ellam. No, not with him about any of these Bonds.

Mr. Faz. When Chambers declined standing as a Security, how many Bonds were given after?

Mr. P. Ellam. I think it was before the third was given up. Then Peter Ellam withdrew, but was called back; and standing up again was further examined.

Mr. Faz. Recollect the Time you had the Discourse with Mr. Bambridge; How many Bonds did you give after the Time you had the Discourse with Mr. Bambridge?

Mr. P. Ellam. I think it was three; when he came to the third Bond I gave Security, Mr. Chambers having given up.

L. C. J. It don't appear who the Bonds were accepted by, or who delivered to.

Call Mr. Harbin. (Who was sworn.)

Mr. Filmer. Who acted as Clerk of the Securities to the Warden of the Fleet when Hopkins was ill?

Mr. Harbin. I don't know of my own Knowledge, but as Hopkins told me.

Call Mr. Edwards. (Who was sworn.)

Mr. Reeves. Do you know Hopkins?

Mr. Edwards. Yes.

Mr. Reev. What was his Office?

Mr. Edw. Clerk of the Inquiries, as I believe.

Mr. Reev. Who was Clerk of the Securities?

Mr. Edw. Hopkins, I believe.

Mr. Reev. Do you know Codnor?—Mr. Edw. Yes.

Mr. Reev. Do you know that he acted for Hopkins?

Mr. Edw. I was not privy to such Things.

Call Daniel Hopkins. (Who was sworn.)

Mr. Reev. I think you were employed by Mr. Bambridge to take Securities for the Liberty of the Rules?—Mr. Hopkins. Yes.

Mr. Reev. In November and December 1728, did you employ any one else?

Mr. Hop. In November I was taken ill, about the 20th; and in my Illness Codnor, who acted in the Office, I believe officiated in my Office.

Mr. Reev. Who did he deliver them to? To you?—Mr. Hop. No.

Mr. Reev. Who then?

Mr. Hop. I believe to Mr. Bambridge.

Mr. Reev. Did he account for any Bonds to you?

Mr. Hop. No; but he gave me a Memorandum, that Bonds were taken for Mr. Landman and Mr. Castell.

Mr. Reev. Do you believe Mr. Bambridge appointed him?

Mr. Hop. Yes; Nobody else could.

Mr. Reev. You believe he accounted to Mr. Bambridge?

Mr. Hop. Yes.

Mr. Strange. You are Clerk of the Inquiries?—Mr. Hop. Yes.

Mr. Strange. Don't you go to enquire after the Securities?

Mr. Hopkins. Yes; and I have taken Bonds.

Mr. Strange. Don't the Clerk of the Papers take Bonds?

Mr. Hop. Not in my Time.

Mr. Strange. Is it not the Clerk of the Papers Business?

Mr. Hop. No.

Mr. Strange. What is your Business?

Mr. Hop. Our Business is, to inquire into the Circumstances of the Sureties before we take them.

Mr. Serj. Eyre. Is it not usual to take Bonds *de bene esse*?

Mr. Hopkins. Yes.

Mr. Serj. Eyre. Suppose you inquire into these Persons Circumstances, if you find them not sufficient do you take them?—Mr. Hop. No.

Mr. Serj. Darn. If any body gets a Day-rule and escapes, who takes them up?—Mr. Hop. The Tipstaff.

Mr. Serj. Darn. If the Security won't stand any longer, but will surrender the Party, the Tipstaff carries them to Prison?

Mr. Hop. Yes, if they desire it; and to their own Houses, if they desire it.

Mr. Serj. Darn. Was it usual to take up a Man without the Security going along with him to surrender him?—Mr. Hop. Sometimes.

Mr. Serj. Darn. Could he do it in the Case of Mr. Castell?

Mr. Hop. I don't know he could.

Mr. Serj. Darn. I desire he may acquaint you, whether he had any Directions from Mr. Bambridge to enquire after this Mr. Bell for Mr. Castell?

Mr. Hop. There was a Bond taken in the Month of July for 200l. Penalty, and another of 800l. and I inquired after the Security by the Direction of Mr. Bambridge, and Mr. Bambridge excepted to the Security first proposed for that Bond, and Mr. Castell was at Liberty to get other.

Mr. Serj. Darn. Did you report them as sufficient?

Mr. Hopkins. Yes.

Mr. Serj. Darnell. Was Bambridge satisfied?

Mr. Hop. Yes, in July.

Mr. Strange. I ask you whether you ever observed any Averseness to these Gentlemen, as to the first Bond?

Mr. Hopkins. Never myself.

Mr. Strange. Had you any Directions as to the third Bond?

Mr. Hop. I had Directions to inquire after one Lilly.

Mr. Strange. Did you inquire after Mr. Curll?

Mr. Hop. Not then.

Mr. Strange. After the two first, did you inquire after the Security?

Mr. Hopkins. No.

Mr. Strange. Did you ever enquire after Curll?

Mr. Hop. Yes.

Mr. Strange. Did you report him sufficient?

Mr. Hop. Yes.

Mr. Strange. How many Bonds was he in?

Mr. Hop. He was in the two first, and the last Bond.

Mr. Strange. Have you these two Bonds?

Mr. Hop. No, I delivered them in to the Table at the Committee of the House of Commons, and have not had them since.

Mr. Strange. Do you know Mr. Corbett's?

Mr. Hopkins. Yes.

Mr. Strange. Do you know what Prisoners pay there?—Mr. Hop. Yes.

Mr. Strange. What is the Price of a Dinner?

Y

Mr.

Mr. Hopkins. One Shilling, and I think it worth it.

Mr. Strange. While Mr. Castell was there, how was he used?

Mr. Serj. Darnell. (not answering directly) Did you ever hear Mr. Castell complain of any ill Usage?

Mr. Hopkins. No: There are some Persons behind interrupt me in giving my Evidence, and say I deserve to be hanged.

Mr. Serj. Darnell. Do you know the House where White was?

Mr. Hopkins. Yes.

Mr. Serj. Darnell. Do you know the House where Castell was?

Mr. Hopkins. No.

Mr. Fazakerley. The Witness swore that Bambridge said he had one Bond.

Lord Chief Justice. Bandon did say so, for he had applied to Bambridge, and Bambridge said, to prevent Disputes, he had but one.

Mr. Serj. Darnell. Two were delivered to Mr. Huggins, the other two before the Committee; they charged Mr. Bambridge with having Bonds, and Bambridge said, to prevent Disputes, there was but one. If Hopkins could not act, and he had appointed any one, that was the same Thing; as to one Bond, that Bambridge confessed to have. There was an Act made last Session of Parliament, under the severest Penalty, that Bambridge should deliver up all his Books and Papers. If he should produce the other Bond, and it appears that he did not deliver up all Bonds, he would be liable to the said Penalty.

Lord Chief Justice. You are only to deliver the Bonds in Evidence; you must consider, here are three Bonds taken by Codnor; if one of these Bonds came to your Possession, that don't imply the rest being in your Hands; as to the single Bond, it is to be left to the Jury, for if Codnor is the Person, he put it in the Office, and has delivered up one Bond, won't it be implied that he has the other?

Mr. Serj. Darnell. There has been an Application to another Court for the Books of the Office; and it was the Opinion of the Court that the Books could not be delivered up.

Lord Chief Justice. That Excuse will not do here; if you shew they are taken from you, we cannot expect Impossibilities.

Mr. Serj. Darnell. I do confess they are not delivered up.

Lord Chief Justice. They say the Bonds were given for such Sums; you must produce the Bonds, to shew if that is true or not.

Mr. Serj. Darnell. We are desirous to lay all before you we can; these Bonds were only taken *de bene esse*, only till the Security was enquired after, according to the Method of the Thing; these are not absolute, and that was the Reason why these People were enquired after.

Lord Chief Justice. Then the Question is, Whether they should not go on?

(Call Mr. Underwood, who was sworn.)

Mr. Reeves. Where do you live?

Mr. Underwood. Upon Ludgate-hill.

Mr. Reeves. In the Rules of the Fleet?—Mr. Underwood. Yes.

Mr. Reeves. Did Mr. Castell lodge at your House?

Mr. Underwood. Yes.

Mr. Reeves. When did he live there?

Mr. Under. Last July was twelve Months.

Mr. Reeves. How long did he continue there?

Mr. Under. I believe till the Middle of November.

Mr. Reeves. Do you know what happened to him then?

Mr. Under. Corbett came to my House that Morning to fetch him away, but he was not at home; and when he came in, I told Mr. Castell he had been there; and Mr. Castell desired me, if he came again, not to tell him he was at home, and he went to lock himself up; then Corbett came up.

Mr. Reeves. Did he express any Concern?

Mr. Under. Yes, he spoke to me, and said, If Corbett came again he would lock himself up.

Mr. Strange. Did you hear any thing of his Security being uneasy?

Mr. Under. No.

Mr. Strange. Did you never hear Mr. Castell say the Security was uneasy?

Mr. Under. No.

Mr. Strange. Did Corbett use him uncivilly?—Mr. Under. No.

Mr. Strange. What did Corbett say?—Mr. Under. He spoke to me, and asked where he was, and then went up.

(Then Daniel Hopkins was again called.)

Mr. Reeves. Was you in Mr. Underwood's House?—Mr. Hopkins. Yes.

Mr. Reeves. You heard the Discourse that passed?

Mr. Hopkins. Yes, I was in Williams's Room on the Stair-head; I lived up two Pair of Stairs, and Mr. Castell three Pair of Stairs; Williams, Castell, and I were standing together, Corbett came down Stairs; there was Mr. Castell with us; he said, Mr. Castell, you must go with me, your Security has surrendered you; Mr. Castell desired he might not go; Corbett said he must, he had the Warden's Orders, and must obey them.

Mr. Reeves. Who was Warden?—Mr. Hopkins. Mr. Bambridge.

Mr. Reeves. Did not Castell desire him to let him stay?

Mr. Hopkins. Yes; Corbett said, he wished he could; and said several other civil Expressions.

Mr. Strange. Do you know the Time when Mr. Bambridge was sworn?

Mr. Hopkins. I believe it was the 15th of November.

Mr. Strange. How do you know?

Mr. Hopkins. The 16th I took Bonds in his Name.

Mr. Kettleby. How long was it after Mr. Castell was taken from Underwood's before Bambridge was admitted Warden? When was he admitted Warden?—Mr. Hopkins. About the 15th of November.

Mr. Kettleby. What Day was Mr. Castell fetched in?

Mr. Hopkins. About the 14th of November.

(Call Catharine Mackartney, who was sworn.)

Mr. Reeves. Was you present when Mr. Corbett came to take Mr. Castell?—Mrs. Mackartney. No.

Mr. Reeves. What Orders had you from your Mistress about Mr. Castell?

Mr. Kettleby. I must beg Leave to oppose that Question.

Mr. Reeves. Was you with Mr. Castell when he was ill?

Mrs. Mackartney. I went several times to know how he did; when I went the first Day, he kept his Bed, which was the second Day of the Small-Pox coming out.

Mr. Reeves. I desire she may acquaint you, whether she heard him say who was the Cause of his catching the Small-Pox.

Mr. Strange. How long before he died?

Mr. Fazakerley. Did you see him before he died?

Mrs. Mackartney. Every Day before he died.

Mr. Fazakerley. How long before he died, did you hear him say who was the Cause of his Death?

Mrs. Mackartney. I heard him say several Times, that if he died, he laid his Death to Mr. Bambridge, for he was the Occasion of his Death.

Mr. Fazakerley. Tell the last Time you heard him speak it. How long before he died?—Mrs. Mackartney. Three Days.

Mr. Fazakerley. Was he in a dangerous Condition at that Time?

Mrs. Mackartney. Yes.

Mr. Fazakerley. You say you went several Times by the Direction of your Mistress; did your Mistress supply him with any Thing?

Mrs. Mackartney. The first Day I went to him, he desired me to give his Service to my Mistress, for he wanted several Things.

Mr. Fazakerley. What did he say?

Mrs. Mackartney. He said he wanted to make some Tea, and he could not get Things there to make it.

Mr. Fazakerley. What were the Things?

Mrs. Mackartney. A Spoon, Tea-pot, Cup and Saucer, a Knife, Fork, Plate, and Napkin.

Mr. Fazakerley. When did he make that Declaration, that Bambridge was the Occasion of his Death?

Mrs. Mackartney. I heard him make that Declaration three Days before he died. The last Time I was with him, he held up his Hand, as much as to say, Don't come to speak.

Mr. Fazakerley. Who provided him with Necessaries?

Mrs. Mackartney. I cannot tell.

Mr. Fazakerley. Did your Mistress send them?—Mrs. Mackartney. No.

Call ———— Savage. (Who was sworn.)

Mr. Lee. Did you at any Time see Mr. Castell after he was in Custody with Corbett?—Mr. Savage. Frequently.

Mr. Lee. When did you first see him?

Mr. Savage. The Day he was taken in Custody.

Mr. Lee. Where did you first see him?

Mr. Savage. I can't say whether at his own Lodgings, or at the King's Arms Tavern.

Mr. Lee. Did Mr. Castell make any Request to you?

Mr. Savage. Mr. Castell desired I would go to Mr. Bambridge, for that he understood he was going to close Confinement, and that he apprehended the Small-Pox was there; and said, that it was very fatal to his Family, and if he caught it, he should die; and said, it would be a Loss to him in his Affairs.

Mr. Lee. When was this?

Mr. Savage. This was the first Day he was taken in Custody, before he went to Corbett's. I told Mr. Bambridge this, and told him the Apprehension Mr. Castell was under of catching the Small-Pox, and desired he might be indulged to go to his own Lodging, and that he would be at the Expence of having a Keeper there. Accordingly I went to Mr. Bambridge, but he gave me no express Answer.

Mr. Lee. Did you acquaint Mr. Bambridge with what Mr. Castell said?

Mr. Savage. Yes.

Mr. Lee. What did he do after?

Mr. Savage. I went upon the same Message to Bambridge three, four, or five Times, I believe four or five, and never had any Answer till the last Time; then Mr. Bambridge said, he was charged with a pretty deal of Money, and he must take care of his Office.

Mr. Lee. Did you mention any thing of the Small-Pox to Bambridge?

Mr. Savage. Yes.

Mr. Lee. Did he say any thing as to that?—Mr. Savage. No.

Mr. Fazakerley. Do you remember any Conversation at the King's Arms Tavern?—Mr. Savage. Yes, that was some time after.

Mr. Fazakerley. How long?

Mr. Savage. A little before he was taken ill of the Small-Pox.

Mr. Fazakerley. How long before?

Mr. Savage. About a Week or four Days. I was in Company with some other Gentlemen, and Bambridge came in, and said he had been with Mr. Castell, and that an unlucky Accident had happened; and that Mrs. Corbett had mentioned the Danger the Man was in that was ill of the Small-Pox, and Bambridge told us, that Mr. Castell seemed to be much affected, and it gave him vast Uneasiness.

Lord Chief Justice. Was this before Mr. Castell was taken ill?

Mr. Savage. I was at Supper in the King's Arms Tavern, in a Room behind the Bar; then Bambridge came in and told us, that he had been at Corbett's House, and Corbett's Wife had unfortunately mentioned the Person's having the Small-Pox; and that Mr. Castell seemed to turn pale; and it gave him Pain to see Mr. Castell so much shocked.

Mr. Reeves. You say that you told Bambridge, the first time of going to him, of the Small-Pox being there, and you returned immediately to Mr. Castell?—Mr. Savage. Yes.

Mr. Reeves. Was that the first Day of his being in Custody?

Mr. Savage. Yes, I take it to be so.

Mr. Reeves. You say you went the next Day again?

Mr. Savage. I believe it was.

Mr. Reeves. Did you go by Order of Mr. Castell?

Mr. Savage. At the Request of Mr. Castell.

Mr. Reeves. What did Mr. Castell desire you to say the next Day to Mr. Bambridge?—Mr. Savage. The very same Thing.

Mr. Reeves. Was there any thing mentioned as to the Place Mr. Castell desired to be carried to?—Mr. Savage. It was to his own Lodgings.

Mr. Reeves. Was there any other Place mentioned?—Mr. Savage. No.

Mr. Reeves. Was there any Endeavour used by Bambridge to take him out of that Place?—Mr. Savage. No, I do not know it.

Mr. Filmer. How many Times did you go?

Mr. Savage. Two, three, or four Times.

Mr. Kettleby. I think he said, it would be an Inconvenience, and that he cared not to go to Corbett's?—Mr. Savage. Yes.

Mr. Strange. I ask you, Whether you said it was the first Day, or not, before he went to Corbett's?—Mr. Savage. No.
Mr. Strange. Did you see him there?—Mr. Savage. Yes.
Mr. Strange. How was his Usage?
Mr. Savage. I did not hear him complain.
Mr. Strange. Did you go with any other Request, than that he might go back to his Lodging?—Mr. Savage. That was the Request by me.
Mr. Reeves. What was the Answer the last Time you went to Bambridge; whether he did not say he was in Execution?
Mr. Savage. I cannot take upon me to say.
Lord Chief-Justice. I think what you said, was, that it had been signified by Corbett, that Mr. Castell was to be locked up there, and it had been signified to him that the Small-Pox was there?—Mr. Savage. Yes.
Lord Chief-Justice. What Place was it at?
Mr. Savage. I can't be certain whether at the King's-Arms, or his Lodgings.
Mr. Lee. Do you know the Day he fell ill?—Mr. Savage. I can't tell.
Mr. Lee. Was he well before he went into Corbett's?
Mr. Savage. Yes, he was.
Mr. Lee. When he went into Corbett's, the 14th of November, was he well then?—Mr. Savage. Yes.
Lord Chief-Justice. Did he not talk that it was fatal to his Family?
Mr. Savage. Yes, and said if he caught it, it would kill him.
Lord Chief-Justice. Did you acquaint Bambridge of that?
Mr. Savage. I did tell him it would be fatal.
Lord Chief-Justice. Was the Message the same as the first?
Mr. Savage. I went on the same Message.
Mr. Lee. How many Times did you go?
Mr. Savage. Four or five Times.
Mr. Lee. How long before Bambridge came in into the King's-Arms Tavern, before that Discourse happened?
Mr. Savage. I believe the same Day.
Mr. Bambridge. I desire a Question may be asked the Witness, Whether he came in relation to some Suits of Mr. Castell?
Mr. Lee. We must oppose that.
Lord Chief-Justice. It is between Party and Party, his Counsel must ask Questions.
Mr. Savage. I did understand there was a Negotiation carried on by Mr. Bambridge for Mr. Castell, between him and the Printer; and Mr. Bambridge did tell me, that he had made an End of it for 40 or 50*l*. but I know nothing of it.
Mr. Strange. Did not you come about one Curll?
Mr. Savage. I know nothing of it.
Mr. Strange. Did you come to Bambridge as to Mr. Curll's being Security?
Mr. Savage. I believe I did, and said he was a proper Man for Security, being a Man of Substance.
Call ——— Shortis. (Who was sworn.)
Mr. Lee. Did you go to Mr. Castell when at Corbett's?
Mr. Shortis. I went to Mr. Castell at Corbett's, the Morning after he was in Custody.
Mr. Lee. What passed?—Mr. Shortis. Mr. Castell said, he had been very ill used by his Creditors, and believed they had been in Combination, and had combined with Mr. Bambridge.
Mr. Strange. Was you frequently with Mr. Castell while he was at Corbett's House?—Mr. Shortis. Yes.
Mr. Strange. During the Time you was there, what Manner was he used in?—Mr. Shortis. Mr. Bambridge behaved towards him very gentleman-like, so did Mr. Corbett.
Mr. Strange. Did you ever hear him complain?—Mr. Shortis. No.
Mr. Strange. When did you last see him?
Mr. Shortis. A Day or two before he died.
Mr. Strange. Did he complain of Mr. Corbett's ill Usage then?
Mr. Shortis. I believe he had every Thing he wanted from Corbett's.
Mr. Wynn. Did he complain of any Hardship in being carried to Mr. Corbett's House?—Mr. Shortis. Yes.
Mr. Wynn. Who did he complain of, his Creditors, or Mr. Bambridge?
Lord Chief-Justice. That is not Evidence.
Call John Surridge. (Who was sworn.)
Mr. Lee. Did you go at any Time from Mr. Castell to Mr. Bambridge?
Mr. Sur. I went two or three Times.
Mr. Lee. When did you see him?
Mr. Sur. I went in the Month of November.
Mr. Lee. What Time?
Mr. Sur. About fourteen Days in the Time of the Term.
Mr. Lee. That was about the Middle of November; it was before he was taken ill.—Did you see him at Corbett's?—Mr. Sur. Yes.
Mr. Lee. When you went to Mr. Bambridge, what did you go with?
Mr. Sur. Two Letters.
Mr. Lee. Did you go by Word of Mouth?—Mr. Sur. No.
Mr. Lee. Had you any Answer to these Letters? Did you deliver them to Mr. Bambridge? Did he give any Answer?
Mr. Sur. He said, he would wait upon Mr. Castell.
Mr. Reeves. Had you any Discourse, concerning his Confinement, with Mr. Bambridge?—Mr. Sur. No.
Call Thomas Goodman. (Who was sworn.)
Mr. Reeves. Was you at any Time at Mr. Corbett's, when Mr. Bambridge and Mr. Castell were together?
Mr. Goodman. I was confined a Prisoner there.
Mr. Reeves. Did you remember any Conversation between them two?
Mr. Goodman. I was a Prisoner there, and Mr. Bambridge came into Corbett's, and sent for Mr. Castell down Stairs; and Castell said to Mr. Bambridge, he had sent to him two or three Times, and never could have the Happiness to see him; Bambridge said he was very sorry for that; and Mr. Castell desired of Mr. Bambridge either to go into the House, or the Rules, for the Distemper raged there.
Mr. Reeves. What do you mean by the House? To go into the Gaol? Tell the Discourse that happened; what did Mr. Castell say?
Mr. Goodman. Mr. Castell said, the Distemper raged in the House, and the Distemper would be the Death of him; and Bambridge made Answer, that he should neither go into the House, nor into the Rules, unless he gave him such a Sum of Money.

Mr. Reeves. Where was you when you heard this Discourse?
Mr. Goodman. I was at the Bar, asking for some Bread and Cheese.
Mr. Lee. When Mr. Bambridge said he should not go into the House, or into the Rules, what did Mr. Castell say?
Mr. Goodman. That he had given Security several Times, and fresh Bail, and that he would not give any more.
Mr. Reeves. Did Mr. Bambridge deny that?
Mr. Goodman. No, I did not hear it.
Mr. Reeves. Where did Bambridge order him to be put?
Mr. Goodman. He then ordered Corbett to put him into the Tap-room, and then he went up.
Mr. Reeves. How long did he stay there?
Mr. Goodman. About four Minutes.
Lord Chief-Justice. What Time of the Year was this?
Mr. Goodman. About the Month of November.
Mr. Reeves. Did Castell complain of any Illness?
Mr. Goodman. The next Morning he came down, and said to Mr. Corbett he was very ill, and desired a Fire to be made in his Room, and I believe he never came down again.
Mr. Reeves. How often did Mr. Castell repeat this to Mr. Bambridge?
Mr. Goodman. He desired two or three Times to go into the Gaol, or to the other Place; and Bambridge said he should not go to either, without a Sum of Money.
Mr. Reeves. What Sum was it?—Mr. Goodman. I did not hear the Sum.
Mr. Reeves. Where was this?—Mr. Goodman. At the Bar; I was standing at the Bar asking for Bread and Cheese.
Mr. Serj. Darnell. How long was you there?
Mr. Goodman. Four or five Minutes.
Mr. Serj. Darnell. How long was you a Prisoner?
Mr. Goodman. Four or five Months.
Mr. Serj. Darnell. Did you see them together?
Mr. Goodman. No, it was impossible for me to see them, the Door was shut.
Mr. Serj. Darnell. Did you never give any Testimony before?
Mr. Goodman. No.
Mr. Serj. Darnell. When was you discharged?
Mr. Goodman. By the Act of Parliament.
Mr. Kettleby. How came it you was not examined before?
Mr. Goodman. I don't know.
Mr. Kettleby. Did you make any Declaration of this Matter to any body?
Mr. Goodman. I gave this Account to several, particularly to Mr. Houghton.
Mr. Kettleby. Did you hear of this Trial?
Mr. Goodman. I heard something of it.
Mr. Kettleby. Are you subpoena'd?—Mr. Goodman. I am not subpoena'd.
Mr. Kettleby. Where have you been since you was discharged?
Mr. Goodman. In my Business.
Mr. Kettleby. What Business?—Mr. Goodman. A Printer.
Mr. Bambridge. My Lord, there is a Person, Mr. Botwright, stands behind the Evidence to prompt them, I desire he may be removed from that Place.
Lord Chief-Justice. Let him go to the other Side.
Call ——— Sutton. (Who was sworn.)
Mr. Lee. Did you know Mr. Castell?—Mrs. Sutton. Yes.
Mr. Lee. Did you know he had the Small-Pox?
Mrs. Sutton. Yes; Mr. Corbett sent for me, and desired me to look after one White, but I could not, and Mr. Castell was standing there, and said he was afraid of the Small-Pox, and said that he was afraid that I had them, observing something like a Pimple upon my Face.
Mr. Lee. Was there any Thing upon your Face?
Mrs. Sutton. No, nothing but what is now.
Mr. Reeves. Was that after he was in Custody at Corbett's?
Mrs. Sutton. He was not a Prisoner then there.
Mr. Reeves. Was you in the House when Mr. Castell was ill?
Mrs. Sutton. I sat up the Night he died.
Mr. Reeves. Can you tell the Day of the Month?
Mrs. Sutton. I cannot tell.
Mr. Reeves. Do you know the Month?
Mrs. Sutton. I can't tell, it was before Christmas.
Mr. Fazakerley. What Distemper did he die of?
Mrs. Sutton. The Small-Pox.
Call ——— Westbrook. (Who was sworn.)
Mr. Fazakerley. What do you know of Mr. Castell's Fear of having the Small-Pox?
Mr. Westbrook. I have been Mr. Castell's Neighbour twenty Years, and often heard him say, that he was very much afraid of the Small-Pox.
Call ——— Kilbury. (Who was sworn.)
Mr. Fazakerley. Do you know that about the 14th of November, and so for a Month, from that Time till December last, there were empty Rooms in the Prison?—Mr. Kilbury. Yes, there was, one of the most commodious Rooms in the Prison.
Mr. Fazakerley. Where was it?
Mr. Kilbury. Up one Pair of Stairs, No 16, wainscoted.
Mr. Fazakerley. Was there any other Room?
Mr. Kilbury. Yes, one where they kept the Lumber in.
Mr. Fazakerley. Were there other Houses where there were Rooms as convenient?—Mr. Kilbury. I don't know of any.
Lord Chief-Justice. What Time were the Rooms empty?—Mr. Kilbury. From the latter End of October, till the 4th or 5th of December.
Call ——— Booth. (Who was sworn.)
Mr. Fazakerley. You hear the Question, whether from the Middle of November till the latter Part of December, any Rooms convenient were empty?
Mr. Booth. There were the same two Rooms as Kilbury mentioned.
Mr. Fazakerley. How long were they empty?
Mr. Booth. They were empty about a Month; from the latter End of October till the 4th of December.
Mr. Fazakerley. Do you know any Thing of a House that there was Room in?—Mr. Booth. I don't know any Thing of that.
Call ——— Cleaver. (Who was sworn.)
Mr. Fazakerley. Do you know that about the Middle of November, 1728, and so till some Time in December, there was any convenient House, as convenient as Corbett's, to put Prisoners in?

Mr. Cleaver. There was one Room. I was first at Corbett's, and from Corbett's orderd to Britton's: It was the Latter-end of November, or Beginning of December.

Mr. Fazakerley. Was there Room there?

Mr. Cleav. Yes, there were seven Beds made there, and but four or five Prisoners in the House.

Mr. Faz. Was the Small-Pox at Corbett's?---Mr. Cleav. Yes.

Mr. Faz. Was that House made use of as Corbett's?

Mr. Cleav. Yes.

Mr. Strange. Was it fitted up?

Mr. Cleav. Yes, so fitted up as to have Prisoners in it.

Mr. Strange. Were not the Workmen at Work?---Mr. Cleav. No.

Mr. Faz. We shall call no more Witnesses.

Mr. Serj. Darnell. I am of Counsel for the Defendants. The Gentlemen on the other Side say, That this is an Appeal that is brought, with a good deal of Commendation of the Widow; that she was following the Murder of her Husband; and that she traced it with a full Conviction, that though one had been acquitted for it, yet she should now convict both, therefore she waited for this Opportunity of laying it before the Court.

I shall not take Notice what passed upon that Occasion, but observe to you, Gentlemen, what is alledged in the Appeal: The Appeal has charged, that these two Defendants did with Force and Arms make an Assault, and did feloniously take and imprison Robert Castell, without his Consent and against his Will, in the House of Richard Corbett; that there they did imprison him; and that in that House there was one Joseph White then ill of the Small-Pox, a Distemper the said Castell was greatly afraid of; and he believed he should die if he had them.

That being there confined, he caught the Small-Pox and died.

I cannot but say, it is something new, and an uncommon Accusation of Murder; but so far I'll go, that if People do wickedly, they should answer for it.

There is first a great deal to be considered. As to the first Point, Whether he was legally taken and imprisoned? I think there is no Evidence as to that but Hopkins. He told you he was present, and saw Corbett come to Underwood's, and told him his Bail had surrendered him, and told him he must carry him away to Prison, and told him he was sorry for it.

This is the unlawfully and feloniously carrying him there.

He told you he had the Warden's Authority; as he was his Agent and Tipstaff, he was put to take him; he must take him, and did it by the Authority of the Warden, as he was his Officer; this was the general Authority: This is the single Evidence of the first taking the Man. I submit it to your Lordship's Direction, that there is nothing unlawful in this.

The next is, that he was carried to the House where White was sick of the Small-Pox. What is the Evidence as to that? Every Body that speaks as to that, said, the Small-Pox was over ten Days; if it was over ten Days, when is he said to be sick? When is the Small-Pox to end?

What is the Consequence of his coming there? That he dreaded the Distemper, caught it and died. That the catching it was from the 14th of November, till the 4th of December, which was near three Weeks; this comes out to be a Month after the Man had the Small-Pox. It was lawful when he was carried there.

As it is unreasonable to suppose the Time of catching the Small-Pox, are not you to judge? It is so general a Distemper, there is hardly one in a hundred in this Town, that has not caught it. Is it because he had the Small-Pox there, that they had a felonious Intent? Were there all these Circumstances to make it appear? This is the Circumstance that must be left to you, the general Credit that Mr. Bambridge received from almost all the Witnesses, that he treated him civilly, and that even Mr. Bambridge did Business for him, till it came to Goodman, and Goodman gives an odd Account to you, if you can believe it. He says, he stood at the Bar (which in a Publick-House is very noisy); and says, that he heard a Talk through the Door which was shut, and he took it to be Mr. Castell's Voice; and he said he desired to have the Liberty of the Rules, for the Distemper raged in the House.

For a Man to hear this at the Bar, when the Door was shut, and that this should be a Secret so long, is very extraordinary.

I must observe to you, Gentlemen, that Goodman was a Prisoner; and if this Evidence had been thought material, the Vigilance and Industry used to find him out (and very commendable it was), it was impossible to think it should be undiscovered, where so vigilant an Inquiry was made.

This is the only Thing that shews any Iniquity in Bambridge. Here is a Man that wants to go into the Liberty of the Rules; is a Gaoler to let him? If a Gaoler desires Money, I don't know that it is illegal; it was after his Bonds were given up; it would have turned upon his own Head if he had gone away; he must have been answerable.

He charges him with so monstrous an Improbability (it is impossible to think he said it), that we must submit it, whether any Credit can be given to such Evidence.

I chuse to mention Mr. Bambridge; but I am more particularly concerned for Mr. Corbett.

They have called several Witnesses, and they say Mr. Corbett used him very well. And this is alledged to be Evidence, That where Witnesses are wanting, the Man's Declaration upon his Death-Bed is Evidence; because that it may be done without the Privy of any one else; and that a Man at that Time would have Regard to himself in what he said. What was this Declaration? If I die, I lay my Death to Bambridge; but he is not certain that the Man did lay the Misfortune of being brought into Prison to Bambridge; but if he did die by catching it from White, or being confined in a close Air, if I die the Prison is the Occasion of my Death, and consequently the Keeper. Is there any Consequence can be drawn, that there was a felonious Intent? There is nothing at all from Corbett.

But as they have taken up a good deal of Time in shewing that it was a Crime carrying him to Corbett's, though I apprehend it is not material, we shall make it plain that it was no Crime at all.

I must take Notice as to this, that it was insinuated from Circumstances. They have endeavoured to shew Mr. Castell received 125*l.* and alledged, that this Money was to be got from him; this Money was the

Means of his being used ill. When they came to prove this, they only shewed that a Note was drawn upon Woodward. If he had any Money, might he not have paid it to his Creditors?

The next Thing I shall take Notice of is, as to the Bonds. Probably the Bonds that had been given to Mr. Huggins were delivered to Mr. Bambridge. Mr. Bambridge said he had but one; and if it was taken in the manner even said by their Witnesses, it did not appear in any manner oppressive; for Chambers said he would surrender him.

When Peter Ellam was examined, he was asked, whether Bambridge said, that he would not have them surrender him? He made answer, that he said something to that Effect; and it was said, that these Bonds were given *de bene esse*; therefore the Warden was to have a reasonable Time to enquire into the Securities; so it may be likewise taken by the Circumstance, that he desired to have a Keeper with him, and he would pay for it. What Hazard does the Gaoler run, if two or three Persons come to him to ask the Liberties of the Rules, and he gives it them, and the Men escape? Is not he to answer for them? If that was the Case, a Keeper, which is thought to be a beneficial Office, would be soon ruined by Acts of Good-nature.

As to the Case, it stands thus: Mr. Castell was first committed the 18th of June, 1728, and it is customary to bring Prisoners first to this House. Hopkins says, it is common for Prisoners to desire to be there, for they have better Convenience to transact what Business is to be done, than to trouble their Friends to go into the Gaol. Hopkins says, that it was customary; and from this House he did give Security and went to his Lodgings, and continued there till his Security would not stand.

When this Man was brought in, he happened to be an intimate Acquaintance with one Mr. Vanderbank, who spoke himself, and got several others to speak to Mr. Bambridge in his Behalf. He will give you an Account of the very Creditors coming to surrender him; and it is nothing but a Man's Creditors can come; and these People will shew with what Favour Mr. Bambridge treated him, and that he desired Mr. Bambridge to assist him in his Affairs.

Gentlemen, he was removed from Corbett's to his Lodgings, and continued there till his Security surrendered him; and we shall shew you, that Mr. Castell sent to Mr. Corbett's, that this Room might be made convenient and fit for him; which strikes out the first Part of the Appeal; and if we prove he desired to be there, that strikes out the whole; therefore there will be an End of the whole. The Man is carried to the House, but the Communication between them was up two Pair of Stairs: For the Witnesses say, White lay up three Pair of Stairs in one House, and Castell lay up one Pair of Stairs in another. Was there any more Danger lying here than in the next House? The Witnesses say, White never came down, and Nobody insisted that Castell went up; he must have been a Madman if he did. When we shew you that he came there at his own Desire, and had the Bed and Bedding at his own Desire, we must say that this Distemper was the Visitation of God, and came to him as to other People.

We shall call a good many of the People who were his Security, to prove, that as soon as they were inquired after, they were admitted to stand.

Gentlemen, after the last Bond was given, he might have gone about his Business if he would; and that Bond was given *de bene esse*; and therefore in the Power of the Warden to let them in or not. We will call our Witnesses, and shew you how long White had been well before Mr. Castell came there; that he had taken three times Physick; but for fear of any Accident, because there were other Prisoners in the House, they did not let him come down. This, Gentlemen, we shall be able to prove by several Witnesses; which if we do, you will find the Prisoners Not Guilty.

Mr. Serj. Eyre. My Lord, and you Gentlemen of the Jury, I am of Counsel of the same Side. I shall not go over the whole Case; but only observe to you, that the Gentlemen on the other Side were conscious that they had no positive Proof, therefore they have artfully gone about to prove Circumstances.

They say, that Mr. Castell had 125*l.* paid him; and having this Money, Mr. Bambridge knew of it, and consequently was making use of Endeavours to extort the Money from him.

They are far short, in that they called some People, who only proved that a Note was drawn upon Mr. Woodward, payable to him or Bearer; but it did not appear that Bambridge had any Part of it.

There is another Evidence, one Goodman, who said, that Mr. Bambridge had a View to get some of the Money; one would have thought, that he should have mentioned a particular Sum. That seems to be exceedingly unnatural, for the Answer Castell gives is, that Security was given, and he would give no more.

Consider, Gentlemen, when this happened; in November, when all the Securities had been completed.

It is very extraordinary, that this Witness should never be called on before, and very particular that he should hear so well. He was at the Bar, they in the Room, and the Door shut; and, Gentlemen, I am instructed to say, that it is impossible to hear what any Person says behind the Bar, that stands on the Outside of the Bar.

It is usual to take Securities before their Circumstances are inquired into, What then is the Case? They stand if their Circumstances are good, if not they don't.

How then stands this? If these Bonds were executed on the Second, this Man fell sick on the Third, and this one Bond was only delivered over to the Principal, as a Bond *de bene esse*.

What I should apprehend was necessary for them to produce, were the Facts in the Declaration, that he was forcibly taken away out of his Lodgings, and carried to Corbett's House: They admit them as Prisoners; and so far from Force, that some of the Sureties, on the 14th of November, said, that they would stand no longer, and desired Mr. Castell to be taken care of.

They say it was very wrong to carry him to a Spunging-House; a Victualling-House it is, but it don't appear to be a Spunging-House; every Gentleman is used according to his Circumstances; they pay one Shilling for their Dinner, which is very reasonable, and Hopkins said well deserves it.

We

we say it is exceedingly lawful to put Prisoners there; it is lawful, and as lawful as his own Lodgings, and any Place in the Liberty of the Rules is lawful. This is not all; he went first to the Tavern, and his Servant bespoke a Room, and had the very Room he bespoke; and we apprehend, Corbett had a lawful Authority to carry him there.

There is another Fact they have alledged, I must beg leave to take notice of; That *White* was sick at this very Time, and in this very House.

These two Charges are necessary to be proved; but how have they proved them? It appears that these were two distinct Houses, two distinct Stair-cases; and, in my Judgment, I apprehend, appear to be two Houses, not one.

As to *White's* being sick at that Time, it appears he was not sick, and we shall shew he had taken three Purges.

It is not only necessary for them to prove that this Man was sick at the Time *Castell* came there, and that he was unlawfully carried there, but it is necessary to prove that this Sickness was infectious; but *Castell*, on the contrary, did not come there till he was well.

Does it not appear that *White* lay up three Pair of Stairs, and was enjoined not to come out of his Room, and that he continued there, as *Noel* said, all the Time? Where was *Castell*? In one Pair of Stairs in the new House. How can you imagine any Infection to come from the Garret down to Mr. *Castell* in the one Pair of Stairs Room? Therefore, it was impossible to imagine that Distemper was so taken.

Here is a Man visited with the Small-Pox, and says, "Pray let me not go to Gaol, but let me go to my own Lodgings;" the Bail surrender him, because he was not safe at the Place where he lodged; therefore, it was very ridiculous for him to ask to go to his Lodging, which was unreasonable.

As to the Persons that were his Securities, I don't think they were his Friends in fact; for these Men, who before were drinking at the Bar of this House, designed it should be so.

I must beg leave to make one Observation: Suppose there were some of the Prisoners had the Small-Pox, and a Prisoner comes to the Gaoler, and says, Here is the Small-Pox in a Garret, I desire to go into the Liberty; I don't see how it can be granted, for it is impossible for that or any other Gaoler, if a contagious Distemper comes into it, and the well Prisoners desire to go out, he should give them the Liberty: If Criminals should be let out, it is very plain, in that Case, the Gaoler must answer for them; so I apprehend it would be in Civil Cases: Therefore, I must conclude with saying, that my Clients have done nothing at all but what is humane and right.

Mr. *Kettleby*. My Lord, I am Counsel of the same Side; and we will call our Witnesses.

Call — Chappel. (Who was sworn.)

Mr. *Kettleby*. Was you present on the 14th of November, or at any other Time, when Mr. *Castell's* Security came to Mr. *Bambridge*?

Mr. *Chappel*. Mr. *Chambers* came and said, he was determined to stand Security for Mr. *Castell* no longer; and *Peter Ellam* and *Curll* the same.

Mr. *Kettleby*. What did they say to *Bambridge*?

Mr. *Chappel*. That they gave him Power to take him up.

Mr. *Kettleby*. Where was this?—Mr. *Chappel*. At *Bell-Savage Yard*.

Mr. *Kettleby*. What did *Bambridge* say in Answer?

Mr. *Chappel*. He believed they were secure, and could not imagine the Reason of their withdrawing their Security.

Mr. *Kettleby*. What did they say to that?

Mr. *Chappel*. *Chambers* seemed willing, but *Curll* would not.

Mr. *Kettleby*. What Resolution was taken upon that?

Mr. *Chappel*. He persuaded *Ellam* to consent, and nothing more was done then; and we left *Castell* and *Bambridge* together.

Mr. *Kettleby*. What Time was this?

Mr. *Chappel*. I don't know the Day.

Mr. *Kettleby*. What Month was it in?—Mr. *Chappel*. In November.

Mr. *Kettleby*. The Beginning, Middle, or latter End?—Mr. *Chappel*. I cannot tell; by a Line sent to Mr. the Attorney, it will appear.

Mr. *Kettleby*. How long before he was carried to *Corbett's* House?

Mr. *Chappel*. Three Weeks or a Month.

Mr. *Kettleby*. Do you know any Discourse that happened between them a little before he went to *Corbett's* House?

Mr. *Chappel*. Mr. *Chambers* came to Mr. *Bambridge*, and told him, he would be Security no longer.

Mr. *Kettleby*. How near the Time he was carried to *Corbett's*?

Mr. *Chappel*. The next Morning.

Mr. *Kettleby*. Give an Account what passed the Day before he went to *Corbett's*.

Mr. *Chappel*. *Chambers* was twice with Mr. *Bambridge*; and the first Time Mr. *Bambridge* desired Mr. *Castell* might not be surrendered; Mr. *Chambers* waited two or three Days, and then came to Mr. *Bambridge* again, to let him know he would surrender him, and said he would be his Security no longer; and Mr. *Bambridge* said, if he would deliver him up, he must go to the Tipstaff's; then *Chambers* went to one *Corbett*, and *Corbett* said, he must have a Fee; then *Chambers* gave him his Fee, and *Chambers* said, he was at the *King's Arms*. About an Hour after I saw *Corbett*, *Chambers* and *Castell* together.

Mr. *Kettleby*. What did you see done?—Mr. *Chappel*. That is all I know.

Mr. *Kettleby*. Did not you go to the *King's Arms* Tavern?

Mr. *Chappel*. No.

Mr. *Kettleby*. Did you hear the Security say, they would complain to the Judges about it?—Mr. *Chappel*. Mr. an Attorney, was there.

Mr. *Kettleby*. What did the Attorney say?—Mr. *Chappel*. I don't know.

Mr. *Kettleby*. Did they direct him to take him up? Who did *Chambers* speak to?

Mr. *Chappel*. To Mr. *Bambridge*.

Mr. *Kettleby*. To do what?

Mr. *Chappel*. To take Mr. *Castell* in Custody, for he would be Security no longer; and desired that he would take him in Custody.

Mr. *Strange*. What did Mr. *Bambridge* tell him was necessary to be done?

Mr. *Chappel*. *Bambridge* said he must employ a Tipstaff.

Mr. *Strange*. What did Mr. *Chambers* do to *Corbett*?

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Mr. *Chappel*. He sent to *Corbett* to the Coffee-house, and *Corbett* said, he must have a Fee.

Mr. *Strange*. When was this?—Mr. *Chappel*. Over Night.

Mr. *Strange*. Did *Chambers* threaten him?—Mr. *Chappel*. No.

Mr. *Strange*. What did he say?

Mr. *Chappel*. He said something about giving a Fee; and *Corbett* went to the *King's Arms*, and said, he could not find him.

Mr. *Reeves*. First of all *Ellam* seemed uneasy, but afterwards was not; Did *Peter Ellam* concern himself afterwards?

Mr. *Chappel*. Yes, he sent a Letter to Mr. *Scott*.

Mr. *Reeves*. I ask you, whether *Ellam* did not consent to continue before he was taken up?—Mr. *Chappel*. Yes.

Mr. *Reeves*. Did *Curll*, before Mr. *Castell* was taken up?

Mr. *Chappel*. I don't know of that.

Mr. *Reeves*. You don't know of any others?—Mr. *Chappel*. No.

Mr. *Lee*. How come you to be so much concerned?

Mr. *Chappel*. I was to secure *Ellam* and myself. I was so much concerned, that he and I were bound for Three-Fourths of One Thousand Pounds.

Mr. *Lee*. Who went with you to *Bambridge* the first Time?

Mr. *Chappel*. I went along the first time to *Bambridge* with *Peter Ellam* and *Curll*.

Mr. *Lee*. With what Intent did you go?

Mr. *Chappel*. I went with *Peter Ellam* and *Curll* with an Intent to deliver Mr. *Castell* up, for I had given Security to *Ellam* to indemnify him a half Part.

Mr. *Lee*. To indemnify him! Did *Ellam* decline then?

Mr. *Chappel*. He seemed inclinable to continue.

Mr. *Lee*. Was you present when *Bambridge* said he must go to the Tipstaff's?—Mr. *Chappel*. Yes.

Mr. *Lee*. Was he acquainted with *Corbett*?—Mr. *Chappel*. I don't know.

Mr. *Lee*. Was there any body mentioned at the Time when you was with *Bambridge*?

Mr. *Chappel*. I can't charge my Memory with any Name.

Mr. *Lee*. At this Time when you talked about the Tipstaff, was *Ellam* and *Curll* there?—Mr. *Chappel*. No.

Mr. *Fazakerley*. Pray what Bond was that you talked of, that you was Security in?—Mr. *Chappel*. I don't hear.

Mr. *Fazakerley*. Was there any Talk then with *Bambridge* how much the Bond was for?—Mr. *Chappel*. No.

Mr. *Fazakerley*. What was the Bond for?—Mr. *Chappel*. I think 1000*l*.

Mr. *Strange*. You say, upon *Bambridge's* Interposition, that *Ellam* was induced to stand?—Mr. *Chappel*. Yes.

Mr. *Strange*. Was *Curll* the same?—Mr. *Chappel*. Yes.

Mr. *Strange*. When was that?—Mr. *Chappel*. That was the first Time.

Mr. *Strange*. When was the last Time?

L. C. J. I don't find that you fixed these Times.

Call — Chambers. (Who was sworn.)

Mr. *Strange*. You was Security for Mr. *Castell*?—Mr. *Chambers*. Yes.

Mr. *Strange*. Give an Account what you did in relation to that?

Mr. *Chambers*. I begg'd of Mr. *Chappel*, he having Business every Day in Town, to apply to Mr. *Bambridge*, to let him know that I would be Security no longer; but having long had an Intimacy with Mr. *Bambridge*, *Bambridge* desired me to continue Security eight Days longer; and told me, that *White* at the *King's Arms* Tavern had given a Note. I said I was determined to deliver him up. Mr. *Bambridge* said, I was very safe, and desired I would continue; he had been the Instrument of my being Security, and he would not deceive me; if he thought there was any Danger, he would advise me by Letter. I came to Mr. *Castell* from time to time; he told me, he had other Securities ready, and it would be no Inconvenience to him. I came to tell him two or three times I would not stand, and found he had Nobody ready; and then went to Mr. *Bambridge*, and found him at the Lodge about seven or eight o'Clock at Night, and told him I was come determined to deliver Mr. *Castell* up; upon which he said, If you will deliver him up you must. I asked him which way to proceed? He said, I must get a Tipstaff. I asked him, where there was a Tipstaff? He said, there was one *Corbett*. I asked him, what I must give him? He said, Six-and-eight-Pence. I went accordingly to *Corbett*, and told him Mr. *Castell* was at the *King's Arms* Tavern, and I would give him Half a Guinea to secure him. Mr. *Corbett* went to the *King's Arms*, came back, and said he could not find him; then I said, I would be in Town; and I lay at the *Bell-Savage* Inn; then I came the next Morning, and sent to *Corbett's*, who came in his Gown and Slippers; and *Corbett* said, he wished he had not got Notice of our Intention; and said he would go to his Lodgings; and said, he believed there he should find him: Then *Corbett* came, and said he was at his House; and I gave *Corbett* Half a Guinea; and I went to Mr. *Castell* at *Corbett's*; and he said, he thanked me for my Civility; and said, he believed it was not an Act of my own; and I said it was. As you are going abroad, do not think I use you ill. He said, No; I don't believe it was your own Act. I said, Don't deceive yourself, it is.

Mr. *Strange*. Did Mr. *Bambridge* persuade you at first to be Security?

Mr. *Chambers*. Yes.

Mr. *Strange*. Mr. *Castell* made no manner of Objection to his being at *Corbett's*, but thanked you?—Mr. *Chambers*. Yes.

Mr. *Strange*. About what Time was this?

Mr. *Chambers*. About the Middle of November.

Mr. *Strange*. Was this after he was surrendered?—Mr. *Chambers*. Yes.

Mr. *Strange*. Did he complain of being at *Corbett's* House then?

Mr. *Chambers*. No.

Mr. *Strange*. Was you at the *King's Arms* the Day he was taken?

Mr. *Chambers*. No.

Mr. *Strange*. Was you with Mr. *Bambridge*?

Mr. *Chambers*. I sent up to him, and that I was come by the Securities Appointment; and he sent Word again, he had nothing to do with him, till the Security had surrendered him.

Mr. *Strange*. Did Mr. *Bambridge* at any Time expostulate with you, why you surrendered him?

Z

Mr.

Mr. Chambers. I told Mr. Bambridge, I heard he had an Invitation to go abroad with Lord Londonderry.

Mr. Strange. What did Mr. Bambridge say, to lead you to that Answer, to say that Mr. Castell was going abroad?

Mr. Chambers. No, I did not say he was going abroad.

Mr. Strange. Upon the whole, you say that Mr. Bambridge persuaded you to stand?—Mr. Chambers. Yes.

Mr. Strange. Did he persuade you to stand?—Mr. Chambers. Yes.

Mr. Bambridge. My Lord, I desire the Witness may be asked, whether he did not say that Mr. Castell was going abroad.

Lord Chief Justice. Mr. Bambridge, let your Counsel ask the Question.

Mr. Strange. What did you say?

Mr. Chambers. I said I heard a Rumour; I was informed he was going abroad.

Mr. Strange. I desire he may be asked, if he was not told that he was going abroad with Lord Londonderry.

L. C. J. Had any body told you he was going abroad with Lord Londonderry?

Mr. Chambers. No, I did not surrender him upon that Account.

Mr. Strange. What was the real Reason of your surrendering him?

Mr. Chambers. I was informed that he had made two Mortgages of his Estate, one to my Son-in-law.

Mr. Strange. You said you was informed he was going abroad?

Mr. Chambers. Yes.

Mr. Strange. Did any body, an Enemy to him, persuade you to surrender him?—Mr. Chambers. No.

Mr. Strange. Did not you know of that Mortgage to your Son-in-law before then?—Mr. Chambers. No.

Call Joseph Vains. (Who was sworn.)

Mr. Serj. Darnell. Give an Account of what you know of the surrendering Mr. Castell.

Mr. Vains. Mr. Chambers came several times to my Coffee-house, and asked when I saw Mr. Corbett? The first time, I said I had not seen him in two or three Days; and then he came again, and the third time Corbett came by, and my Servant said, There is Mr. Corbett; and he asked Mr. Corbett, whether he knew where Mr. Castell was? Corbett said No. Then Chambers desired him to find him.

Mr. Serj. Darnell. What did Mr. Chambers say to Mr. Corbett? Repeat it again.

Mr. Vains. He said, When did you see Mr. Castell? Mr. Corbett said, he had not seen him two Days. What do you want with him? Chambers replied, I want to speak with him. Corbett asked, What is your Business? Chambers made answer, I will be Security no longer, and will surrender him, for I hear he is going abroad with the Lord Londonderry. Then Corbett went away to look for Mr. Castell, but I know no more of it, but heard he was carried to Corbett's.

Mr. Serj. Darnell. Did not Mr. Chambers threaten Corbett?

Mr. Vains. He said I must lose the Debt, and if you do not see and get him, I will move the Court against you, and make you pay the Debt, for I will stand Security no longer.

Mr. Serj. Darnell. Do you know any thing of Mr. Castell's sending to Corbett's?—Mr. Vains. No.

Call Thomas Woodyer. (Who was sworn.)

Mr. Serj. Darnell. Do you know any thing of Mr. Castell's going to Corbett's House, when it was, and at whose Desire?

Mr. Woodyer. The Night he went from the King's-Arms Tavern, I was Drawer there. Mr. Castell ordered me to go or send to Mr. Corbett's House, to order his Room to be got ready.

Mr. Serj. Darnell. Was that the Night he was carried to Corbett's?

Mr. Wood. Yes.

Mr. Serj. Darnell. It is said Corbett took him against his Will?

Mr. Wood. I can't say.

Mr. Serj. Darnell. When you received that Message, was Corbett there?

Mr. Wood. I can't be positive.

Mr. Serj. Darnell. Did you go?—Mr. Wood. I sent one down.

Mr. Serj. Darnell. By whose Directions?—Mr. Wood. By Mr. Castell's.

Mr. Serj. Darnell. What Time?

Mr. Wood. About eight or nine o'Clock.

Mr. Serj. Darnell. What Day?—Mr. Wood. I don't know.

Mr. Serj. Darnell. What Month?

Mr. Wood. I believe November.

Mr. Serj. Eyre. Was it the last time?

Mr. Wood. I believe it was; I never saw Mr. Castell after.

Mr. Serj. Eyre. How long did Mr. Castell stay at your House?

Mr. Wood. Mr. Castell was there three or four Hours.

Mr. Serj. Eyre. When did Corbett come to take him up?

Mr. Wood. That same Night, I believe.

Mr. Serj. Eyre. Did Corbett bring him to your House?

Mr. Woodyer. No.

Mr. Strange. Who was in Company when he came in?

Mr. Wood. I don't know.

Mr. Strange. Did Corbett come in with him?—Mr. Wood. No.

Mr. Strange. Did Corbett go with him away?

Mr. Wood. Yes.

Mr. Strange. Did Mr. Castell shew any Unwillingness to go?

Mr. Wood. I did not hear.

Mr. Strange. What time of the Night did he first come?

Mr. Wood. Some time in the Dusk of the Evening.

Mr. Fazakerley. He was taken in the Morning at Underwood's.

Mr. Lee. Was you in the House when Mr. Castell first came from Mr. Underwood's?

L. C. J. I don't take the time he was taken from Underwood's to be in the Morning.

Mr. Fazakerley. Are you sure it was the 14th of November?

Mr. Wood. No.

Mr. Fazakerley. What was it he said? To get his Room ready?

Mr. Wood. Yes.

Mr. Strange. There were Sheets to be aired?

Mr. Wood. Yes, there were.

Call John Downs. (Who was sworn.)

Mr. Strange. In November the 12th, was you a Servant to Mr. Corbett?

Mr. Downs. Yes.

Mr. Strange. Do you remember any Message that was sent?

Mr. Downs. Yes, that a Bed should be got ready for Mr. Castell.

Mr. Strange. Had he been at any House before upon the Surrender of his Bail?—Mr. Downs. No.

Mr. Strange. Where did he lodge before?

Mr. Downs. At Mr. Underwood's.

Mr. Strange. Was there a Bed prepared accordingly?

Mr. Downs. Yes.

Mr. Strange. Do you know the Day he came?—Mr. Downs. No.

Mr. Strange. You say you was in the House when he came; Who came along with him?—Mr. Downs. Mr. Corbett.

Mr. Strange. Who shewed him the Room?

Mr. Downs. I think one Holdsworth, he was Chamberlain.

Mr. Wynn. You attended him whilst he was there?—Mr. Downs. Yes.

Mr. Wynn. All the Time?—Mr. Downs. Yes.

Mr. Wynn. What Condition of Health was he when he came in?

Mr. Downs. He was a weakly Gentleman.

Mr. Wynn. Was there any extraordinary Care taken of him?

Mr. Downs. Yes, he was put in the Room one Pair of Stairs.

Mr. Wynn. Was there a Club kept there?

Mr. Downs. Yes, and Mr. Bambridge and Captain Martin used to come to it.

Mr. Wynn. After the time he was brought in?

Mr. Downs. No, before.

Mr. Wynn. How long before?

Mr. Downs. There was a Club in it two or three Nights before.

Mr. Wynn. Did your Master use to visit him?

Mr. Downs. At all Leisure-Times.

Mr. Serj. Eyre. Was Mr. ——— with him?—Mr. Downs. Yes.

Mr. Serj. Eyre. What Room was that, that the Bed was brought out of, that he lay in?—Mr. Downs. I don't know.

Mr. Serj. Eyre. After you received the Message at nine o'Clock at Night, was there a Bed brought down?

Mr. Downs. I can't tell.

Call ——— Holdsworth. (Who was sworn.)

Mr. Serj. Eyre. What are you?

Mr. Holdsworth. I am Chamberlain at Mr. Corbett's.

Mr. Serj. Eyre. How often was Mr. Castell brought to your House?

Mr. Holdsworth. He was brought but once while I was there.

Mr. Serj. Eyre. Was he brought in by Violence, or his own Consent?

Mr. Holdsworth. He came in with Mr. Corbett; I did not see any Violence.

Mr. Serj. Eyre. Was there any Care taken of him while he was there?

Mr. Holdsworth. He wanted for nothing while he was there, for he had every thing he asked for.

Mr. Serj. Eyre. When did he come in?

Mr. Holdsworth. About the Middle of November. During ten Days before he fell sick and complained, he kept his Room altogether, and very seldom came down.

Mr. Strange. The Bed that was prepared for him, was it usually laid in?

Mr. Holdsworth. It was a Bed that had been laid upon; Mr. Hopkins had laid upon that Bed.

Mr. Kettleby. If a Man was speaking at the Bar, could you hear what was said in the Inner Room?

Mr. Holdsworth. No, except he spoke very loud.

Mr. Kettleby. Was this one House where Mr. Castell lay, or two Houses?

Mr. Holdsworth. There were two Houses.

Mr. Kettleby. Was there any Communication or Door opened, or how did one lie up three Pair of Stairs in one House, and one Pair of Stairs in the other?

Mr. Holdsworth. One Pair of Stairs turn'd upon the left Hand, to go to Mr. Castell's Room, and the other turned upon the Right.

Mr. Kettleby. What Condition of Health was White in when Mr. Castell came in?—Mr. Holdsworth. He had the Small-Pox.

Mr. Kettleby. How long had he had them?

Mr. Holdsworth. He was blind.

Mr. Kettleby. How long was it before White recovered? How long was it he kept up after he recovered?

Mr. Holdsworth. About a Month.

Mr. Kettleby. Had White taken any purging Physick?

Mr. Holdsworth. I believe not.

Mr. Serj. Eyre. Was there any Message sent to Mr. Castell's Wife to come?

Mr. Holdsworth. I can't say; Nobody ever came.

Mr. Serj. Eyre. Who provided Necessaries?—Mr. Holdsworth. Mrs. Corbett.

Mr. Serj. Eyre. He wanted Nothing?—Mr. Holdsworth. No.

Mr. Reeves. Did you not go to Jonathan Ireland?

Mr. Holdsworth. I was along with him when the Gentleman died.

Mr. Reeves. Did not you take away a Bed from under White?

Mr. Holdsworth. Yes, and I carried it into Mr. Castell's Room; but the Bedstead being too little, I carried it up another Pair of Stairs, into a Room.

Mr. Reeves. How came you to put White out of his Bed? What did you put under White?

Mr. Holdsworth. I put as good a Bed as that.

Mr. Reeves. Did not White keep his Bed?—Mr. Holdsworth. Yes.

Mr. Fazakerley. Did not White continue in the same Room?

Mr. Holdsworth. He was removed into another Room.

Mr. Fazakerley. Where was that?—Mr. Holdsworth. In the next Garret.

Mr. Fazakerley. What was the meaning of turning White out of one Bed into another?

Mr. Holdsworth. It was for the Convenience of a Fire.

Mr. Fazakerley. Did White make any Complaint that you had taken away his Bed?

Mr. Holdsworth. I believe he would not have had it taken away.

Mr. Fazakerley. Let me ask you about the Stair-case. Was there no Communication to go from Mr. Castell's Room up that Stair-case to White's?

Mr. Holdsworth. Yes, when you go up another Part of the Stair-case.
L. C. J. You say that there are two Houses, and that there is but one Stair-case?

Mr. Forakerly. When the two Houses were laid into one, the first Pair of Stairs served both Houses.—Did not Mr. Castell lay up one Pair of Stairs?
Mr. Holdsworth. Yes.

Mr. Faz. Can you go down Stairs, without going by Mr. Castell's Room?—Mr. Holdsworth. No.

L. C. J. I thought the Houses were laid into one, till you come to the Top?

Mr. Faz. Is not one of the Stair-cases stopped up?—Mr. Holdsworth. Yes.

Mr. Faz. How long was this before Mr. Castell came in?

Mr. Holdsworth. Five or six Days.

Call Thomas Norton. (Who was sworn.)

Mr. Strange. Do you remember any Message brought from the King's Arms Tavern?

Mr. Norton. Yes, it was to have a Fire laid in the best Room in the House, and the best Bed to be made.

Mr. Strange. Who did it come from?

Mr. Norton. From the King's Arms, from Mr. Castell.

Mr. Strange. Was that the best Room in the House that he was in?

Mr. Norton. Yes.

Mr. Strange. Do you remember his coming in?—Mr. Norton. Yes.

Mr. Strange. Did he come in of his own Accord?—Mr. Norton. Yes.

Mr. Strange. Did you observe any Violence used to him?

Mr. Norton. No.

Mr. Strange. Had he all the Assistance necessary, while there, and while ill?—Mr. Norton. He had.

Mr. Strange. Who provided it?—Mr. Norton. Mrs. Corbett.

Mr. Strange. You know the Situation of the Bar?—Mr. Norton. Yes.

Mr. Strange. Supposing then a Person comes down to the Bar to ask for any Thing, and any Body was in the Room behind the Bar, in case the Door was shut; could you hear what was said in Discourse?

Mr. Norton. I think you could not.

Mr. Strange. Do you know one Goodman?

Mr. Norton. Yes, very well.

Mr. Strange. Did you ever hear him give any such Account till of late?

Mr. Norton. Never in my Life.

Mr. Strange. How long have you been there?

Mr. Norton. Two Years.

Mr. Strange. How long has Goodman been there?

Mr. Norton. Six Months.

Mr. Faz. Is not that Partition a very thin one?

Mr. Norton. Yes, it is Wainscot.

Mr. Faz. Did you ever hearken, to hear what was said in that Room?

Mr. Norton. No.

Mr. Faz. I suppose you are a Drawer there?

Mr. Norton. I am a Servant.

Mr. Faz. What are you?

Mr. Norton. I keep the Key of the Door; I must hear if any one can; I stand near the Door.

Mr. Faz. Is that made up to the Ceiling?—Mr. Norton. Yes.

Mr. Filmer. Does the Bar go up to the Top?—Mr. Norton. Yes.

Call — Gardiner. (Who was sworn.)

Mr. Kettleby. Did you attend Mr. Castell in his Illness?

Mr. Gardiner. No.

Mr. Kettle. Can you give an Account what Condition he was in?

Mr. Gardiner. No, he was not sick when I saw him.

Mr. Kettle. Was not you with him when he was sick?

Mr. Gardiner. No.

Mr. Kettle. Did you go with him, when he was charged in Execution?

Mr. Gardiner. Yes, I asked him how he had been used; he said, with great Civility.

Mr. Kettle. What House was he in?—Mr. Gard. At the Royal Oak.

Mr. Kettle. Did you ask him in what House he was placed?

Mr. Gard. He said he was placed at Mr. Corbett's House, at his own Request.

Mr. Kettle. How did he say he was used?

Mr. Gard. With great Civility.

Mr. Kettle. How long before he died?—Mr. Gard. I don't know.

Mr. Kettle. Was it a Year?

Mr. Gard. I believe it was about fourteen Days.

Mr. Kettle. Was not you charged in Execution at the same Time?

Mr. Gard. Yes.

Mr. Kettle. When was you charged?

Mr. Gard. The last Day of the Term.

Mr. Faz. How came you to ask him such a Question?

Mr. Gard. I went from Corbett's with him, and came back to Corbett's again.

Mr. Faz. How many Times was you in Company with him after?

Mr. Gard. I never was in Company with him but at that time.

Mr. Filmer. Do you know when he had the Small-Pox?

Mr. Gard. I heard he had the Small-Pox, and died in a Fortnight.

Call Anne Blake. (Who was sworn.)

Mr. Wynn. You was in the House when Mr. Castell lay ill?

Mrs. Blake. Yes.

Mr. Wynn. Was he provided with all Necessaries?

Mrs. Blake. Yes, I was present at making of Hartshorn-drink, before he had the Small-Pox.

Mr. Wynn. Was he attended with an Apothecary?

Mrs. Blake. I did not see, I was sick beforehand.

Mr. Wynn. Pray did you know the Care that was taken to prevent the Disease from the other Prisoners?

Mrs. Blake. I saw no Disease after.

Mr. Wynn. Was the Room furnished with good Furniture?

Mrs. Blake. Yes.

Mr. Strange. What was the Matter with him?

Mrs. Blake. He had a Flux upon him when he came in.

Mr. Filmer. Had you ever the Small-Pox?—Mrs. Blake. No.

Mr. Filmer. When he had the Small-Pox, was not you removed?

Mrs. Blake. After he died, I had leave to go out.

Mr. Strange. Was not the House so commodious, that as you lay up two Pair of Stairs you thought yourself safe?

Mrs. Blake. Yes.

Mr. Strange. You did not catch them?—Mrs. Blake. No.

Mr. Strange. Did White come down before Mr. Castell died?

Mrs. Blake. I was kept from White, because I had not had them.

Call — Moor. (Who was sworn.)

Mr. Serj. Hawkins. Did you attend Mr. Castell?—Mr. Moor. Yes.

Mr. Serj. Hawk. You are an Apothecary as well as a Surgeon?

Mr. Moor. Yes.

Mr. Serj. Hawk. In what Manner did you take care of him?

Mr. Moor. I was ordered to attend Mr. Castell, and accordingly I went to him, and found him in Bed, in a very convenient warm Room: The Small-Pox was not then come out, but appeared in two Days after; he seemed alarmed at the Distemper, but did not say he was under any great Concern or Alarm—from the Confinement.

Mr. Serj. Hawkins. Who was to attend him?

Mr. Moor. There was a Nurse. He did not seem to want any Thing; there was a good Fire kept; I ordered her so to do, and he had every Thing given him in good Order.

Mr. Serj. Hawk. Did he make any Complaint of Corbett?

Mr. Moor. No, he never said any thing to me, I was an utter Stranger, Mr. Waller was the Apothecary employed.

Call Mr. — Smith. (Who was sworn.)

Mr. Strange. At the Time Mr. Castell was ill, Corbett came to Mr. Bambridge at your House?—Mr. Smith. Yes.

Mr. Strange. Tell what passed.

Mr. Smith. I think it was the second or third of December Corbett came to Mr. Bambridge, and Bambridge was in the Parlour; I was sitting there; we were not rose from Table, and Mr. Corbett was telling Mr. Bambridge of the Affairs of the Prison, and said, Poor Mr. Castell is not well; and Bambridge asked what was the Matter with him? He said, he had caught cold. Bambridge said he was very sorry for it, and said, Give my Service to your Wife, and desire her to take Care of him.

Mr. Strange. What did Mr. Bambridge ask?

Mr. Smith. Mr. Bambridge asked what was the Matter, and Corbett said he had caught Cold: Something of the Affairs of the Prison requiring the Direction of Mr. Bambridge, the next Day Corbett came again; and Bambridge asked him how Mr. Castell did? Mr. Corbett said he had got the Small-Pox, and said the Gentlemen in the House were very uneasy at his being in the Middle of the House, and he was thinking to have him removed a Room higher; and Mr. Bambridge said, he would not have him removed higher in the House, to run the risque of his Life; but if the Gentlemen were uneasy, he would have them removed into the Prison.

Call — Martin. (Who was sworn.)

Mr. Strange. I ask you if you were not of the Club with Mr. Castell, in Corbett's House?—Mr. Martin. Yes.

Mr. Strange. Was you present at the Club the last time Mr. Castell was brought there?

Mr. Martin. I think I was there that Night he was charged in Execution.

Mr. Strange. I ask you whether Mr. Corbett and Castell were there in a friendly Manner, when together?—Mr. Martin. Yes.

Mr. Strange. So they were together?—Mr. Martin. Yes.

Mr. Strange. Was Mr. Bambridge there?

Mr. Martin. Mr. Bambridge did not come to the Club all that Term.

Mr. Strange. There is one thing I must take notice of, that the Paper Ellam owned his Hand to, may be read.

Mr. Serj. Hawk. Was you with Mr. Castell all the Time of his late Illness?—Mr. Martin. I visited him constantly.

Mr. Serj. Hawk. What did he say as to his Usage?

Mr. Martin. I never heard any Complaint.

Mr. Serj. Hawk. How often did you go to see him?

Mr. Martin. Every Day at Corbett's.

Mr. Serj. Hawk. Did you ever hear him complain of Bambridge?

Mr. Martin. It was the second Day after the Small-Pox came out; I went into the Room to him; I could not see him, being in Bed, but he knew my Voice, and he would have had me drank something. I was immediately called out of the Room, and Mr. Castell would not have had me gone; I told him I must, but would return soon; and when I went down, I saw Mr. Bambridge there, and I told him Mr. Castell had the Small-Pox; and Mr. Bambridge said he was very sorry for it, but he had trifled with him and himself too: When I went up again to Mr. Castell, and told him that I had told Mr. Bambridge that he was very ill of the Small-Pox, and that Mr. Bambridge said he was very sorry for it; (I would not mention the rest) Mr. Castell said, For God's sake don't mention his Name, I can't bear to hear of it.

Mr. Serj. Hawk. As to the Temper of Mr. Castell, was he reserved?

Mr. Martin. He was very free in Conversation, but not free in telling of his Circumstances.

Mr. Strange. I desire the Paper Ellam owned his Hand to may be read (which was accordingly produced and read, and appeared to be a Bill of Sale, dated the 22d of October, 1728).

Mr. Strange. The Witness, when I came to ask for the Bill of Sale, did not remember when it was executed.

L. C. J. But what Use is it of?

Call John King. (Who was sworn.)

Mr. Kettleby. Did you know when Mr. Castell was brought to Mr. Corbett's?—Mr. King. No.

Mr. Kettle. Do you know how Bambridge behaved to him after?

Mr. King. I was to declare Houston and Nus against Mr. Castell, and Bambridge appeared not only as Gaoler, but as his Attorney, and paid me.

Mr.

Mr. Kettle. How did Bambridge behave himself?
 Mr. King. Very handsomely.
 Mr. Kettle. In what Capacity did Bambridge act?
 Mr. King. Mr. Bambridge was employed by Mr. Castell as his Attorney.
 Mr. Kettle. Did not you say Bambridge lent him Money?
 Mr. King. He lent him a Guinea to clear the Score.
 Mr. Kettle. Did he lend him any more? And what?
 Mr. King. Mr. Castell complained he had not Money to pay the Reckoning, and Bambridge paid it for him.
 Mr. Kettle. When was this?
 Mr. King. It was the 21st of November, 1728.
 Mr. Kettle. You can be positive to the Time?---Mr. King. Yes.
 Mr. Kettle. How many Times was you in Company before?
 Mr. King. Twice; but I never was with him but once at Corbett's.
 Lord Chief-Justice. Then this 21st of November was at Corbett's?
 Mr. King. Yes.
 Mr. Kettle. There it was he lent the Money?---Mr. King. Yes.
 Mr. Kettle. Was there any Disrespect towards Mr. Castell shewn by Mr. Bambridge?
 Mr. King. I never saw any Thing like it.
 Mr. Kettle. I ask you, whether Mr. Bambridge did say any Thing upon his giving Security?
 Mr. King. Mr. Bambridge said, he should be ready to do him any Service.
 Mr. Fazakerley. Did he do any other than Attorneys usually do for their Clients?
 Mr. King. Attorneys very seldom pay their Clients Reckonings.
 Mr. Fazakerley. Was there not then Judgment against Howson?
 Mr. King. No, I have always been concerned for Howson.
 Call William Howson. (Who was sworn.)
 Mr. Kettle. I ask you, whether you was ever in Company with Mr. Castell and Bambridge, after he was surrendered at Mr. Corbett's?
 Mr. Howson. I don't know that.
 Mr. Kettle. Was you ever in Company with them?
 Mr. Howson. Yes, Mr. Castell employed Mr. Bambridge as his Attorney, to make up a Matter between me and Mr. Castell.
 Mr. Kettle. When was this?
 Mr. Howson. In November before he had the Small-Pox.
 Mr. Kettle. Did you observe any Dislike between him and Bambridge?
 Mr. Howson. I did not know that he was Warden, he acted as his Attorney.
 Lord Chief-Justice. This was before he came to Corbett's?
 Mr. Howson. Yes.
 Lord Chief-Justice. Where was it at?---Mr. Howson. The King's-Arms.
 Call Meers. (Who was sworn.)
 Mr. Kettle. Do you know any Thing that passed between Mr. Castell and Mr. Bambridge?
 Mr. Meers. Yes, I desired---
 Mr. Kettle. What Month was it in?---Mr. Meers. I cannot tell.
 Mr. Kettle. How long before Mr. Castell died?
 Mr. Meers. About ten Days.
 Lord Chief-Justice. What were the particular Marks of Friendship that Bambridge shewed?
 Mr. Meers. Bambridge appeared to behave with Civility to him; he desired---
 Lord Chief-Justice. I cannot understand a Word; he must explain himself.
 Call Townshend. (Who was sworn.)
 Mr. Kettle. Do you remember the Day when Mr. Bambridge was admitted Warden of the Fleet?
 Mr. Townshend. I do not remember the Day particularly.
 Then James Codnor was again called.
 Mr. Kettle. Was you at any Time concerned in taking Securities?
 Mr. Codnor. Yes; at the Time of Mr. Castell's first Commitment, and being put in Custody at Corbett's.
 Mr. Kettle. You acted in taking Securities; pray look upon this Bond, and see if it was taken by you?
 Mr. Codnor. I believe it was all my Hand-writing, except the Names of the Persons subscribing as Witnesses and Parties.
 Mr. Kettle. Did you receive any, and what Directions from Mr. Bambridge, as to Mr. Castell?
 Mr. Codnor. I received Directions from Mr. Bambridge to attend Mr. Castell.
 Mr. Kettle. Did he go to Castell?---Mr. Codnor. Never: he sent.
 Mr. Kettle. What was the Purport of the Bond?
 Mr. Codnor. The Purport of the Bond was *de bene esse*.
 Mr. Kettle. Were there any other Bonds, during the Time you acted, given over to Bambridge; or that one only?
 Mr. Codnor. I cannot recollect that; I remember I took two Bonds; I believe they were only bound *de bene esse*.
 Mr. Kettle. Were these absolute Bonds, or Bonds *de bene esse*?
 Mr. Codnor. As to the first Bond, the Parties not being found sufficient, the Penalty---
 Mr. Strange. How much was the Penalty?
 Mr. Codnor. One Thousand Pounds. It was ordered to be cancelled, and a Bond taken *de novo*.
 Mr. Strange. Was that Bond absolutely completed, or done *de bene esse*?
 Mr. Codnor. There was not an Inquiry reported.
 Mr. Wynn. Was that Indorsement made at the Time?
 Mr. Codnor. It is my Hand-writing.
 Mr. Wynn. What was wrote there?---Mr. Codnor. *De bene esse*.
 Mr. Wynn. Was it done at that Time?
 Mr. Codnor. I might go into the Office.
 Mr. Wynn. Was it usual to let Parties execute Bonds before Enquiry was made?---Mr. Codnor. Yes; it was the daily Practice.
 Mr. Reeves. You say it was the usual Practice to take Bonds *de bene esse*, and you say the other Bonds were cancelled?---Mr. Codnor. I believe so.

Mr. Reeves. Did you see them cancelled?---Mr. Codnor. I did not.
 Mr. Reeves. I ask you then, whether it was usual for you to cancel a Bond that was good before another was executed?
 Mr. Codnor. I would not have taken upon me then to have done it.
 Mr. Reeves. Do you know it was done?
 Mr. Codnor. I can't say I do; it was usual to take new Bonds *de bene esse*: when Bonds given before were cancelled, and the Persons had been inquired after, and not found sufficient.
 Mr. Reeves. What were your Orders?
 Mr. Codnor. My Orders were, to take the Securities from Time to Time as they came.
 Mr. Reeves. So you took them *de bene esse*?---Mr. Codnor. Yes.
 Mr. Fazakerley. You say you have got a Method to take Bonds *de bene esse*: Did not you take a Bond *de bene esse*, which he was in Execution for?---Mr. Codnor. Yes.
 Mr. Fazakerley. What, do you take double Times?
 Mr. Codnor. Yes.
 Mr. Fazakerley. Did you say how much he was in Execution for?
 Mr. Codnor. No.
 Mr. Fazakerley. Do you know how much?---Mr. Codnor. Yes.
 Mr. Fazakerley. Was there any Thing more?---Mr. Codnor. No.
 Mr. Fazakerley. Then that was 500 l.?---Mr. Codnor. Yes.
 Lord Chief-Justice. So your constant Practice is, that the Securities are first bound, and then you enquire after them?---Mr. Codnor. Yes.
 Lord Chief-Justice. You say you took these Bonds by Mr. Bambridge's Directions?---Mr. Codnor. Yes.
 Lord Chief-Justice. What did you do with the first Bond?
 Mr. Codnor. I can't charge my Memory.
 Lord Chief-Justice. Are you sure you took but two?---Mr. Codnor. Yes.
 Mr. Strange. It was very probable that these People might demand 1000l. Bond; the other Bond, when given, was for 2000l. What was the Reason of your taking a larger Security?
 Mr. Codnor. I received three Habeas Corpus's, which was the Reason of taking so large a Security (speaking to Mr. Strange). We always take Security, though charged by the same Plaintiff, for two Sums.
 Lord Chief-Justice. Is that usual?---Mr. Codnor. Yes.
 Lord Chief-Justice. So that you take Security for the Declaration, and take Security for the subsequent Charge in Execution.
 Mr. Fazakerley. When was the last Security given?
 Mr. Codnor. Much about a Week after the first.
 Mr. Fazakerley. Observe; if an Action is brought for 200l. and you take Security, and a Week after that Judgment is had, do you take other Security, and double the Sum?
 Mr. Codnor. Not without a Habeas Corpus is brought.
 Mr. Fazakerley. So you don't increase the Penalty, unless you distrust the Value of the Bail?---Mr. Codnor. No.
 Mr. Fazakerley. Because I observe a great many Judgments are given before the Security is increased.
 Lord Chief-Justice. The last Bond was executed the first of December, and he was taken ill the third.
 Mr. Strange. My Lord, we shall call no more Evidence, but submit it here.
 Mr. Reeves. My Lord, I must beg leave to take notice of the Objections they have made. The first is, that he went voluntarily to Corbett's; that it was his own Desire. In Answer to that, if our Witnesses are to be credited, we have proved the whole Appeal. We have proved, he was taken forcibly; I humbly apprehend that was sufficiently proved; for if Corbett took him without his Consent, it was forcibly, and it was unlawful; it will warrant the Declaration of Appeal.
 The next Fact is, that he was carried to the House of Richard Corbett, where one Joseph White was then ill of the Small-Pox. The Objection did arise, that it was laid to be the House of Richard Corbett, which was one House, and here are two; one where Joseph White lay sick, and they say, he was carried to the other. As to that, it appeared by the Evidence, that before this Fact happened, they were made into one House; and notwithstanding they were made into two Dwelling-houses before Castell was put there, our Witnesses say, they went up Stairs into one and the same House; and that Mr. Castell was carried to the House of the said Richard Corbett, where Joseph White was ill of the Small-Pox.
 The other Objection is, that Joseph White was well of the Small-Pox ten Days before Mr. Castell was brought there. My Lord, we apprehend that That is contradicted by their own Evidence; that the Man was well, and looked upon to be recovered; for I must beg leave to observe, that upon the Evidence of Holdsworth, it appeared that White was blind at that Time when Castell came in; and he remained there a considerable Time after Castell was brought in.
 As to the Points of Law insisted on by the Gentlemen on the other Side, I must submit it to your Lordship, whether this Proof is not sufficient to support the Appeal; that he was carried against his Consent to an unlawful Confinement, and at a Spunging-house.
 Mr. Strange. The Point of Law is, Whether he was unlawfully taken? And though he was unlawfully confined, yet it don't make an unlawful Taking.
 Lord Chief-Justice. Though he was lawfully taken, yet he ought not to be unlawfully confined. He was carried into Corbett's on the 14th of November, and the fifth Bond was given the first of December; which was a great while after he was taken in Custody.
 Mr. Reeves. There was a third Bond given for 1000l. one was in July. In order to make these Bonds clear, they should be produced.
 Mr. Strange. Codnor swears, that he took but two.
 Mr. Reeves. It was sworn by Ellam that there were five.
 Mr. Serj. Darnell. The Confinement was a proper Confinement. A Tiptaff's House is a proper Confinement, and the Taking was not an unlawful Taking.
 Lord Chief-Justice. Is there not a Difference of being carried into the Rules? If not in the Rules, it is not a Part of the Prison; if not, every Prisoner that escapes and dies, the Gaoler is answerable for; and a Prisoner being there,

there, will not be looked upon to be a Prisoner at large: Every Part of the Rules is a Part of the Prison, though not within the Walls: if it is not in the Prison, then there is an End: It was both illegal to carry him there, and confine him there. There is another Consideration; they say, capitally Guilty; I don't know but that is the Case here; but then it is not laid so in the Declaration. If a Prisoner dies by Duress, the Gaoler is guilty, and capitally guilty.

Mr. Lee. We humbly apprehend, that the Case must be considered, that he did with Malice aforethought murder the said Robert Castell.

Lord Chief Justice. The Law makes it so.

Mr. Lee. Therefore I apprehend, from the Nature of the Thing, and his Behaviour, that it must be taken, that in this Case they did feloniously carry this Man to the House of Richard Corbett; but that must be decided by the Evidence. They knew the House to be infected; therefore, whether the original taking him up was legal or illegal, is the Thing to be considered: If he was only taken up to be carried into the Gaol, it will have another Consideration; but the Prisoner's Intention is to be judged by the Jury. I don't know whether I should be proper in taking Notice of the Evidence; I should very shortly take Notice of the Evidence in this Trial.

Lord Chief Justice. That can't be done.

Mr. Fazakerley. As to the single Matter of taking, that will be the Consequence of the other.

Lord Chief Justice. Though the Act itself is lawful, the Usage of the Man will make it unlawful: This is a necessary Case for their Consideration; for where a Man dies in Duress, it is Murder in the Gaoler. It is the Nature of Human Bodies to take Infection; and if a Man is put into a Place where such Infection is, it will be Murder in the Gaoler.

Mr. Strange. That does not appear to be done with the Privy of either.

Lord Chief Justice. Is the Proof against Corbett's taking of him? Human Bodies may breathe forth infectious Vapours.

Mr. Fazakerley. We desire to call Noel again.

(Noel standing up again.)

Mr. Fazakerley. What has been the Usage, where an Action has been brought, and Security given for 100 l. and Judgment given upon this Action?

Mr. Noel. I don't know what it was then; but since Mr. Gambier's Time, where a Prisoner is charged with Mefne Procefs, we have taken the Bond for the Sum; but when in Execution, take the Bond in a double Penalty.

Mr. Fazakerley. We desire to call Jonathan Ireland, to ask him a Question or two, as to a Declaration of Holdsworth.

(Call Jonathan Ireland, who was sworn.)

Mr. Fazakerley. Do you know Holdsworth?

Mr. Ireland. Yes.

Mr. Fazakerley. Had you any Discourse with him about a Bed being brought out of White's Room?

Mr. Ireland. No, I had no such Discourse.

Lord Chief Justice. Gentlemen of the Jury, this is an Appeal of Murder, brought by Mary Castell for the Death of her Husband. I must take Notice of the whole Appeal, because Proofs are required of the Facts as there laid. It charges, that on the 14th Day of November, in the second Year of his present Majesty, he was duly committed to the Custody of the Warden; that on the 14th of November, Richard Corbett took her Husband, arrested him, and carried him to the House of him, the said Richard Corbett, and kept him there for the Space of twenty-one Days, against the Will, and without the Consent of the said Robert Castell. Then it goes on, and says, that the said Richard Corbett did unlawfully, violently, and of Malice aforethought, imprison and detain the said Robert Castell in his the said Richard Corbett's House; and that, at the Time of taking and imprisoning of the said Robert Castell, White was ill of the Small-Pox in the same House; which Distemper Robert Castell never had.

Further sets forth, That while her Husband was there, on the 16th of November, he requested Bambridge and Corbett, that they would not detain him in the House; and then gave Notice that White was sick of the Small-Pox, and that Castell had not had them; and if he got that Distemper, it would be the Occasion of his Death: That notwithstanding this Distemper was there, they detained him there, and there kept him till the 12th of December.

Further sets forth, That on the 4th of December he fell ill of this Distemper; and on the 12th of the same December he died of the same.

To conclude, that these two Appellors did feloniously, voluntarily, and of Malice aforethought, kill and murder the said Robert Castell.

To which the two Defendants have pleaded Not Guilty. The Question for you, Gentlemen of the Jury, to consider of, is, If the Appeal is proved, and not what is opened by the Counsel: You must regard that no further than it is proved by the Evidence.

This Appeal is grounded upon this Law; that as the Law has particular Guards and Privileges in justifying the Right of Gaolers in detaining of Prisoners in safe Custody; so on the other Hand, that though they had the Liberty of keeping Prisoners secure and safe, yet they must treat them humanely, and put them into such Places as do not prejudice their Limbs and Lives; for if they should be put in such Places as they do, and they die, it lies at their Doors; that is Murder.

If a Gaoler brought Bodies that were infectious into a Room, by which a Prisoner should catch a Distemper; or put a Man into Irons, by which he should die, it would be the same Thing. If a Gaoler will take Persons that have not a Distemper, and carry them to a Room against their Consent, after Notice was given him that such a Distemper was there, it is at his Peril. Gentlemen, I must observe to you, that in the present Case all these Circumstances must be concurrent:

That he was carried there against his Will; that the Distemper was in the House; that he had Knowledge of the Distemper being there, and that the Nature of it was infectious; that Application was made on his Behalf; that notwithstanding he was carried there, and there kept; and by that Means caught that Distemper, which was the Occasion of his Death; because Distempers may arise from Human Bodies.

This is the Foundation upon which the Appeal is founded.

The first Witness is only to shew, that Mr. Bambridge was Warden of the Fleet; and for that End, he produced a Copy of the Letters Patent.

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I shall take Notice of the Time, which is the 30th of September, 1728: It said, he was not admitted till after, but there is no Proof to be admitted.

The next, John Noel, is to prove, that he was committed the 18th of June, 1728. I need not trouble you with all the particular Sums, but that all together they come to 527 l. When they have proved this, it was necessary to shew that he was a Prisoner at large.

As to Corbett's House, he says, he was a Prisoner there two Months, and that he never saw any Thing but what was very humane; the House was in the Liberty of the Rules, and so consequently Part of the Prison; the Questions that were asked by the Defendant's Counsel were to shew, that he had a Right to take him up, because he might have went away before; that the House belonged to the Warden, and that the Behaviour of Corbett to him, and his Usage while he was there, were very humane.

He told you he was taken ill the 4th of December, and died the 12th; that as for the House, there were two Houses laid into one; and White was not properly in the House, because one was in the first Floor in one House, and the other was up three Pair of Stairs in the other; and that Direction was given, that White was not to come down; and White never came down during the Time Mr. Castell was there, before he died.

That as to Corbett's Wife, when Mr. Castell was ill, she did look after him as much as if he had been her own Child; and that Mr. Castell did not complain, but did say, he was very sorry he had the Distemper, and that Corbett and Castell had been of a Club together; that as to the Room, it was a very commodious Place. As to what Evidence else was given by him, I shall mention but little of it now, for I am now only summing up for the Appellant.

The next Evidence that was called was Captain Sinclair; he did not speak to the Time in Question, but spoke only to 1727; he was going on, but the Counsel knew that was not proper, so stopped him.

The next Witness was Wilson; he says, that it was a Publick House, and that they sell Beer, Ale, and Wine; and that Castell had Provision there, and paid for it. I desire, if I omit any Thing, I may be put in mind of it.

The next was Captain Collet; they made use of him for another Purpose, to prove that Mr. Castell had received 125 l. therefore they insisted, that Mr. Bambridge having Notice of this, he might take the Occasion of insisting upon further Security, in order to extort Money from him.

Mr. Lee. There is a Juryman and the Prisoner talking all the Time.

Lord Chief Justice. I must have no Obstruction of Justice; you must not disturb the Court.

The first Thing to be done was to prove, that Bambridge had Knowledge of Mr. Castell's receiving the Money for that End; Collet and Brent were called, who proved, that a Note was given to Castell, payable to him or Bearer, for the Sum; and that it was afterwards allowed in Woodward's Account. Collet says, he was in the same Room with Castell, talking about the Judgment, and says, That it was possible that he might mention the Money that was to be paid by Castell to Bambridge; that is the material Thing. They would infer on the other Side, that it cannot be proved, unless it came to the Knowledge of Bambridge; for though Brent went up to Bambridge, he cannot take upon him to say, he mentioned any thing in relation to that Sum.

What is insisted on by the Appellant's Counsel, is, that several Securities were given upon Account of Mr. Castell, and therefore Security was given before; and in order to prove that, they called Witnesses to shew he demanded several Bonds, and that Notice was given to Mr. Bambridge to produce them. As to that, the Answer that was given was, that to prevent Disputes in Court he had but one Bond. Then they called upon Witnesses to prove the Circumstances. Mr. Peter Ellam, who says, he gave Bond five Times, the first in July, 1728, for 200 l. in the second Bond one Chambers and Peter Ellam were bound; the third was for 1000 l. entered into by him and Curll; the fourth was for 1000 l. entered into by Curll, and him, and Bell, the latter End of November, in order for Mr. Castell to have the Liberty of the Rules; and there was a fifth for 2000 l. given: He says it was on a Monday, but that is a Mistake; Peter Ellam, and John, and Curll were bound in that. He says, that between the 26th and last of November, he saw Mr. Castell at Corbett's, and he asked him what was the Reason of his being there? And he made Answer, That he did not know, it was what Bambridge pleased. Then he tells you how he came to be bound; that he was a Creditor of Mr. Castell's in the Sum of 200 l. that he had a good Opinion of Mr. Castell's Industry, and that he had a Bill of Sale from him, but did not know the Date; then the Defendant's Counsel produced a Paper, which shews it was the 22d of October, 1728.

That is the Point controverted, as you will see by and bye. He says, that there was one Chambers bound, who did not care to continue any longer; he says, he himself was inclinable to give it up, but that Castell probably might get over his Difficulties, so he was resolved to continue. He was asked, Whether Bambridge did dissuade them from continuing Securities? He says, he did encourage them to continue, rather than dissuade them from it. Afterwards the Security was to be delivered up, and he was carried to Corbett's, after the 4th or 5th Bond was given; but he can't take upon him to say that Mr. Bambridge did ever accept of it; then was the other Security, in November, 1728, given by himself, John Ellam, and Curll, the Clerk attended at Gravesend; he says, he did send to them (Castell being uneasy) to have the Bonds executed: He says, That he was with Castell before he died; and he says, he was much concerned at having the Distemper, and that he did say, that Bambridge was the Occasion of his Death, for he applied to him to let him go, but he did not let him go; and told him, if he did not let him go out soon he knew he should die. This was not above two days before he died.

Then, Gentlemen, they go on upon the former Enquiry about the Bonds, to fix the Bonds upon Bambridge, and called Daniel Hopkins. He says, he was Clerk of Inquiries; but that he was taken very ill, and Codnor officiated for him. He supposes Bambridge did, if any Security was not found sufficient, scruple to continue him; and says, when Security surrenders a Man, it is the constant Practice to take them up by a Tipstaff, who brings them in Custody, and puts them into a Spunging-house: As to the House of Corbett, he knew the House, and that there was good Usage there, and that Mr. Castell had not any ill Usage there. Then they

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they go to shew Mr. *Castell* was carried there without his Consent; and in order to prove that, called Mr. *Underwood*, who says, that last July was twelve Months (he continued in Custody till he died) *Corbett* came one Morning to inquire after Mr. *Castell*; then he was not at his Room, and *Castell* seemed much concerned at the hearing of it, and said he would go up and lock himself in; that *Corbett* came at nine o'Clock in the Morning, and took *Castell*, and he seemed very much concerned; but *Corbett* did not use him ill. *Hopkins* says, that *Corbett* said he must go along with him, his Security had surrendered him; upon which *Castell* desired to stay there; and *Corbett* said to that, he had the Warden's Order for it, and he must obey it; he wished he could excuse it.

Then they called *Catharine Mackartney*; she says, she was with Mr. *Castell*, and saw him the Day before he died; and says, she saw him about three Days before that, and he said, if he died, he would lay his Death to Mr. *Bambridge*. She says, that he wanted some Necessaries, as a Tea-pot, Knife and Fork; and that her Mistress supplied him.

Savage was the next; he says, he saw Mr. *Castell* a little before he was taken into Custody; and Mr. *Castell* sent to him, to desire him to go to Mr. *Bambridge*, to acquaint him that they had the Small-Pox in the House; and that he was afraid of catching them; for his Family had suffered very much thereby; so he was directed to deliver himself as to his Message; and that he had a great Inconvenience, to be locked upon respect of going out by Day Rules: He says he did go, but the Defendant gave no Answer till the last Time; he says, he went two or three times; he don't know but he went three or four times; and he delivered the same Message every Time, and he had no Answer till at last, and then he said he was in Execution; and after said, he was charged with great Sums of Money, and he must take care of his Office. He says, that some time after *Castell* was taken ill of the Small-Pox. He says further, Gentlemen, that *Bambridge* came to the *King's-Arms* Tavern, and said that he had been at *Corbett's*, and that the Small-Pox being mentioned before Mr. *Castell* to be there, he said that *Castell* was extremely affected with it, and greatly concerned. He did go about some sort of Business to Mr. *Bambridge*.

Shortis was the next; he gave you Evidence, which I shall not repeat, it did not come to the Time; but he being cross-examined, said *Bambridge* treated him well.

Then *Surridge* was called; who said, he went with two Letters from *Castell* to *Bambridge*, and *Bambridge* said he would send an Answer. This is only introductory, to shew that *Castell* made Application to *Bambridge*.

Goodman was the next; he says, he was at *Corbett's*, and *Bambridge* came there, and *Castell* said he had sent several Messages to him; and pursuing the Discourse, *Castell* desired to go into the Gaol, or go into the Rules, because the Distemper was there, and he certainly should die if he caught it. He swears, that *Bambridge* said he should neither go into the Gaol, or into the Liberty of the Rules, without a certain Sum; (he could not take upon him to swear what it was) to which *Castell* said, he had given Security enough, and he would give no more. Then he went into the Tap-room, and the next Day he was taken ill, and desired a Fire in his Room. The Counsel on the other Side, they did examine him to know the Description of the Place, and asked him if he could hear what was said; he said the Door was shut, but he took upon him to swear he did hear.

Then *Sutton* was called; who says, that Mr. *Castell* was very timorous; and says, she was sent for to *White*; that Mr. *Castell* looked her in the Face, and fancied she had the Small-Pox; she said she had no more Mark than at this time; and she swears he did die of the Small-Pox.

Westbrook was the next, who spoke to the same Purpose, to shew his Apprehension of catching the Small-Pox.

Then they go to the other Evidence, to shew that there was no Necessity of carrying him to this Place. There was a Room *Kilbury* swears was an empty Room from the Latter-end of *October* till about the 5th of *December*, No. 16; there was a Lumber-Room besides, that might have been made commodious.

Booth he says the same.

Beaver was called next, to give an Account, that there was not only a Room in the Prison empty, but that there were Rooms empty in another Spunging-house. This is the Substance of the Evidence, as near as I can lay it before you. The Evidence given by *Savage* is the most material; and the Evidence given by *Goodman* and the other Witnesses, of his Fear of having the Small-Pox.

This being the Evidence for the Appellant; for the Defendants, they insisted upon some Points of Law, that the Party here was not illegally taken, and say this was laid so in the Declaration. This was urged, because they will shew you in their Evidence, that it was proper for the Warden to take him up by a Tipstaff; that this was a legal Taking, and that it will be the Consequence only of — that will be taken Notice of when that Part of the Case comes to be considered; that it is laid to be in one House, but there are two: Though they are different Apartments, this must be considered as one House.

The next Thing that was laid, was, that *White* was sick at the same time when Mr. *Castell* was brought in. Now say they, having proved that, they have proved the Declaration.

I don't see that the Man can be said to be ill of the Distemper when he was brought down; though the Defendant's Witnesses say, that he had not taken all his Purges; that Evidence will take off the Objection made by the Appellee's Counsel.

Then they go on further, and say, that he did actually catch this Distemper; and on the other hand, they say there was little Reason to believe it, when he was kept so long before he came down. This is true, it is to be considered in that Manner. As to the Objection of that Part of the Declaration of Mr. *Castell*, where he declared *Bambridge* was the Occasion of his Death; I must acquaint you, where a Man is wounded, and dies in a little time, we have admitted what he said to be given in Evidence. These Things were at the time when he had the Distemper, a little time before he died.

The Counsel for the Defendants gave this Answer, that if they bring him there, that his Declaration would not signify, for if they confine him there, they have a Right; it would be justifiable in them to do it.

After this Observation, they do say, that it was very incredible to hear what was said in the Room at the Bar; the Room was close boarded to

the Top, and the Door was locked, and this was a long time before it was discovered; and called Witnesses to prove, how incredible it was to hear what was said in that Room.

Then the Defendants Counsel come to give Evidence that his Security had surrendered him. The Witness they make use of was Mr. *Chappel*, to shew that *Chambers* would not continue as Security any longer: He gives an Account, that *Chambers* would not stand, that *Peter Ellam* was of the same Mind, but afterwards did recede, and *Bambridge* said he thought them very secure; what could induce them to withdraw their Securities, don't appear; both the *Ellams* would stand. *Chambers* told *Bambridge* himself, that he desired to take him up; and *Bambridge* said, if he must be taken up; you must go to a Tipstaff, and directed him to *Corbett*, and *Corbett* demanded his Fee. That he could not find *Castell* at first, but went a second Time, and took him.

Ellam first refused, afterwards he was Counter-security to *Ellam*; that was the Reason he called the Note from *Chambers*.

Chambers desired Mr. *Chappel* to tell *Bambridge*, that he then came to Town in order to give him up; and *Bambridge* told him he was very safe, and he desired him to continue Security still. The Use they make of this is, that if *Bambridge* wanted him in Custody, he would not have persuaded him to continue Security. He says, that on *Bambridge's* saying that, he did continue some time longer; then he came to Town, and was resolved he would deliver him up; he told him again, if he was resolved, he must go to a Tipstaff, and give Six Shillings and Eight-pence for his Fee; that *Chambers* went that very Day to *Corbett's*, and had *Castell* taken up; and *Castell* said to *Chappel*, that he was set on; and *Chappel* said, he was not; and *Castell* said, he did not believe it; and says that Mr. *Castell* did not complain of any ill Usage.

Joseph Pains was the next; he says that *Chambers* came to his House (he was not there after he spoke to *Corbett*), and asked him, whether he had seen *Corbett*? He said, he had seen him that Day: He came there again, and met with *Corbett*, and told him he intended to surrender Mr. *Castell*, for that he was informed he was going abroad with Lord *Londonderry*. He says, that he charged *Corbett* to look for *Castell*; and said, if he did not get him, he would move the Court against him, and make him pay the Debt.

Woodyer, he gives an Account, that Mr. *Castell* was at the *King's-Arms*, and says, that Mr. *Castell* ordered him to get a Room ready, to air the Sheets, and get a Fire; and he says, he sent the Boy thereupon, but that he never saw Mr. *Castell* after; that Mr. *Corbett* went with him; that he went away easy, and did not make any Complaint.

The next is *Downs*; he did not say that he received the Message from Mr. *Castell* to get the Room ready, and that the Night before he lay at *Underwood's*, that he attended him there till he died; and as to Necessaries, he had every thing that was fit, and there was a Club kept there, and *Corbett* used to be with them.

Then *Holdeforth* the Chamberlain was called; who says, that Mr. *Castell* came in there, and wanted nothing; he seemed to complain of nothing; before he came in there the Bed was aired. They asked him, whether they could hear on the Outside of the Bar, what was said in the Room behind it? (to take off the Evidence of *Goodman*) He says, in his Opinion he could not hear, unless they spoke very loud. As to *White*, he says, he lay up three Pair of Stairs, and *Castell* up one Pair of Stairs; that two Houses were laid together only at the Top, and that one Stair-case was stopped up five or six Days before *Castell* came there.

That the Bed *White* lay on was brought down into Mr. *Castell's* Room, but the Bedstead being too little, it was carried up again; this was five or six Days before Mr. *Castell* came there.

The next Witness is *Norton*; he tells you, that a Message was brought to have a Fire made in the best Room, and to have the best Bed got ready in the best Room. He tells you, as to the Bar, that you can't hear what is said in the Inner-room.

They then called Doctor *Gardiner*; when he was charged in Execution, he says, he was with him at that Place; talking how Mr. *Bambridge* and *Corbett* used him, he said he was used with great Civility.

This was the last Day of *Michaelmas* Term, which was long after Mr. *Castell* was carried there, for he was carried there the 14th of *November*; and says, that he went back again with him.

The next was *Blake*; who gives an Account, that she saw *Hartshorn* drink made; that she never had the Small-Pox, and staid in the House the whole time *White* was there, but never went out.

Mr. *Moor* says, he found him in a convenient Room, and that he wanted nothing.

Mrs. *Smith* was the next; who said, that *Corbett* said to *Bambridge*, that poor *Castell* was ill of the Small-Pox, and *Bambridge* desired to let him have every thing that was necessary for him; and *Corbett* came again the next Day, and said the Gentlemen were uneasy, and he said he had thoughts to remove him; and *Bambridge* said, if they are afraid, let them go into the Gaol.

The next was Captain *Martin*; he tells you, that he never heard that he particularly complained; that the Second Day after the Small-Pox came out, he went to *Bambridge*, and was telling him how Mr. *Castell* was, and *Bambridge* said he was very sorry for it; then he went up to Mr. *Castell*, and told him what Mr. *Bambridge* had said, and Mr. *Castell* desired he would not mention his Name.

Then there was a Paper produced to shew what he did by a Bill of Sale.

Then *King* was called; who says, that Mr. *Castell* was at *Corbett's*, and that *Bambridge* used him very well, and *Bambridge* paid his Reckoning on the 21st of *November*, which is about seven Days after he came into *Corbett's* House.

One *Hawson*, another Witness, says, that Mr. *Castell* owed him Money, and that *Bambridge* was employed for him, and this was about ten Days before Mr. *Castell* died.

Then they come to shew you what became of the Bonds.

Peter Ellam proves that there were five; but then it was not proved they were delivered to *Bambridge*.

Cadnor, he was Clerk, and says, he had repeated Directions, from time to time, to take Mr. *Castell's* Security as soon as they came; he says, there were but two taken; there was 1000*l.* 1000*l.* and 2000*l.* but he only admitted of 1000*l.* and 2000*l.*

He

He says, that the Bonds were taken *de bene esse*, in their Language, which was only to be taken in order for an Inquiry; one was taken up and cancelled, the other was only *de bene esse*.

He tells you likewise, that all the Charges was 500*l.* this was taken in the Penalty of 2000*l.*

He says, that where the Charge is first for 100*l.* and Judgment for 100*l.* they take Bonds for double.

There are other Witnesses say, that the Custom is otherwise lately: they say what the other said; and that the same Man may have a Declaration for one Sum, and Judgment for another.

Counsel says positively, that the two last Bonds were only taken *de bene esse*. This Evidence has been long, according to the different Things; if any thing is omitted, you'll remind me of it.

Gentlemen, you are to consider in the first place, as to Corbett, that only Part of the Evidence relates to him; as to the taking Mr. Castell up; but as it does not appear he had any Knowledge of the Small-Pox being there then, I apprehend it is not sufficient to convict him: Then as to Bambridge; if Bambridge had notice that he never had this Distemper, that he was afraid of catching it, that he desired not to go there; if he did carry him afterwards, against his Will, and Castell did catch this Distemper of White, and he died of that Distemper, then he is Guilty. The Appeal

depends upon these Circumstances. I take it in point of Law, they must all concur; if they do not, you will not find them Guilty; if they do, you will find them Guilty.

Clerk. Gentlemen of the Jury, answer to your Names. (*Which they did.*)

Clerk. Who shall say for you?—Jury. The Foreman.

Clerk. Are you agreed?

Omnes. Yes.

Clerk. Are the Defendants, or either, and which of them, Guilty or Not Guilty?—Foreman. Not Guilty.

Upon this Acquittal, Mr. Kettleby moved the Court, on the Statute of 13 Edw. I. c. 12. which enacts, That upon a false Appeal, by Malice, the Appellor shall suffer a Year's Imprisonment, and restore the Parties appealed their Damages, at the Discretion of the Justices.

But the Court would not allow the same; the Chief-Justice said, * He was only to try the Issue, and that the Application was proper above, or by Writ of Conspiracy, and all he could do was to record the Verdict.

Upon 3 February following, the Appellees appeared in Court, and having given a Rule upon the *poslea*, which they then produced, and Nobody appearing to say any thing against them, they were discharged. *Strange pro Appellatis.*

* *Strange's Reports*, Vol. I. 2. p. 857.

XIV. The Trial of WILLIAM ACTON, Deputy-Keeper and Head Turnkey of the *Marshalsea* Prison in *Southwark*, for the Murder of THOMAS BLISS, late a Prisoner in the said Prison; at the Affizes held at *Kingston upon Thames* for the County of *Surrey*, before the Hon. Mr. Baron Carter, Aug. 1, 1729.

Die Mercurii, 30th July, 1729.

Proclamation was made for all Persons concerned to attend.

Clerk of Arraignment.

YOU good Men that are impannelled to inquire, &c. answer to your Names, and save your Fines.

Clerk. William Acton, hold up your Hand. (*Which he did.*)

Clerk. You stand indicted by the Name of William Acton, of the Parish of St. George the Martyr, &c. for the Murder of Thomas Bliss, &c.

Clerk. How say you, William Acton, are you guilty of the Murder whereof you stand indicted, or not guilty?—Mr. Acton. Not Guilty.

Clerk. How wilt thou be tried?—Mr. Acton. By God and my Country.

Clerk. God fend you a good Deliverance. On a Motion, his Trial was fixed for Friday.

Die Veneris, 1st August, 1729.

Proclamation was made for Information.

Clerk. Thou the Prisoner at the Bar, these Men that thou shalt hear called and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore if thou wilt challenge them, or any of them, thy Time to speak is as they come to the Book to be sworn, before they are sworn.

Mr. Strange. (*Counsel for the Prisoner.*) My Lord, I hope you will indulge the Prisoner to come to the Inner Bar.

Mr. Baron Carter. He may come.

Mr. Baron Carter. Call over the Pannel. (*Which was done.*)

Mr. Baron Carter. There are twenty-seven of the Jury in that Pannel, so you may challenge who you will.

Mr. Acton. No, my Lord, I shan't challenge any.

Then the Jury sworn was as followeth:

Thomas Cole,	Charles Buckland,	William Brown,
Miles Poole,	William Goswell,	John Water,
Robert Parkhurst,	John Siggins,	Robert Patten,
Vincent Hollis,	Thomas Bandford,	James Wellbeloved.

Clerk. Hold up your Hand. (*Which he did.*) You of the Jury, look upon the Prisoner, and hearken to his Charge. He stands indicted by the Name of, &c. (*prout in the Indictment mutatis mutandis.*)

Mr. Acton. I desire the Indictment may be read in Latin.

Mr. Strange. I desire Mr. Serjeant Baynes may be here, before it is read.

Mr. Baron Carter. I have staid an Hour already, I can't stay any longer.

Crier, make Proclamation to keep Silence upon Pain of Imprisonment. This is a Trial for Life and Death, and I shall commit any one that don't hold their Peace.

Mr. Harding. William Acton stands indicted for the Murder of Thomas Bliss. The Indictment sets forth, That John Darby was Keeper of the King's Palace-Court at *Westminster*, and had the Custody of the Prisoners there.

That William Acton, during the Time he was Servant of the said John Darby, was employed in and about the Care and Custody of the Prisoners there.

That the said William Acton, being a Person of an inhumane and cruel Disposition, did on the 21st of October, in the Thirteenth Year of the late King, cruelly, barbarously, and feloniously beat, assault, and wound the said Thomas Bliss, then being a Prisoner under the Custody of the said John Darby; and of Malice aforethought did carry the said Bliss into the Strong-Room, and put on Irons and Fetters of great Weight upon his Legs; and the said Bliss was exposed to the Damp, and Wet, and Cold of the said Room; which is a dangerous, damp, noisome, filthy, and an unwholesome Place.

The Indictment further sets forth, that he put on an Iron Instrument, and Engine of Torture, upon the Head of the said Thomas Bliss, called

the Scull-Cap; and also Thumb-Screws upon his Thumbs; and that he remained there three Hours under all this Torture and Torment.

At the Time of the imprisoning the said Thomas Bliss in the Room aforesaid, he knew it to be damp, noisome, and filthy; and consequently very unwholesome.

That during the Detention of the said Thomas Bliss in the said Room, by Durefs of the Imprisonment, by being assaulted, beat and wounded, the said Thomas Bliss became languid, and contracted such an Indisposition, and ill Habit of Body, that he languished; and, by reason of this Durefs, died.

The Indictment concludes, that he did feloniously, voluntarily, and of Malice aforethought, murder the said Thomas Bliss.

Gentlemen, the Prisoner has pleaded Not Guilty; and if we prove him guilty, you will find him so.

Mr. Marsh. I have the Honour to be Counsel for the King against William Acton, the Prisoner at the Bar. The Offence is Murder; and Nobody can be guilty of Murder, but by being a Person of a malicious and cruel Nature. The Law determines all Differences between all Subjects; and by the Laws of this Land, the Body and Person of the unfortunate Debtor is liable to Imprisonment till he pays the Debt; and the Law takes care, that Gaolers and Keepers of Prisons should have a particular Encouragement and Defence against the Persons that offer Abuses to them in the Capacity of a Gaoler; and on the other hand, the Law takes care, that they shall not use their Prisoners inhumanely or cruelly.

The Nature of all Custody is to answer for the Debt owing, or Injuries done; and the Person is to be kept safe there, till justly delivered in Court. Where a Person is condemned in an Action where Judgment is had against him, then the Gaoler is to keep the Prisoner in safe Custody, but not to use any inhumane Treatment.

That, by the common Fate and Inequality of human Affairs, Mankind cannot be alike in point of Fortune, and it must fall to the Lot of many to become insolvent; and it would be very hard for these of the Unfortunate, when they are reduced by the Confinement and Miseries of a Gaol, to be made more miserable by the Cruelty of the Gaoler; who ought to treat his Prisoners with Lenity and Humanity. Bliss was put in Gaol, and was there kept for a small Debt.

The Indictment takes notice, that Darby had the Custody of the Gaol; and that Acton was his Servant, and stood in his Place; and performed the same as Darby ought to have done.

That the Prisoner at the Bar, by a long Train and Series of cruel and inhuman Usage, maltreated the Deceased (I would not be hard upon a Man in his Circumstances); I may say what the Law allows, that he being under Darby as Servant, assaulted Bliss, who was a Prisoner for Debt under his Care, and prosecuted that, by putting him into that Place, where he would not have put his Swine, or other Beast.

A Place so damp, in which were so many noxious Humours, that any one that was put there must be in Danger of Death, not only from the noxious Vapours, but from the want of a due Covering at Top; and from its being so remote from the Sun, that it could have no Influence upon it, and mult for want of it grow noxious, even to Infection.

To make Misery more miserable, he put him there without Bed or Bedding.

A Bed would have kept him warm, but he was denied that, which is seldom denied even to Criminals and Convicts; nor would he afford him the cold Comfort even of Straw; but he was restrained from the Liberty of looking out for any thing to relieve him from the Injuries of the Place.

He was several times very hardly used; he was so beat with a most terrible Instrument of Correction, a *Bull's-pizzle*, that his Clothes were forced to be cut off his Body.

There is no punishing the Body without the Concurrence of the Mind. The Prisoner sent for this poor Man out of this terrible Place, in Sport and Ridicule, to the Lodge where he had Company; and there had an Iron Instrument fixed upon his Head, Thumb-screws on his Thumbs, that the Blood started from his Thumbs. He had another Instrument, called a Collar, put about his Neck; it was very far from being easy; it there made an Impression that the Mark plainly appeared: He had a Load of heavy Irons on, worse than any Yoke of Servitude; after these Instruments were fixed on him, he had Fetters put upon his Legs, of great Weight.

What

What then were the Fetters put on for? To add to the Affliction of the Man, and to shew the Cruelty of the Prisoner, I have already mentioned, that he was a Prisoner for Debt: They should not be loaded with Fetters, upon any Pretence whatever.

Indeed, by an old Act of Parliament, where Auditors of Accounts were found indebted to their Principal, and are imprisoned, and refuse to account, they may be ironed; but this is an obsolete, disused Law, and being in a particular Case excludes all others. Lord *Coke* takes Notice, that it is not lawful, that Prisoners for Debt by the Common Law should be put in Durefs.

The Indictment does not say, that it was the Occasion of his immediate Death; but it would have been better that one of those Instruments had put an End to his Life, that he had expired under these Cruelties, his Death would have put an End to him and them together; for every body would rather choose to die immediately, than to be so punished, when Death must be the Consequence. But though he survived them, the Effects remained; the Man soon died, and that shews that it was the Cause of his Death. The Indictment charges, that the Prisoner killed and murdered him. If we prove the Facts, they will justify that Conclusion; and then we must submit to your Lordship, if it is Murder. If a Gaoler brings a Prisoner to his Death by Durefs, it is Murder; and the Law in such Case judges it to be Malice prepenfe.

There is one Thing I should have taken Notice of; that in Case of the Death of any Prisoner, the Law requires the Gaoler to have the Coroner's Inquest to sit upon the Body, to inquire the Cause of his Death: I don't find that was done.

Mr. *Ward*. May it please your Lordship, and you Gentlemen of the Jury, I am Counsel of the same Side. If a Gaoler, or the Servant of a Gaoler, kills a Prisoner by Durefs, I take that to be Murder; the Reason of the Law is plain: By the Constitution of this Country, a Prison is only for the safe Custody of the Prisoners till tried or discharged: If that is turned into Cruelty, it is contrary to the Law; and he must answer for it. If *Bliss* came to his Death by *Aiton*, if that Usage was the Occasion of his Death, I must conclude, as in the Indictment, that he is guilty of Murder. To shew you, Gentlemen, that *Aiton* used him in that barbarous manner, we shall shew, that the Place he kept him in was unfit for any human Creature; it was not defended from the Violence of the Rains and Seasons, which made it moist and damp, and very unwholesome. He was kept here without a Bed; this might be the Occasion of his Death; but if he had Force used upon him afterwards, there can be no Reason to doubt it.

We shall shew you that he had actual Force used upon him. He had a Cap of Iron fixed on his Head, and a Collar of Iron on his Neck, so that he could not open his Jaws; even his Sustenance was forced to be pulled into little Pieces, for it was impossible before to get it into his Mouth, which was occasioned by the Weight of his Collar. The Man did address himself to a Person, who condescended to chew it fit for him to get it into his Mouth.

Besides these Irons he had Thumb-Screws on his Thumbs, and the Blood gushed out of them; besides this, he was beat with a Bull's Pizzle and a Rope, and was black all over. Not content with this, the Prisoner at the Bar stamped upon his Belly, till the Swelling was so great, that his Clothes were forced to be cut off his Body.

Further, to be more barbarous, he put him into Fetters so strait, that they made an Impression on his Legs, and eat into the Skin; which occasioned a Wound and Mortification in his Legs. This was the Usage of the Prisoner, to a poor Man who was only to be kept in safe Custody by him. If he did not die immediately, but languished of his Wounds, and then died of them; that will be as much chargeable upon him.

If we call our Evidence, and prove the Case, you will find him Guilty: That he feloniously, and of Malice aforethought, assaulted and murdered *Thomas Bliss*.

Mr. *Trigg*. A Person confined for a very small Debt, to have all those Engines of Torture upon him, is contrary to Law.

Mr. *Ward*. It is set forth in the Indictment, that *Darby* was Keeper of the Prison; therefore it is proper to proceed to prove that first.

John Wilson being produced.

Mr. *Marsh*. What is your Name?—Mr. *Wilson*. John Wilson.

Mr. *Marsh*. Have you been sworn?—Mr. *Wil*. Yes.

Mr. *Marsh*. Do you know the *Marshalsea* Prison?

Mr. *Wil*. Yes, I have been a Prisoner there ever since April 1726.

Mr. *Marsh*. Who was the Keeper?—Mr. *Wil*. John *Darby*.

Mr. *Marsh*. Do you know the Prisoner at the Bar, William *Aiton*?

Mr. *Wil*. Yes.

Mr. *Marsh*. In the Year 1726 was Mr. *Aiton* concerned, and in what Manner?

Mr. *Wil*. He acted as chief Turnkey, and succeeded one *Burleigh*.

Mr. *Marsh*. What is the Nature of Turnkey?

Mr. *Wil*. He acted under Mr. *Darby*, in taking care of the Prisoners.

Mr. *Marsh*. Acquaint my Lord, and the Jury, if you remember *Thomas Bliss*.—Mr. *Wil*. Yes.

Mr. *Baron Carter*. I must put you in mind, you have only examined to the Year 1726.

Mr. *Marsh*. How long did he (*Aiton*) continue under Mr. *Darby*?

Mr. *Wil*. I can't justly say how long; till Mr. *Darby* farmed out the Gaol.

Mr. *Marsh*. How long had it been farmed out?

Mr. *Wil*. I believe it had been farmed out a Year, more or less.

Mr. *Marsh*. When was it farmed out?—Mr. *Wil*. I believe in May 1727.

Mr. *Ward*. You say, you believe it was farmed out in 1727; Who took care of the Prisoners then? Who in May 1727?

Mr. *Baron Carter*. You need not go so far; take any Part of the Year 1727, to the Death of *Bliss*.

Mr. *Ward*. From what do you know he was Turnkey? How long was he so before 1727?

Mr. *Wil*. He was so the Time I was committed. I was committed in 1726.

Mr. *Ward*. You believe he did continue as such from 1726 to 1727.

Mr. *Wil*. Yes.

Mr. *Ward*. Did *Aiton* ask?

Mr. *Wil*. *Aiton* did ask, if seldom saw *Darby* there.

Mr. *Marsh*. Give an Account what Condition *Bliss* was in.

Mr. *Wil*. When I was committed a Prisoner in 1726, he was then put in the sick Ward; a little before the Act passed, to prevent frivolous and vexatious Arrests, there was a Draught made of four Prisoners out of each Ward, to be put into the Pump-Ward, and I and *Bliss* were among them: He then appeared to be a sad Object, very lame, and I took an Opportunity to ask him the Cause of it, and he told me that he attempted to escape; but being seen by a Woman, he was discovered in the Attempt, and fell down and dislocated his Ankle; and that one *Rogers* and *Pope* took him, and brought him into the Gaol again, who he said had beat him.

Mr. *Aiton*. I desire, my Lord, he may be asked, if he ever saw *Bliss* in Irons?

Mr. *Baron Carter*. Answer that.—Mr. *Wil*. No, my Lord.

Mr. *Aiton*. Please to ask him, my Lord, if *Bliss* ever fell off the Top of the House.

Mr. *Baron Carter*. What say you to that?—Mr. *Wil*. He did.

Mr. *Baron Carter*. He said so before.

Mr. *Aiton*. Please to ask, my Lord, if he ever saw *Bliss* beat, or confined in the Strong Room.—Mr. *Wil*. I never saw him beat.

Mr. *Aiton*. Please to ask, my Lord, if he saw my Behaviour to the Prisoners in general.

Mr. *Baron Car*. What say you to that?

Mr. *Wil*. I have seen People beat, and put in Irons.

Mr. *Ward*. By whose Directions?—Mr. *Wil*. I believe by *Aiton*'s.

Mr. *Ward*. Have you seen *Aiton* strike Prisoners?

Mr. *Wil*. I have seen him strike Prisoners with his Fist.

Mr. *Ward*. Did you see *Bliss* with an Iron Instrument on?—Mr. *Wil*. No.

Mr. *Bar. Carter*. What Behaviour did *Aiton* use towards his Prisoners?

Mr. *Wil*. He behaved very well to some, and used others ill.

Mr. *Strange*. *Wilson*'s Evidence is Hear-say, being only the Declaration of the Deceased.

Mrs. *Anne Bliss* sworn.

Mr. *Marsh*. Did you know *Thomas Bliss*?—Mrs. *Bliss*. Yes.

Mr. *Marsh*. Who was he?—Mrs. *Bliss*. My Husband.

Mr. *Marsh*. Do you remember the Time when he was put into the Strong Room?

Mrs. *Bliss*. He was a Prisoner in the *Marshalsea* for a small Debt.

Mr. *Marsh*. Did you use to visit him?

Mrs. *Bliss*. I went to him every Night and Morning.

Mr. *Marsh*. Acquaint my Lord, and the Jury, with every Step as to the Treatment of your Husband.

Mrs. *Bliss*. My Husband went to make his Escape, and was betrayed.

Mr. *Ward*. Tell the Time.

Mrs. *Bliss*. He and six or seven others went to break into a Baker's, and *Aiton* came in.

Mr. *Ward*. Name the Time.

Mrs. *Bliss*. I can't be sure when it was, but one *Murlimus*, when he was put in, was there, and was collared.

Mr. *Marsh*. Was you by?

Mrs. *Bliss*. I saw it next Morning; I went into the Strong Room, and *Murlimu* had an Iron Collar on, but my Husband was only fettered.

Mr. *Marsh*. I confine my Question only to your Husband. What Room was he in?—Mrs. *Bliss*. The Strong Room.

Mr. *Marsh*. Describe it.

Mrs. *Bliss*. It is a Room floored with Boards, and there is a Hole big enough to put in a Pot of Beer, and I saw him in there thro' the Hole.

Mr. *Marsh*. How long did he lie there?

Mrs. *Bliss*. He lay there three Weeks, in the Winter-Time.

Mr. *Ward*. You say, there is a little Hole, big enough to put in a Quart Pot?—Mrs. *Bliss*. Yes, there is, just on the Side of the Door.

Mr. *Baron Carter*. Stay a little, I can't hear one Word. You say you could not go into the Room, but looked thro' the Hole?—Mrs. *Bliss*. Yes.

Mr. *Baron Carter*. Did you observe the Condition of the Room?

Mrs. *Bliss*. The Floor was very damp, and it had rained that Night, and had rained in.

Mr. *Baron Carter*. Was it covered at Top?

Mrs. *Bliss*. Yes, but the Rain came in through the Boards.

Mr. *Foster*. Were the Irons heavy he had on?

Mrs. *Bliss*. Yes, they were.

Mr. *Ward*. What Time of the Year was it?

Mrs. *Bliss*. It was much about Christmas Time.

Mr. *Ward*. How long ago?

Mrs. *Bliss*. About three Months after he was in Gaol.

Mr. *Ward*. What Time did he first go into Gaol?

Mrs. *Bliss*. I cannot tell the Month.

Mr. *Ward*. Can't you be certain as to the Time?

Mrs. *Bliss*. I think it was after Christmas, not much.

Mr. *Ward*. How long since?

Mrs. *Bliss*. It was much about three Years; it was much about four Years since the first Time he attempted to escape. He went to make an Escape a second Time, by a Rope, about two or three Months after the first Attempt; and then *Aiton* pursued after him, and took him.

Mr. *Ward*. Do you know this of your own Knowledge?

Mrs. *Bliss*. When I came the next Day to the Prison, *Nichols* said, there is the Bitch his Wife, and *Aiton* ordered me to be called into the Lodge; and said, Damn you, Madam, I will have you before Justice *Ladd*, for bringing the Rope to your Husband: Damn you, I will confine you; and he put me into the Place where they put the Irons in, adjoining to the Lodge, and kept me there an Hour. Whilst I was there, he sent for my Husband into the Lodge, and put on the Scull-cap, Collar, Thumb-Screws, and Fetters.

Mr. *Ward*. Were they all put on at the same Time?—Mrs. *Bliss*. Yes.

Mr. *Ward*. Who put them on?

Mrs. *Bliss*. They were put on by *Aiton*'s Order.

Mr. *Ward*. Did you see him order it?

Mrs. *Bliss*. I heard him order it, I did not see it.

Mr. Ward. Did you see them on your Husband?

Mrs. Blifs. I did. My Husband said, As you are a Man, I hope you will use me as such; *Aston* said, If you will confess who brought you the Rope; and ordered him into a Place called the Dungeon; and when he was put there, sent for me, and said, I will now have you before Justice *Ladd*; but having a Friend there, who interceded, I was let go out of the Gaol, and came the next Morning, and found my Husband in the Dungeon; he spoke to me thro' the Hole.

Mr. Ward. Did you see him?

Mrs. Blifs. I did not see him, but thro' the Hole. He said, This Place, and the cruel Usage I have had, will be the Death of me. He was beat so, that his Cloaths were forced to be cut off, and his Body, Stomach, and Belly, were very much swelled.

Mr. Ward. Did you see him beat?—Mrs. Blifs. I saw the Marks.

Mr. Ward. When did you see him in the Strong Room?

Mrs. Blifs. About two Hours after I came in, in the Morning; *Aston* came down the Yard at the same Time.

Mr. Ward. Had he all these Irons on when *Aston* came down?

Mrs. Blifs. He had them all on.

Mr. Ward. When were his Cloaths cut off?

Mrs. Blifs. His Cloaths were cut off from his Body after *Nichols* beat him, because he was swelled.

Mr. Ward. You told us that you saw your Husband, what had he on?

Mrs. Blifs. I saw him with the Scull-cap, Collar, and Irons on.

Mr. Ward. By whose Order were they put on?

Mrs. Blifs. I heard *Aston* order them to be put on.

Mr. Ward. What was he swelled with?

Mrs. Blifs. He was swelled with the Blows that *Aston* had given him, as my Husband told me.

Mr. Foster. How long was this before his Death?

Mrs. Blifs. His Cloaths were forced to be cut down; and *Aston* told the Nurse of the sick Ward, to take a deal of Care of him.

Mr. Foster. Recollect what Year this was in?

Mrs. Blifs. It was about two Years and Three Quarters ago.

Mr. Richardson. When he was in this Place, (the Strong Room) did you see any Blood about him?

Mrs. Blifs. He bled at the Mouth, and he told me, that it was caused by having the Iron Instrument on his Head; and the Blood flowed from under the Nails of his Thumbs.

Mr. Harding. Did you make any Complaint of this Usage?

Mrs. Blifs. A Friend of mine did.

Mr. Harding. How long did he continue in the Strong Room?

Mrs. Blifs. Above a Month at one Time, a Week at another, and another Time about three Days.

Mr. Harding. How long before he died?

Mrs. Blifs. About seven or eight Months before he died.

Mr. Richardson. Did you see your Husband beat?

Mrs. Blifs. He was black as any thing with the Marks of the Bull's-pizzle *Aston* kept. *Rogers* and *Nichols* knocked him down with a Bunch of Keys, as I was told.

Mr. Richardson. From the time you saw him in this Condition, till he died, how long was it?

Mrs. Blifs. About seven or eight Months.

Mr. Richardson. When did he die?

Mrs. Blifs. He died on *Lady-day*.

Mr. Richardson. What Condition of Health was he in?

Mrs. Blifs. He was a pretty while in the sick Ward, and then was removed into his own Ward.

Mr. Richardson. How long after this Usage was it before he died?

Mrs. Blifs. Seven or eight Months.

Mr. Richardson. Was it in Summer-time?

Mrs. Blifs. It was at the Beginning of Summer.

Mr. Baron Carter. I must be forced to tell you, not to ask the same Questions over and over again.

Mr. Richardson. What was the Occasion of Death?

Mrs. Blifs. I verily believe the cruel Usage of *Aston* and *Nichols*; for he said to me a little before he died, I must soon leave you, and Nobody is the Death of me but *Aston* and *Nichols*.

Mr. Baron Carter. The first Witness, *Wilson*, put it right, when he came in *April* 1726, to *Lady-day* 1727; you must keep her to that Time.

Mr. Harding. What Time did you see him in Fetters?

Mrs. Blifs. Seven or eight Months before he died.

Mr. Aston. My Lord, please to ask her if I was by when the Scull-cap was upon her Husband's Head.

Mr. Baron Carter. What say you to that?

Mrs. Blifs. I saw it on in the Strong Room.

Mr. Aston. Please to ask, my Lord, if he was not well after this, and went into the Country to work.

Mr. Baron Carter. Answer that Question?

Mrs. Blifs. He went to *Enfield* to work, but was so ill he could not work; he did not do three Hours Work there.

Mr. Aston. I desire she may be asked, if he had not got a violent Cold by working.

Mrs. Blifs. When he came home, he said he was very bad, and I got him Half a Pint of Wine, and put him to Bed; he continued very ill for a Week, keeping his Bed some Part of the Time, and some Part sat up; and then desired me to get him into the Hospital, for that he could not recover it, and *Aston* was the Occasion of his Death.

Mr. Aston. Please to ask, if any body was by when her Husband told her I was the Occasion of his Death.

Mrs. Blifs. He made the Declaration as I was sitting on the Side of the Bed.

Mr. Aston. I desire she may be asked, if he had not strained his Ankle by a Fall from the House, when he attempted to escape.—Mrs. Blifs. Yes.

Mr. Aston. Please to ask, my Lord, how long it was after her Husband died, before she complained to any body that I was the Cause of his Death.

Mrs. Blifs. I never complained to any body, because I had no Money to go to Law, nor Friends, nor any body else to stand by me.

Mr. Aston. Please to ask, who she lodged with when her Husband died.

Mr. Baron Carter. Answer that?—Mrs. Blifs. I lodged with my Sister.

Mr. Aston. Please to ask her, if she ever complained to her Sister.

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Mr. Baron Carter. What say you to that?—Mrs. Blifs. No, I did not.

Mr. Aston. Please to ask, if she complained to her Father or Mother.

Mrs. Blifs. I had no Father, and as to my Mother, I did not see her in half a Year; it was above a Quarter of a Year after my Husband's Death.

Mr. Aston. I desire she may be asked again, if she did not tell her Mother.

Mr. Baron Carter. Did not you tell your Mother?

Mrs. Blifs. No, I had a Difference with my Mother, on account of her marrying a second Husband.

Mr. Aston. I desire she may be asked, when was the first time of her complaining, whether it was voluntarily, or whether she was sent for; and by whom, and whereto.

Mr. Baron Carter. You hear the Question.

Mrs. Blifs. One Mr. *Newland*, an Acquaintance of my Father's, knowing how my Husband was used, sent for me.

Mr. Aston. I desire she may be asked, when and where.

Mrs. Blifs. To his own House.

Mr. Aston. Please, my Lord, to ask how long ago.

Mr. Baron Carter. Answer that.—Mrs. Blifs. I believe half a Year.

Mr. Aston. Please to ask her, my Lord, when Mr. *Newland* sent for her, what he sent for her for; and whether he did not say there was Money for her.

Mr. Baron Carter. What say you to that?

Mrs. Blifs. Knowing how barbarously my Husband was used, he said he would have me right his Death; and ordered me to go to a Gentleman about it; but said nothing of Money.

Mr. Aston. Please to ask, my Lord, if she did not tell *Hester Long* she was to have Money to swear her Husband's Death to me.

Mr. Baron Carter. Did you tell *Hester Long* so?

Mrs. Blifs. No; my Sister came to me, and said, Mr. *Newland* desired to see me; and she said, she believed there was Money for me. Afterwards I saw *Newland*, and he told me to go to the Gentleman.

Mr. Aston. I desire she may be asked again, if she did not tell *Hester Long*, she was to have Money to swear her Husband's Death to me.

Mrs. Blifs. No.

Mr. Aston. Please to ask her, if she did not tell *Hester Long*, she was to have fifty Shillings, or three Pounds.

Mr. Baron Carter. I must take care you do not ask her Questions to injure herself.

Susannah Dodd, being produced and sworn.

Mr. Marsh. Did you see *Blifs* in Prison?

Mrs. Dodd. Yes, a hundred times, and once in Irons.

Mr. Marsh. What Time did you see him Irons?

Mrs. Dodd. He had them on the next Day after he was put in the Strong Room.

Mr. Marsh. What Time of the Year?

Mrs. Dodd. Between Winter and Summer.

Mr. Marsh. How long before he died?—Mrs. Dodd. A Quarter of a Year.

Mr. Marsh. Do you know when he died?

Mrs. Dodd. I was not with him.

Mr. Marsh. When do you know he died? Have you been told when he died?

Mrs. Dodd. I knew he was dead, because his Wife came and said he was dead.

Mr. Baron Carter. Was it the first or second Time he made his escape he was out two or three Months?

Mr. Aston. My Lord, he was not out then at all.

Mr. Baron Carter. I will call the Woman again.

Mrs. Blifs being called.

Mr. Baron Carter. Was your Husband twice in Goal, or once?

Mrs. Blifs. Only once.

Mr. Marsh. What Gentleman did Mr. *Newland* send you to?

Mr. Baron Carter. It is not usual to ask Questions after a Witness has been examined, and only called again to explain a Fact.

Mr. Marsh. It is only to clear up what she has already given in Evidence.

Mrs. Blifs. Mr. *Newland*, an Acquaintance of my Father's, only sent for me.

Mr. Marsh. How long since?—Mrs. Blifs. Three Weeks last Sunday.

Mr. Baron Carter. Who is *Newland*?—Mrs. Blifs. He lives in *Southwark*.

Mr. Baron Carter. What is he?—Mrs. Blifs. He is a Baker.

Mrs. Dodd standing up again.

Mr. Ward. When did you see him last in Gaol?

Mrs. Dodd. About three Months before he died.

Mr. Ward. When did he die?

Mrs. Dodd. I can't be certain when he died.

Mr. Ward. What Condition did you see him in?

Mrs. Dodd. I went to the Strong Room to carry him some Victuals, and he had Thumb-screws on his Thumbs, Irons on his Legs, an Iron Cap on his Head.

Mr. Ward. Had he Fetters on his Legs?

Mrs. Dodd. He had very large Fetters on his Legs, and Irons cross his Legs too. I spoke to him thro' the Hole.

The said Irons being produced and viewed by the Witnesses.

Mr. Ward. Are those the same you saw upon *Blifs*?

Mrs. Dodd. They are.

The Irons called *Sheers* being shown her particularly.

Mr. Ward. Look on them, had he any other Irons on his Legs than those?

Mrs. Dodd. He had the *Sheers* cross his Legs, and Fetters on besides. The Deceased asked me to give him Relief, and desired me to chew his Victuals, for his Mouth was sore; and I pulled it to Pieces, and fed him.

Mr. Ward. What was the Occasion of his Mouth being sore?

Mrs. Dodd. He was confined two Days in this Condition.

Mr. Ward. How do you know it?

Mrs. Dodd. By being sent backwards and forwards of Errands.

Mr. Ward. Did he speak to you?

Mrs. Dodd. Yes, he spoke to me several times.

Mr. Hard. Could he chew?—Mrs. Dodd. I don't believe he could chew.

Mr. Foster. How long was he in this Condition in the Strong Room?

Mrs. Dodd. A Day or two.

Mr. Ward. How long ago?—Mrs. Dodd. Five or six Months ago.

Mr. Ward. How long ago is it since you saw him in that Condition? Recollect yourself, how long ago it might be.

B b

Mrs.

Mrs. Dodd. I can't tell exactly.
 Mr. Ward. How long was it after he was turned out, before it was reported he was dead?—Mrs. Dodd. About half a Year.
 Mr. Ward. How long was it then, before he was in that Condition?
 Mrs. Dodd. This was about a Quarter of a Year before.
 Mr. Ward. What Time of the Year was it?
 Mrs. Dodd. It was about Southwark Fair-time.
 Mr. Ward. Did you see him bleed at the Mouth, or any where else?
 Mrs. Dodd. There is a great Hole on the Side of the Door, and I saw him screwed, and saw him bleeding at his Thumb Nails.

Being again shewn the Iron Instrument called the Sheers.

Mr. Ward. How was it used?—Mrs. Dodd. It goes between the Legs.
 Mr. Harding. What Sort of a Place is the Strong Room?
 Mrs. Dodd. It is a large Room, and strong.
 Mr. Harding. Describe the Room. Is it damp?
 Mrs. Dodd. It is not damp; it is dry enough.
 Mr. Harding. Is it covered at Top?
 Mrs. Dodd. It is leaded over at Top. I gave him Drink through the Hole by the Door, while he held his Head backward; he could not take it himself, because of his Hands being confined.
 Mr. Acton. Please to ask, my Lord, if he was well in Health when he came to lodge at the House where she lived?
 Mrs. Dodd. He was only lame in his Legs; he was well as to every Thing else.

Mr. Acton. Please to ask her, if she did not see him the Day after he came out of the Strong Room.

Mr. Baron Carter. Did you see him the Day after he came out of the Strong Room?—Mrs. Dodd. No, it was two Days after.

Mr. Baron Carter. Did you see him when his Cloaths were cut off?

Mrs. Dodd. No.

Ruth Butler, being produced, was sworn.

Mr. Ward. Did you see Blifs in the Gaol?

Mrs. Butler. I was a Prisoner in 1725.

Mr. Ward. How long did you continue a Prisoner?

Mrs. Butler. I continued till I was cleared by the late Act, about fourteen Days ago.

Mr. Ward. Did you see Blifs?—Mrs. Butler. I did.

Mr. Ward. How long was he in Prison, while you was there? Give an Account of what you knew of Blifs.

Mrs. Butler. He was a Prisoner, I cannot say how long; but I saw him going over the House, and he fell off; and was taken on the other Side, and brought in again; and was put in the Strong Room by Acton, Thomas Nichols, Rogers and Page.

Mr. Ward. Did you see Acton put him there?

Mrs. Butler. I saw Acton concerned in putting him there. He kept him there till the other Prisoners were locked up, and then brought him into the sick Ward, and Acton beat him with a Bull's-pizzle there, and stamped upon his Body several Times, he (Blifs) lying upon the Ground. He had hurt his Leg with the Fall, and thought it was broke. He continued in the sick Ward that Night, and the next Day they carried him into the Lodge, and there put Irons on.

Mr. Ward. What Irons?

Mrs. Butler. They put on long Irons, that kept his Legs to a vast Extent.

Mr. Ward. When was this?

Mrs. Butler. The next Morning after he fell in going over the House; in the latter End of February, or the Beginning of March.

Mr. Baron Carter. You say it was the latter End of February, or the Beginning of March. Was it the first Time of his escaping?

Mrs. Butler. Yes.

Mr. Richardson. Did you see him after he went out of Gaol?

Mrs. Butler. I never saw him after he went out of Gaol.

Mr. Ward. How long was he out of Gaol before he died?

Mrs. Butler. I don't know.

Mr. Ward. Recollect the last Time you saw him in Gaol; when was it?

Mrs. Butler. I cannot say.

Mr. Harding. Did you see him when he left the Gaol? How was he?

Mrs. Butler. He was very bad, very ill; I heard him often say after this Usage, that the Bruises and Hurts Acton gave him by stamping upon him, would be the Occasion of his Death?

Mr. Richardson. Do you believe that those Bruises and that ill Usage was the Occasion of his Death?

Mrs. Butler. I verily believe they were the Occasion of his Death.

Mr. Richardson. What State of Health was he in when he left the Gaol?

Mrs. Butler. In a very ill State of Health.

Mr. Baron Carter. For my Satisfaction and the Jury's, give an Account particularly when he was beat with the Bull's-pizzle.

Mrs. Butler. He was first beat with the Bull's-pizzle; then flung upon the Ground, and stamped upon.

Mr. Baron Carter. Whereabouts did Acton stamp upon him?

Mrs. Butler. Betwixt his Belly and his Stomach, and upon his Belly.

Mr. Baron Carter. How many Times did you observe him to stamp upon him (Blifs)?—Mrs. Butler. Three Times.

Mr. Richardson. I will ask you one Question.

Mr. Baron Carter. I can't admit you to ask any Questions now; I asked them for my own, not your Information.

Matthew Bacon (being called and sworn.)

Mr. Ward. Did you see the Deceased?

Mr. Bacon. Yes, several Times; I saw him when he was sick, and when his Legs were swelled.

Mr. Ward. What State of Health was he in?

Mr. Bacon. He was very sickly and very lame; his Legs were swelled, and he complained of the Bruises that he had received from Acton.

Mr. Ward. Did you see him in the Strong Room?

Mr. Bacon. I was not a Prisoner then; I was a Prisoner from about the latter End of April to Michaelmas following, and then I was discharged. He was sick great Part of that Time, and said he should do well enough, if not for the Bruises; and that that Rogue, Acton, had done that to him which he should never recover.

Mr. Harding. What State of Health was he in when you left the Prison?

Mr. Bacon. He was sickly.

Mr. Richardson. Do you know the Strong Room?

Mr. Bacon. Yes; it is standing at the South-East Part of the Gaol; and is a Terror to all those that behave themselves ill; and is not fit to put a human Creature in, to remain there.

Mr. Ward. Did you see him after you was discharged?

Mr. Bacon. I was discharged about Michaelmas, 1726, and went to the Gaol to see him between Michaelmas and Christmas; and I am positive he was never well while I saw him in Gaol.

Mr. Ward. Did he complain of any Thing?

Mr. Bacon. He complained of Pains in his Side, which he attributed to Acton.

Mr. Harding. What Sort of a Place is the Strong Room?

Mr. Bacon. It is a Square, as big as the Square between the Posts in the Court; and has no Light but through a little Hole on the Side of the Door; and it is damp.

Mr. Harding. Is it unwholesome?

Mr. Bacon. It is undeniably to all Mankind unwholesome. I have seen People dead in it.

Mr. Baron Carter. What is the Prisoner's general Character in the Gaol?

Mr. Bacon. A great many give him an ill Character, but I never had any Abuse from him; I never deserved it.

Mary Gillis (being sworn.)

Mr. Ward. Do you know Blifs?

Mrs. Gillis. Yes; I was a Prisoner nineteen Months, and remember Blifs very well.

Mr. Ward. Give an Account of what you know in relation to Blifs.

Mrs. Gillis. The Account I can give is this: The Man was almost perished for Want, and with a Rope had attempted to escape, being tied round his Middle; but being discovered, the Rope was cut, and he fell into the Yard on the other Side, and received Damage in one of his Legs; and though he could not stand, Acton and his Servants brought him into the Lodge.

Mr. Ward. When was it?

Mrs. Gillis. In an Evening; about the Beginning of March.

Mr. Ward. Who were Acton's Servants? Name them.

Mrs. Gillis. Richard Page, Nichols and Rogers. Acton was there himself; they pulled and hawled him about, and Acton beat him with a Bull's-pizzle; he stood upon one Leg, for he could not set the other to the Ground, and cried out for Mercy; and they asked him, who gave him the Rope? He said, Thomas Crabb. Then they put him in a Hole, a little Place under the Stairs, and he lay there a little while; and when he came out, they ironed him on one Leg.

Mr. Ward. Do you believe this Usage was the Occasion of his Death?

Mrs. Gillis. I believe in my Heart he died for Want of Food, as well as by being so used.

Mr. Richardson. Did you see his Body?—Mrs. Gillis. I never did.

Mr. Harding. They wanted him to confess who brought the Rope?

Mrs. Gillis. Yes; they did ask him who brought it.

Mr. Harding. What Time was it?

Mrs. Gillis. It was Candle-light; I came out of one Carey's Shop.

Mr. Ward. What State of Health was he in when he left the Gaol?

Mrs. Gillis. I came out before him. He was sick in the Sick Ward when I came out.

Mr. Ward. What Irons had he on?

Mrs. Gillis. I never saw him but with one Iron on.

Mr. Ward. Did you see him beat?

Mrs. Gillis. Yes; I did stand by, and saw him beat; and he fell down through Weakness from the Hurt.

Mr. Harding. Did you ever hear him complain of the Injuries he received?

Mrs. Gillis. I never went near him, nor asked him.

Mr. Harding. How many Blows did you see him receive?

Mrs. Gillis. I cannot tell.

Mr. Harding. How long were they using him in that Manner?

Mrs. Gillis. They were half a Quarter of an Hour using him in that Manner.

Mr. Harding. Was Acton by?

Mrs. Gillis. He was present at the same Time he was beat; but he was beat mostly by Nichols.

James Abbot was sworn.

Mr. Ward. Did you see Blifs?

Mr. Abbot. Yes; I saw him drubbed, so that no Man was so drubbed.

Mr. Ward. By whom?—Mr. Abbot. By Acton's Servants.

Mr. Ward. With what?—Mr. Abbot. With a Rope and a Bull's-pizzle.

Mr. Ward. Was Acton by?—Mr. Abbot. I can't say that.

Mr. Ward. Who were they that beat him?

Mr. Abbot. He was beat by Page and Nichols.

Mr. Ward. You say they beat him with a Bull's-pizzle and a Rope?

Mr. Abbot. Yes.

Mr. Ward. Was Acton in the Prison then?—Mr. Abbot. Yes, he was.

Mr. Ward. Was Acton in the Yard?

Mr. Richardson. Did you see Blifs in the Strong Room?

Mr. Abbot. No.

Mr. Baron Carter. Will you (speaking to the Prisoner) ask any Questions?

Mr. Acton. My Lord, please to ask the Question, Whether I ever used the Prisoners ill during the Time he was there.

Mr. Abbot. I did see him beat a great many People, but can't say who.

Matthew Brandon was sworn.

Mr. Ward. Did you know Blifs?

Mr. Brandon. Blifs was a Prisoner when I came in, in 1726; I went there on the 16th of March, 1726.

Mr. Ward. How long did you continue there?

Mr. Brandon. Six Months.

Mr. Ward. Did you see Blifs?—Mr. Brandon. Yes.

Mr. Ward. What Condition did you see him in?

Mr. Brandon. He was a Cripple.

Mr. Ward. From what Time do you count the Year?

Mr. Brandon. From the 25th of March; I cannot be sure whether it was 1725 or 1726.

Mr. Trigg. What Manner did you see his Legs in?

Mr.

Mr. Brandon. I saw one very much bruised by the Irons that were put on. There was a Mark about as big as the Top of one's Finger.

Mr. Ward. Was his Leg swelled?

Mr. Bran. It was very much swelled.

Mr. Ward. Did you see both his Legs?

Mr. Bran. I took it to be the left Leg.

Mr. Ward. Was his Ankle strained?

Mr. Bran. I don't know any thing of the straining of his Ankle; it was much about the Ankle.

Mr. Baron Carter. If it was his Leg that he hurt; that's an Answer.

Mr. Ward. That remains upon them to prove. Had the Skin been broke?

Mr. Bran. The Skin had been broke, and it was swelled above and below, and there was the Mark of the Iron.

Mr. Harding. What Sort of Mark was it?

Mr. Bran. It was a circular Mark.

Mr. Hard. Did he make any Complaint to you?

Mr. Bran. I gave him Part of a Mug of Ale; and as he was relating his Grievances to me, he told me he desired me to see *Acton* prosecuted, in case he died.

Mr. Hard. What did he tell you?—Mr. Bran. He told me he was very barbarously used by *Acton*, and he was the Occasion of his Death.

Mr. Hard. How long was it before you left him in Gaol, that he made this Declaration? What Time of the Year was you discharged?

Mr. Bran. I went out in *August*.

Mr. *Acton*. My Lord, please to ask, how long it was after *Blifs's* Death before he made Complaint.

Mr. Bar. Car. What say you to that?

Mr. Bran. I made no Complaint of this but since I have been at home; I have been beyond the Seas.

Mr. *Acton*. Please to ask, how long it was before he went out of *England*, after he was discharged.

Mr. Baron Carter. Answer that.

Mr. Bran. I was discharged in *August*, and went abroad in about two Months Time; and it is three Months since I came home again.

Mr. Ward. Did you ever see any Irons upon *Blifs*?—Mr. Bran. No.

Mr. Ward. Did you ever see him beat?—Mr. Bran. No.

Mary Renwood was sworn.

Mr. Baron Carter. I beg you would let us know the Time better; I should be glad to be satisfied as to that.

Mr. Ward. Give an Account of what you know of *Blifs*.

Mrs. Renwood. I never was a Prisoner, but carried him Victuals.

Mr. Baron Carter. You knew *Blifs*; Did you see him in Irons?

Mrs. Ren. Yes, my Lord, once. After his Fetters were taken off, I saw his Legs where the Irons had been on; and the Irons had eat very deep into both his Legs.

Mr. Baron Carter. Did you see the Irons on?

Mrs. Ren. I saw the Irons on in the Yard, but that was before.

Mr. Baron Carter. Was the Soreness of his Legs occasioned by the Irons?—Mrs. Ren. Yes.

Mr. Baron Carter. Upon what Occasion did you go to him?

Mrs. Ren. I went to carry him Victuals and Clothes. When I saw him in the Sick Ward, the Small of his Legs were swelled as big as the Calf.

Mr. Ward. When was this?—Mrs. Ren. I can't be certain as to the Time.

Mr. Ward. Go on.

Mrs. Ren. The Skin was broke, and his Legs were fore and raw in the Places where the Marks of the Irons were.

Mr. Richardson. What did you carry him?

Mrs. Ren. I carried him a Pair of Stockings, but he could not put them on.

Mr. Ward. Had he no Stockings on?—Mrs. Ren. When I went to him, he had no Stockings, no Shirt, only a Blanket.

Mr. Ward. What Size were the Stockings?

Mrs. Ren. They were my Husband's Stockings, but of a Small Size.

Mr. Ward. If his Legs had not been swelled, might he have got them on?—Mrs. Ren. I believe he might.

Mr. Ward. Did he make any Complaint to you?

Mrs. Ren. He said, he was afraid he should never be his own Man again, by the ill Usage he had received in the Gaol.

Mr. Ward. Did he say who used him ill?

Mrs. Ren. No; I did not ask him.

Peter Purchase being sworn.

Mr. Ward. Did you know *Blifs* when in Prison?

Mr. Purchase. Yes; he was a Prisoner some time before I was a Prisoner, in the Year 1726; and he related to me the Usage he had had.

Mr. Ward. When was you a Prisoner?—Mr. Pur. I became a Prisoner the 26th of March 1726. I was discharged some time before he was.

Mr. Ward. When had you the Discourse with him?

Mr. Pur. In May or June.

Mr. Ward. How long did he continue in Gaol?

Mr. Pur. He was there 10 Months during the Time I was there; he told me he was ironed, and—

Mr. Baron Carter. You must not speak to Hear-say. What he told you don't signify. Did you see his Legs?

Mr. Pur. I did; and the Marks of the Irons were upon them. His Legs were swelled very much both of them; and one continued swelled until he went out of the Gaol.

Mr. Ward. What was the Occasion of their being swelled?

Mr. Pur. It was occasioned by wearing the Irons.

Mr. Ward. Were they raw?—Mr. Pur. They were not raw; but I saw the Marks of the Irons upon them.

Mr. Ward. Did you see his Thumbs?

Mr. Pur. I did; and he told me, that he had been Thumb-ferewed.

Mr. Ward. Did you see any Marks upon them?

Mr. Pur. I saw his Thumbs very black, and much bruised about the Joints; and he told me, he had wore the Scull-cap.

Mr. Ward. Did he complain of any Bruises?

Mr. Pur. He complained of his Side.

Mr. Ward. When did he go out?—Mr. Pur. I cannot tell the exact Time; I went out a little before him.

Edmond Commins, being sworn.

Mr. Ward. Did you know *Blifs*?—Mr. Commins. Yes.

Mr. Ward. Did you see *Acton* do any thing to him?—Mr. Com. No; but he told me, he believed he had got his Death by *Acton*.

Mr. Ward. Did you see any Irons on him?

Mr. Com. I saw them; they were very remarkable; he declared to me that *Acton* put them on, and beat and abused him.

Mr. Ward. Did you see his Legs?—Mr. Com. I did; and his Legs were like a Horse's Fetlock cut with a Clog.

Mr. Ward. What Time?—Mr. Com. I cannot say.

Mr. Ward. How long before his Death?

Mr. Com. A considerable Time; when he died, I was abroad in *India*; I was there two Years and three Months. I was by when *Acton* put *Blifs* and some others in the Strong Room; and I heard him say to *Blifs*, I thought I had given you enough already, but I will give you more.

Mr. Ward. What kind of a Place is the Strong Room?

Mr. Com. I have been twice in that Prison; it is very damp, and if it rains never so little, it comes through.

Mr. Ward. Had he any Bed?

Mr. Com. No; there is no Bed allowed to be carried in.

Mr. Ward. Is there any Place to let in the Air or Light?

Mr. Com. There is a small Hole, about twelve Inches, on the Side of the Door.

Mr. Ward. Was it proper to put a human Creature in?

Mr. Com. No; I have seen Hogs lie in a better Place: The Common Sewer runs underneath it, and the Drain from the Vault.

Mr. Ward. Is it unwholesome?—Mr. Com. It is very unwholesome.

Edward Murfey was sworn.

Mr. Richardson. Did you know the Deceased?

Mr. Mur. I did; he was in Prison when I came.

Mr. Rich. What Condition was he in? Did you see him?

Mr. Mur. Yes; I heard him say, that he had so much beating in the Lodge, that he could never recover it.

Mr. Rich. Did you see any Irons upon him?

Mr. Mur. I saw him in the Strong Room with Handcuffs on his Hands, and large Fetters on his Legs.

Mr. Rich. Did you see his Legs? What Condition were they in?

Mr. Mur. I saw them; they were black and blue; and they were raw in a Circle, and the Skin was off.

Mr. Rich. Did he complain of any Bruises?

Mr. Mur. He complained of his Side.

Mr. *Acton*. Did he never talk of falling off the House, and that he was hurt thereby?—Mr. Mur. I never heard him.

Ellis Roberts was sworn.

Mr. Ward. Did you know *Blifs*?—Mr. Roberts. I saw him in Prison, and saw the Fetters upon both his Legs.

Mr. Ward. Did you see him after he went out?—Mr. Rob. I can't say.

Mr. Ward. Did he make any Complaint to you?

Mr. Rob. He told me, that his Legs were very bad, and desired me to go to Mr. *Darby* about it; which I did, but was afraid to speak in the Prison, seeing People used so ill; and I spoke to him at the Door, and *Darby* said—

Mr. Baron Carter. What *Darby* said is no Evidence.

Mr. Ward. Upon what Account did you go to him?

Mr. Rob. I went to *Darby* to desire the Fetters might be taken off; or otherwise, that those might be taken off, and bigger put on; for his Legs were swelled so much, that they hid the Irons; the Iron hung almost out of Sight on one Side.

Mr. Ward. Did he shew you any other Marks?—Mr. Rob. No.

Mr. Ward. Did you see him in the Strong Room?

Mr. Rob. I did see him in the Strong Room; and I saw several more there lying upon the Ground, coming to see him after Work.

Mr. Ward. What Sort of a Place is it?

Mr. Rob. There is only one Place to look in at, a Hole on the Side of the Door. It is very dismal to look into.

Mr. Ward. Was it dry?

Mr. Rob. I can't say. At the same Time *Blifs* was there, I saw another Man with an Iron about his Neck in the same Room.

Mr. Baron Carter. Would you (speaking to the Prisoner) have me ask any Questions?—Mr. *Acton*. No, my Lord.

Mr. Rich. It was insinuated, that the Man went to work. We shall produce the Person where he went to work, to shew he was not able.

William Cowley, Master Carpenter, was sworn.

Mr. Marsh. Did you know *Blifs*?

Mr. Cowley. I remember his coming out of Gaol; and after he came out of Gaol, he came to work with me.

Mr. Marsh. What Trade are you?

Mr. Cowley. A Carpenter.

Mr. Marsh. Give an Account what State of Health *Blifs* was in when he came to work for you?

Mr. Cowley. I had a Job of Work at *Southgate*, and came to Town generally on a Saturday Night; and he came the Day after, and said he was coming to work for me; I said he was too weak, and he had better be purged and blooded before he went down. I left him in Town, and when I came again from the Country, he came to me; I asked him, How he did then? He said, Pretty hearty. I and the rest of the Men went down; and on Monday he came down after us to *Southgate*. I asked him, How he got down, and if he came to work? He said, I don't doubt but I shall, in Grace of God. I got him some Mutton, and made Broth of it; and he endeavoured to work, but was very little able, and did nothing that Day. The next Day he came to work, and plained three Boards; and then said, he could not work any longer. I asked him, What he would have? Give me, says he, a Dram of Geneva, or Brandy, one of which they got; and laid him down, and threw their Clothes over him. I asked him, if he could eat any thing? He said, He believed he could eat some Bacon; but when it came, he could not touch a Bit. I said, Can you eat any thing else? He said, No,

No, nothing. I then spoke to the Woman of the House to get him Sugar-lops, which she did; but it did him no good; he grew worse and worse. I asked him, if I should send to the Apothecary? He said, No: He attempted to come up, but could not. On Saturday Night I came to London; I asked him, if I should leave any thing? He said, No; but desired his Sister might be sent for; and I think I sent for her, and my Son, Thomas, sent for the Apothecary. And when I came back on the Monday he was worse, and the People were uneasy with me for bringing a sick Man; so I got the Man, that carried my Timber, to bring him to London; and he was put into the Hospital; and on the 25th or 26th of March he died.

Mr. Marsh. Was you with him in the Hospital?

Mr. Cowley. Hearing he was abused, I went to see him. He had Holes in his Legs when he came down to me; and his Words were, Master, that Rogue, Acton, and those other Rogues, are the Death of me; this was about a Month before he died.

Mr. Marsh. How long was he with you in the Country?

Mr. Cowley. About nine Days.

Mr. Marsh. Did he complain of any thing?—Mr. Cowley. About a Month before he died, he complained for a Week together.

Mr. Baron Carter. Did the Deceased complain of his Side?

Mr. Cowley. He told me, that they took and held him by the Legs, and his Head knocked on the Ground; and kept him chained in Irons.

Mr. Baron Carter. Did he complain of his Side?

Mr. Cowley. He complained of inward Bruises.

William Cowley, junior, sworn.

Mr. Marsh. Acquaint my Lord with what you know of Blifs.

Mr. Cowley. After he came out of Prison he come to see for me at my Lodgings.

Mr. Marsh. Don't tell all you know in your Life-time.

Mr. Cowley. When Blifs came to see for me, I met him in Crooked Lane, and asked him, How he did? He said, as well as can be expected; for the Bruises I have received from those Rogues I shall never recover.

Mr. Baron Carter. Did you see his Legs?

Mr. Cowley. Yes, and they were black, blue, and yellow, about the Calf. When he came to Southgate, I asked him then how he did; he said as well as can be expected; for I have got those Bruises I shall never recover.

Mr. Marsh. Tell how he was at Southgate?

Mr. Cowley. After he had done Work, he went up to Bed, and said, I hope I shall do well; and putting his Hand to his Breast, said he was very sore. After he began to work, he fainted. We had a Fire made, and laid him down, and asked him if he could eat; he said if we could get him some Bacon; but when it came he could not touch it. Then we got him some Bread and Ale, and he could but just take it down, and brought it up again, and complained of Pains. He was afterwards blooded, and the Blood was of all Manner of Colours, and mighty watery.

Mr. Marsh. Did you see any Marks but in his Legs?—Mr. Cowley. He said those Rogues had given him Bruises he should never recover.

Mr. Marsh. Did he name any body?

Mr. Cowley. Yes, he named Acton, and a little Fellow he had shewn to me when at the Gaol.

Mr. Baron Carter. When he was going away, what did he complain of?

Mr. Cowley. He said, I shall never overcome the Blows received by these Villains; and I must lay my Death to Acton and those Rogues.

Samuel Parker was sworn.

Mr. Marsh. Did you know Thomas Blifs?

Mr. Parker. I knew Thomas Blifs when he came out of Gaol; I saw him come down to Southgate to work, but he was fitter to go to Bed. He worked with me, and lay down on the Bench seven or eight times.

Mr. Marsh. Did he complain?

Mr. Parker. He complained of his Stomach and Legs, and said that his Stomach was beat to a great Degree, and that Acton had put on Irons on his Legs, (which extended them a Yard) and put on an Iron on his Head, Thumb-screws on his Thumbs, so that the Blood gushed out at the End of his Thumbs.

Mr. Marsh. Did you see his Legs?

Mr. Parker. Yes; they were swelled so, that he was forced to wear old Slippers; and they looked of many Colours; and there was a Hole in one of them big enough to put your Thumb in.

Mr. Marsh. What Condition was he in?

Mr. Parker. In a very weak Condition, not fit to work.

Mr. Marsh. How long did he work?

Mr. Parker. About a Quarter of an Hour, and then said, Master, I can't work any more; he then laid down, and they made a Fire for him.

Mr. Marsh. Had he any Apprehension of Death?

Mr. Parker. He said, that the Bruises and the Blows he had received were the Occasion of his Death, and he should never recover them, and hoped some good Person or other would prosecute them for it.

Mr. Baron Carter. Now, you have heard the Charge against you, by sixteen Witnesses, you stand upon your Defence.

Mr. Acton. Notwithstanding what the People have sworn against me, I hope to make it appear that I am innocent.

Thomas Blifs, was a Prisoner in December 1725, and he attempted to escape by a Rope, to get over a House; but some People seeing him, he fell off the House on the other Side, which is twenty-four Feet high: I went round, and found him lying on the Ground; I took him up by the Arm, and asked him the Reason why he did so; he said, he was poor, and he could not get out, without Somebody would assist him: I put him into the sick Ward, to be taken Care of, and allowed him Two-pence per Day; and had a Surgeon to bathe his Leg, which he had hurt in the Fall. He continued in Custody, and continued in the sick Ward only till his Leg was well, and then went into the Pump Ward, where he was chose Constable, but for some Misdemeanor was turned out; it was for cheating the other Prisoners of the Ward. After he was discharged, he continued three Weeks at one Gresham's near the Marshalsea Gate, and was fuddled several Days. He went into the Country and came up again, and said he had caught Cold, was put into the Hospital, and there died of a Fever. My Lord, since his Fall, he never had any Irons on, and he lived near twelve Months after. I have several Witnesses ready to prove those Facts, which I will call.

Samuel Bullock was sworn.

Mr. Acton. Give an Account of what Usage Blifs had in the Prison.

Mr. Bul. (After making a long Pause.) My Lord, I may be a little startled, having never been before such an Audience before, therefore desire a little time to recover myself.

Mr. Baron Carter. You must propose what Questions you would have asked, to the Court.

Mr. Acton. Please to ask, my Lord, if Blifs was on the Top of the House, and what Usage he saw when he came back.

Mr. Bul. In March 1725, or 1726, I went to see Mr. Acton, and there was an Out-cry He was here, he was there; and Acton went into Axe and Bottle Yard, and brought Blifs along with him. I saw no Barbarity used, but saw some of them strike him.

Mr. Acton. Please to ask, if he saw any Irons on.

Mr. Baron Carter. What say you to that?

Mr. Bul. I saw no Irons on. He continued with Mr. Acton till he was confined in the sick Ward, and a Friend and myself gave a Shilling a-piece, because he complained he was destitute, and had no Sustainance.

Mr. Acton. My Lord, please to ask, if he did not complain of his Legs and Back by the Fall.

Mr. Bul. I saw him in a miserable Condition.

Mr. Baron Carter. The Question was, if he did not complain of his Leg and Back by the Fall?

Mr. Bul. He complained of his Ankle and his Side.

Mr. Acton. Please to ask, my Lord, if there was any Irons on should he have seen them.

Mr. Baron Carter. I think that Question will not be so much for your Service; you may have it asked if you please.

Robert Holmes was sworn.

Mr. Acton. Please to ask him, my Lord, whether he remembers the Escape of Blifs, and when.

Mr. Holmes. I know of Blifs's breaking out into Axe and Bottle Yard, and saw Acton and Rogers bring him into the Prison, supporting him upon their Shoulders.

Mr. Acton. Please to ask, if he had any Irons on, or Abuse given him.

Mr. Holmes. He had no Irons on, no Abuse given.

Mr. Acton. What did he complain of?

Mr. Holmes. He only complained of his Legs.

Mr. Acton. Where did he go after he was discharged?

Mr. Holmes. He went and lodged at one Gresham's, and I drank with him very often in an Evening, and he and I took a Walk together, and he then declared to me, that Acton had used him very well, and if it had not been for him, he must have perished before he got discharged; and when we came back to Mr. Gresham's he told me, he was to go to Work at Southgate, which he did, and staid there nine Days; and when he came back, he said he had caught an Ague, and took a Sweat; and two or three Days after that went into St. Thomas's Hospital. I met Blifs's Wife on the Bridge, and she said —

Mr. Marsh. I apprehend what she said cannot be Evidence.

Mr. Baron Carter. I tell you how far; she is a good Witness to contradict herself.

Mr. Marsh. You can only call this Witness to invalidate her Testimony. What did she say about her Husband's Death?

Mr. Baron Carter. She has said, the Blows he received from Acton were the Occasion of his Death; and the Witnesses may be asked to what she said as to that. Did you see any Irons upon Blifs, after the Fall from the House?

Mr. Holmes. No.

Mr. Baron Carter. Was he in the Strong Room?

Mr. Holmes. No, he was in the Sick Ward.

Mr. Acton. Please to ask, my Lord, how long he was in Prison after he came out of the Sick Ward.

Mr. Baron Carter. What say you to that Question?

Mr. Holmes. Seven or eight Months.

Mr. Acton. What Condition of Health was he in?

Mr. Holmes. Very good.

Mr. Act. Please to ask, if he ever complained of any thing but his lame Leg.

Mr. Holmes. I never heard him complain of any thing else. He was at Work several times in my Room.

Mr. Ward. He did complain of one Leg you say; did he not complain of both?—Mr. Holmes. No, he never did.

Mr. Harding. Did you never see him fettered after he attempted to escape?

Mr. Holmes. No, I never did.

Mr. B. Carter. Before he went into the Sick Ward, was he in the Lodge?

Mr. Holmes. I came down into the Lodge with him.

Mr. Baron Carter. Where was he carried next?

Mr. Holmes. He was set down there.

Mr. Baron Carter. You did not see him in the Yard?—Mr. Holmes. No.

Mr. Baron Carter. The Witnesses say, that he was first brought into the Lodge, and there had Irons put on, and then was carried into the Yard, and there it was that all the Witnesses say he was beat.

Mr. Marsh. I did not hear that.

Mr. Baron Carter. It is so said.

Mr. Marsh. When did he fall from the House?

Mr. Holmes. About seven or eight o'Clock at Night.

Mr. Marsh. What time of the Year was it?

Mr. Holmes. I can't say, I believe about March.

Mr. Baron Carter. Let the Time be whenever it will, it must be taken after the Fall off the House.

Mr. Marsh. When did he fall?—Mr. Holmes. As near as I can guess, in March next coming, four Years ago.

Mr. Marsh. You was speaking of his continuing well when he came out of the Sick Ward; When did he come out?

Mr. Holmes. About two Months after March.

Mr. Marsh. Was you a Prisoner then?

Mr. Holmes. No, I was a Prisoner before.

Mr. Marsh. You was discharged then, and lived in the Prison?

Mr. Holmes. Yes.

Mr. Marsh. Had you not the Privilege of the Gate?

Mr. Holmes. I was no Prisoner.

Mr. Marsh. Had you no Privilege granted you?

Mr. Holmes. Yes, by Prison; he gave it me.

Mr. Marsh. When was Mr. Holmes. About March.

Mr. Acton. I desire to see Mrs. Blifs.

Mr. Holmes. I met Mrs. Blifs. I met her at the House; she thanked God her Husband.

Mr. Baron Carter. Did she die? What did she say?

Mr. Holmes. That she was in the Hospital. I met her on Tuesday.

Mrs. Blifs. My Lord, such Words; there was a Her.

Mr. Acton. Don't you Mr. Baron Carter. I was he fell off the House; ask.

Mr. Acton. Please to ask Mr. Chapman. Blifs was brought in; he had hurt the Sick Ward; Dr. Drow he thought proper.

Mr. Bar. Cart. Tell me, Mr. Chapman. He was of him till he was brought.

Mr. Acton. My Lord, Mr. Baron Carter. Blifs.

Mr. Chap. Yes.

Mr. Baron Carter. What Mr. Chap. I saw nothing.

and the Doctor was called Mr. Acton. I desire he come to him, and let him.

Mr. Chap. Yes.

Mr. Baron Carter. How Mr. Chapman. I can't tell.

Mr. Acton. Please to ask Mr. Chap. Yes, I do not.

Mr. Acton. What Condition the Sick Ward?

Mr. Chap. He was healthy.

Mr. Acton. Did you ever Mr. Acton. Did you see?

Mr. Acton. Please to ask, Mr. Chap. I saw him free.

Mr. Acton. Did you ever Mr. Chap. No; but he.

Charity Money, to get him Mr. Acton. Please to ask.

Ward, and if I stamped upon Health after he came out of.

Mr. Chap. It was, to the Mr. Strange. Was it a great.

Mr. Chap. It was a conflict.

Mr. Acton. Please to ask, Mr. Chap. I drank with him.

Mr. Acton. How was he Mr. Chap. He was well in.

as ever he was in his Life.

Mr. Bar. Carter. Who is Mr. Chap. He keeps the Lodge.

Mr. Baron Carter. You Mr. Chap. He was well in.

and that he had an Ailment, Mr. Baron Carter. Was he.

Mr. Chap. He was well in Mr. Baron Carter. Did he.

Mr. Chap. Never in his Life Mr. Acton. Be pleased, my.

whether if he was to be locked ed up there, than in the Ward.

Mr. Chap. Yes.

Mr. Acton. Whether Prison in any other Room?

Mr. Chap. I have heard several Mr. Acton. Is there any com.

Mr. Chap. No.

Mr. Marsh. You say, there is Mr. Chap. I am sure of it.

Mr. Marsh. Have you no Pl Mr. Chap. I draw Beer for.

fy gives me; and Victuals and died, from Mr. Acton.

Mr. Marsh. What Halfey? Mr. Ward. You say, you he.

gate; What did he complain of Mr. Chap. He did complain.

wished to be in the Hospital.

Thomas Fletcher.

Mr. Acton. Mr. Fletcher, pri House, whether you looked after.

Mr. Fletcher. I visited People me to look at his Leg; I did lo.

used the best Means I could. I Oils, and used them first, and th.

where his Pain was? He said, h

Yes, by Mr. Darcy. I had the Privilege of lodging in the

When was you discharged?

About four Years since, by the Act of Insolvency.

Blifs, being in Court to confront Holmes,

I desire he may give an Account of the Conversation he had

I met Mrs. Blifs on Saffron-hill, and she told me, she

her Husband was dead.

Carter. Did she tell you what was the Occasion of his

That he died of an Ague and Fever in St. Thomas's Ho-

her on Tuesday last.

My Lord, I did meet him on Tuesday, but never said any

there was no such Word spoke.

Henry Chapman was sworn.

Don't you remember Blifs's Attempt to escape?

Carter. I would have you take one thing for granted, that

House; ask any thing that was the Consequence of that.

Please to ask him, if he saw Blifs after he fell off the House.

Blifs was found in the Axe and Bottle Yard, and was

he had hurt his Leg, and as soon as he came, he was put into

Dr. Draper was sent for to him, and used what Means

Yes.

Carter. Where does he go, thro' the Yard to the Lodge?

I saw nothing there; but he was carried to the Sick Ward,

was called out of Bed to him.

I desire he may be asked, whether I did not order the Doctor

, and let him have Three-pence per Day while he was Sick.

Yes.

Carter. How long did he continue in the Sick Ward?

I can't tell how long.

Please to ask him, if he don't remember Blifs's being Con-

fining Ward, and drawing Garnishes for his Fellow-Prisoners.

Yes, I do remember it very well.

What Condition was Blifs in when he was brought out of

He was healthful, but complained of the Hurt of his Leg.

Did you ever see any Irons on him?—Mr. Chap. No.

Did you see him in the Strong Room?—Mr. Chap. No.

Please to ask, my Lord, if he did not usually see Blifs every Day.

I saw him frequently.

Did you ever hear him complain of having Irons on?

No; but he desired me to make Interest to get him the

, to get him out of the Gaol.

Please to ask, if he did not go with Blifs into the Sick

stamped upon his Breast. How long did he continue in

came out of the Sick Ward?

It was, to the best of my Memory.

Was it a great or a little while?

It was a considerable Time; but I can't be certain.

Please to ask, whether he never saw Blifs at Mr. Gresham's.

drank with him there.

How was he in Health there?

He was well in Health; and he said himself, he was as well

in his Life.

Carter. Who is Gresham?

He keeps the Dolphin Ale-house, at the Gaol Door.

Carter. You saw him when he came from Southgate; tell

was well in Health then?

He was well then; but he complained of a Stitch in his Side,

an Ailment, and that Work did not agree with him.

fourteen Days time I took off that Plaster, and put on another, and then

Mr. Baron Carter. Who was the Occasion of his being let out?

Mr. Fletcher. He always gave Alton a good Word; and said, he was re-

leased by a Gentleman coming there with Charity-Money.

Mr. Alton. I desire, my Lord, he may be asked, if he (Blifs) had any

Irons on.

Mr. Fletcher. I never saw him with Irons on.

Mr. Baron Carter. When he came out of that Room, and was put into

the Sick Ward, had he any Irons on then.

Mr. Fletcher. He had no Irons on.

Mr. Alton. Please to ask, if there was any Bedding.

Mr. Fletcher. I saw some Bedding, and asked who lay There. They did

not tell me the particular Man, but told me a Gentleman.

Mr. Alton. Please to ask him, as to the Strong Room, if it was damp.

Mr. Fletcher. I do not think it was any ways damp.

Mr. Ward. You say, there was a great Swelling upon one of his Legs;

Was it not eat into?—Mr. Fletcher. No.

Mr. Alton. Please to ask, if there was any Contusion of the other Leg.

Mr. Fletcher. There was not.

Mr. Alton. Did you ever see Blifs in Irons?

Mr. Fletcher. I have seen him with Fetters on.

Mr. Trigg. Do you remember the Time of Blifs's making his Escape?

Mr. Fletcher. Yes.

Mr. Trigg. Were there other People put in Irons?

Mr. Alton. I desire he may be asked, whether he ever saw Blifs in

Irons, after his last Attempt to escape.—Mr. Fletcher. I did not.

Mr. Baron Carter. What was Alton's Behaviour to the Prisoners, ac-

ording to your Observations.

Mr. Fletcher. I never saw him appear otherwise than very handsome,

and very well to them.

Thomas Whitford was sworn.

Mr. Alton. I desire, my Lord, he may be asked, if Blifs did not attempt

to escape.

Mr. Baron Carter. It is agreed.—Tell me how he was after his

Fall off the House.

Mr. Whitford. I saw him in Prison.

Mr. Baron Carter. Tell me how he was.

Mr. Whitford. From October to February (I was discharged the same

Day) he was as well as ever.

Mr. Alton. Please to ask, what he said in relation to me.

Mr. Whitford. He (Blifs) said, that if it had not been for Alton, he

should not have got out of Prison; and he himself had spoke respectfully

of him, and so had his Wife.

Mr. Alton. Did you go to Mrs. Blifs?

Mr. Whitford. I went to Mrs. Blifs, in the Alehouse, where she lived;

and she desired I would take no notice that her Husband was dead; and

told me, he went into the Country to work, and there caught Cold, and

was carried into the Hospital, and died of it; which was thought the Oc-

casion of his Death.

Mr. Alton. What do you think of the Strong Room?

Mr. Whitford. It is a Strong Room; but the best Room on the Com-

mon Side of the Gaol.

Mr. Baron Carter. Do you say, it is the best Room on the Common

Side?—Mr. Whitford. Yes, for Wholesomeness and Cleanness.

Mr. Alton. Please to ask, what was my general Behaviour to the rest of

the Prisoners.

Mr. Whitford. I never saw you strike a Man.

Mr. Alton. What was my Character among them?

Mr. Whitford. You had a very good Character; you gave Viſuals to

them every Week.

Robert Walter was sworn.

Mr. Alton. Did you ever see me misuse Blifs?

Mr. Walter. Blifs was never used ill by you.

Mr. Alton. Had he any Irons on?—Mr. Walter. No.

Mr. Alton. Did he make any Complaint? Was I there?

Mr. Baron Carter. I remember the Question when Huggins was tried;

it was asked then, if he was there or not? You know I advised Huggins

against answering it (speaking to Mr. Strange). What Condition of

Health was Blifs in after his Fall?

Mr. Walter. In a small Process of Time he walked about the Gaol as

well as I did, and spoke hearty.

Mr. Baron Carter. Did you hear Blifs say any thing of Alton?

Mr. Walter. Never any thing unhandſome.

Mr. Baron Carter. That is not the Question. Have you heard him say

any thing about Alton?

Mr. Walter. I have heard him speak in praise of him.

John Chope was sworn.

Mr. Alton. Please to ask, my Lord, what State of Health Blifs was in.

Mr. Baron Carter. Did you see Blifs? What Condition was he in after

his Fall?

Mr. Chope. He was in very good Condition. About February I eat and

drank with him out of the Place at Gresham's, and he was in good Health

then, and talked of going into the Country to work.

Mr. Baron Carter. What did he complain of?—Mr. Chope. Nothing.

Mr. Bar. Cart. Did you see him when he came back from the Country?

Mr. Chope. I did; and he said, the Country Air did not agree with him.

Mr. Bar. Cart. Did you ever hear him complain of the ill Usage of Alton?

Mr. Chope. No, his Wife told me.

Mr. Baron Carter. I must not hear you tell any thing of her, but what

may contradict what she (Blifs) said. Pray, what did you hear Mrs. Blifs

say, in relation to her Husband's Death?—Mr. Chope. Nothing.

William Bolland was sworn.

Mr. Baron Carter. What have you to say? Do you know of Blifs's

breaking out?—Mr. Bolland. I saw him after it.

C c

Mr.

Mr. Baron Carter. What did he complain of?
 Mr. Bolland. Only of hurting one Leg.
 Mr. Acton. Please, my Lord, to ask, how he was in Health.
 Mr. Bol. In as good as I am.
 Mr. Acton. Did you eat and drink with him?
 Mr. Bol. Often, at one Gresham's.
 Mr. Acton. Please to ask, if he did not fetch Bread.
 Mr. Baron Carter. What signifies that, I don't see how it affects you one way or the other. Did you see him after he was out of Custody?
 Mr. Bol. Yes, I saw him at Gresham's; and I met his Wife on Tuesday last, and asked her to drink some Gin.
 Mr. Baron Carter. I must not let you go on so.—What did he (Bliss) say of the Prisoner?—Mr. Bol. That he was very civil and kind to him.
 Mr. Ward. Did Mrs. Bliss tell you what her Husband died of?
 Mr. Bol. She said, she believed he died of an Ague and Fever.
 Mr. Ward. Did you see his Legs after he fell?
 Mr. Bol. Yes, both, and one of them was swelled.
 Mr. Ward. You are sure both were not swelled.
 Mr. Bol. No, only one.
 Mr. Baron Carter. What is that he says?
 Mr. Strange. Repeat the Answer to my Lord.
 Mr. Bol. I saw only one of his Legs swelled.
 John Westby was sworn.
 Mr. Acton. How was Bliss in Health, after the second Attempt to escape?
 Mr. Westby. I saw him the Night he was brought in.
 Mr. Baron Carter. Did he complain of one or both Legs?
 Mr. Westby. One only.
 Mr. Baron Carter. What Health was he in?
 Mr. Westby. He was in the Sick Ward, and I don't apprehend he wanted Health; he was only lame.
 Mr. Baron Carter. What did Bliss say was the Occasion of his Death?
 Mr. Westby. His Wife told me, he was at Southgate at Work four or five Days, and he came home on the Sunday following; and his Wife said, he was very well, but the Country was too cold for him; but he went back the Week following, and she said, he worked a Day, or a Day and Half, but the Country was so cold he could not bear it. I did not see her after his Death.
 Mr. Baron Carter. What did Mrs. Bliss say?—Mr. Westby. That he had caught Cold, which she took to be the Cause of his Illness.
 Christian Fandy was sworn.
 Mr. Baron Carter. Did you see Bliss after the Fall from the House?
 Mr. Fandy. He lay by me four Months in the Queen's Ward.
 Mr. Baron Carter. The Queen's Ward?
 Mr. Acton. He was removed from the Sick Ward to the Queen's.
 Mr. Baron Carter. What Health was he in? Did he make any Complaint?
 Mr. Fandy. I never heard him make any Complaint, but of his Ankle.
 Mr. Baron Carter. Did he complain only of one Leg?
 Mr. Fandy. It must be one Leg. He could not lye down at Nights; and the other Leg was only swelled.
 Mr. Baron Carter. Did you see him at the Dolphin?
 Mr. Fandy. I did several Times.
 Mr. Baron Carter. Did he complain of any thing at his coming out of the Gaol?
 Mr. Fandy. He desired me to lend him Half a Guinea, and he would go to Work.
 Mr. Acton. Be pleased, my Lord, to ask, if he saw him in the Hospital.
 Mr. Baron Carter. What say you to that?
 Mr. Fandy. Mrs. Bliss told me her Husband was gone to the Hospital; and I went into the Hospital to him, and asked him how he came there? He said, he was at work in the Country, and pulled off his Waistcoat, and caught Cold.
 Mr. Baron Carter. What was the Prisoner's general Behaviour?
 Mr. Fandy. I had been there ten Months, and never saw any Harm done to any Prisoner in that Time.
 Hester Long was sworn.
 Mr. Acton. I desire, my Lord, she may be asked, if she saw Bliss after he came out of Prison.
 Mr. Baron Carter. What say you to that?
 Mrs. Long. I staid at the Dolphin Ale-house to drink when he came out, and I wished him well of being out; he thanked me, and said it was owing to Mr. Acton; and said, God blest him, he got me out. I asked him, If he was arrested again, what he would do? he said, Acton would stand by him. Mrs. Bliss, my Sister-in-law, came there, and she said, that he was as well as ever in his Life; and on the Saturday Se'nnight after, he came to my House, in East-Smithfield, and said to his Wife, Go home to Dinner, for I must go to Mr. Cowley, for I have seven Shillings and Six pence to take of him for Wages; and afterwards I saw him in the Hospital.
 Mr. Baron Carter. What was the matter with him?
 Mrs. Long. Mrs. Bliss desired to lodge with me; which she did, and she told me, her Husband wanted to see me; and when I went to him, he said, Sister, I am going to leave the World: I said, it was only going a little before me.
 Mr. Baron Carter. Pray tell whether he made any Complaint to you of any thing?—Mrs. Long. No.
 Mr. Baron Carter. What Distemper did he die of in the Hospital?
 Mrs. Long. He said no more, than that he caught Cold at Southgate.
 Mr. Acton. I desire, she may be asked, what she heard Mrs. Bliss talk about any Money she was to have in this Prosecution, and from whom.
 Mr. Baron Carter. Answer that Question.
 Mrs. Long. I never heard no more talk till within these four Months; and then a Messenger came, and said, there was Money for Mrs. Bliss in Southwark; and when she went there, the Gentleman was not at home; and when she came back, she said, she should have thirty or forty Shillings. I asked for what? She said upon account of going to swear against Mr. Acton.
 Mr. Acton. Please to ask, whether Somebody gave her any Cloaths, and who.
 Mrs. Long. The next Day after, she gave out, that she was to go to some Gentleman; and I asked to whom? She said, to the Committee, and she should have forty or fifty Pounds; and when she came home, I said, Nanny, I hope you will not be so foolish to go to take away the Life of a Man for forty or fifty Pounds. After that she went to Service.

Mr. Acton. Did you not see Bliss and her Brother together, and what was the Conversation?

Mrs. Long. I said Anne Bliss and her Brother together, and he cautioned her to take care what she did; and she said she was to have forty or fifty Guineas; and he said, Make it up; if you go to Acton, he will give you a couple of Guineas; and she said she could not go, for her Master said she should take a hundred Pounds. She (Bliss) came and said, some time after, she had two Guineas given her by one of the Gentlemen of the Committee, and that she did go and live with him in an Alley by Little Moor Fields.

Mr. Baron Carter. You talk faster than I can take Notes of what you say; you have no Occasion to talk so much. Who did you say, she said, she went to live with?

Mrs. Long. One of the Committee.

Mr. Oglethorpe. My Lord, with humble Submission, I desire leave to speak.

Mr. Baron Carter. Sir, you may.

Mr. Oglethorpe. Then, my Lord, I desire this Matter may be thoroughly sifted, and the Evidences may be confronted.

(Upon which Mrs. Bliss was called to confront Hester Long.)

Mrs. Bliss. When I went to my Sister Long, she said, she would have me consider, not to be ruled by Mr. Newland, and if I would, she could go to Mr. Acton and make it up, and he would give me something: I told her, she never liked my Husband, and Mr. Jennings would not forgive me, if I made up my Husband's Death; and she (Long) said again, her Husband would not forgive me, and wondered how I could pretend to go. I told her after that, my Master Jennings had lent me two Guineas, and desired the Gentleman, where I went to live, that he would see the Money laid out; and gave the Gentleman the Money with his own Hands, and his Wife laid it out for me.

Mr. Baron Carter. Did you not say, that you was to have forty or fifty Pounds?

Mrs. Bliss. I said no such thing.

Mrs. Long. The Person that came from Newland said, it would be a great deal in her way.

Mr. Oglethorpe. I desire she may be asked, who that Person was, and whether he was one of the Committee.

Mr. Baron Carter. Who was Mr. Newland?

Mrs. Long. A Baker in Southwark.

Mr. Baron Carter. Mrs. Bliss, I ask you, whether you said, that Mr. Jennings told you, that you should not take root.

Mrs. Bliss. He said, if they were to offer me 100*l*, I should not take it, not to do Justice to my Husband.

Mr. Baron Carter. How came you to leave Jennings's Service?

Mrs. Bliss. There were so many came flocking up and down after me, that I could not live with him. There came two Gentlemen last Sunday.

Mr. Richardson. You say you could not live with your Master, because so many people came after you. Who did they come from?

Mrs. Bliss. They said they came from Acton.

Mr. Baron Carter. What they said is no Evidence.

Mr. Oglethorpe. My Lord, I must with all humble Submission beg leave to speak. Reputation is a very valuable Thing; and here is an Aspersions thrown out at random against a Member of a Committee, which may affect the Characters of several Gentlemen who are not here present.

Mr. Baron Carter. There are many Committees, and I should have taken notice if any thing had been said of any Committee of the House of Commons.

Mr. Oglethorpe. There are many Committees, as your Lordship says; there is one of Aldermen, there was also another, which I find is not forgot. I would have them explain what Committee they mean; the Charge is a very heavy one, no less than Subornation of Perjury, and this founded on a Hearsay, so as to render it impossible for any Persons to justify themselves: I therefore desire this may be strictly examined into, and insist upon knowing who this Person was, and his Name.

Mr. Baron Carter. Was there any Name mentioned?

Mrs. Long. She said, one of the Committee, and the Committee's Spouse was to lay out the Money for Cloaths.

Mr. Richardson. I ask you, whether or no she said she was to have two Guineas from Jennings, or any one else?

Mrs. Long. From Nobody but Mr. Jennings.

Robert Cole was sworn.

Mr. Acton. My Lord, please to ask Robert Cole if I gave Bliss Money?

Mr. Cole. Some time after the Committee met they had sat once or twice, I met Mrs. Bliss on London-Bridge, and asked her, if she had been with the Committee or Acton. She said, No; but if Acton would give her five Pounds, she would not mention any thing of her Husband's Death.

Mr. Baron Carter. How long was this before Acton was taken up?

Mr. Cole. About three Weeks; I can't be certain.

Mrs. Bliss. I said no such Thing.

Mr. Richardson. Are you subpoena'd?—Mr. Cole. No.

Mr. Richardson. How came you here, if not subpoena'd?

Mr. Cole. Hearing Mr. Acton was to be tried.

Mr. Richardson. How did you know he was to be tried?

Mr. Cole. I heard it by being in the Marshalsea as a Prisoner.

Thomas Rogers was sworn.

Mr. Acton. What Usage did Bliss receive after he fell off the House at the Marshalsea?

Mr. Rogers. His Ankle was swelled as big as his Calf.

Mr. Acton. I desire he may be asked, how the other Leg was.

Mr. Baron Carter. What say you to that?—Mr. Rogers. As usual.

Mr. Acton. I beg he may be asked, whether he was with Bliss when he was brought into the Lodge?

Mr. Rogers. Mr. Acton and I supported him.

Mr. Baron Carter. This Man was accused of beating Bliss; I will not press the Thing upon him to affect himself.

Mr. Serj. Baynes. If he thinks himself innocent, he may be voluntarily a Witness, though he could not be obliged to it.

Mr. Baron Carter. He may be a Witness; but don't let me lead him into any thing that may injure himself.

Mr. Acton. I desire then he may be asked, if he saw Bliss in the Sick Ward?

Mr.

Mr. Rogers. I did; and Mr. Aiton sent for a Surgeon into the Sick Ward to bathe his Leg.

Mr. Aiton. I desire he may be asked, if he was put in Irons.

Mr. Rogers. He was not.

Mr. Aiton. Was you by there all the while?—Mr. Rogers. I was.

Mr. Aiton. I desire he may be asked, if he continued a Prisoner after Blifs was discharged.—Mr. Rogers. I did.

Mr. Ward. You are asking too many Questions.

Mr. Aiton. I desire he may be asked, if he ever saw him after he was discharged.

Mr. Rogers. I did see him, and drank with him; and he was very merry and well.

Mr. Aiton. Rogers, my Lord, was in the Gaol; I beg he may be asked, if the Iron Cap was ever made use of?

Mr. Baron Carter. That is a proper Question. Did you ever know that it was made use of?

Mr. Rogers. I saw it there in Burleigh's Time, and never saw it used from that Time to the Time of my Discharge; it hung up.

Mr. Ward. I ask you, whether you never saw Blifs beat with a Bull's-pizzle, or Rope?—Mr. Rogers. I never saw him beat at all.

(Mr. Baugh was sworn.)

Mr. Aiton. I desire Mr. Baugh may be examined (he has belonged to this Court many Years), whether he has not seen such an Instrument used in burning Felons in the Cheek.

Mr. Baugh. I have seen such an Instrument used to burn People in the Cheek.

(John Grace was sworn.)

Mr. Aiton. I desire he may be asked, whether the Iron Cap was not in the Prison before I came.

Mr. Grace. My Lord, I remember the Marshalsea Prison above a Year before Mr. Aiton knew it; and the Iron Cap hung up there, and I enquired the Use of it. There was an Act in King William's Time for burning Felons in the Cheek; and it was used for that Purpose; and that was the County Gaol, till within these five Years and an Half.

Mr. Aiton. Please to ask if there were not Irons left behind?

Mr. Grace. These Irons were.

Mr. Ward. How do you know?

Mr. Grace. I was Clerk of the Papers five Years.

Mr. Aiton. Please to ask if there was not an Inventory left.

Mr. Grace. When Burleigh left the Gaol, there was an Inventory.

(John Boswell was sworn.)

Mr. Baron Carter. Did you see Blifs after his Fall?

Mr. Boswell. I saw Blifs brought in: I was in the Lodge at that Time, and Aiton had him to the Sick Ward, and had a Surgeon to bleed him, and sent for Ointment to anoint him.

Mr. Baron Carter. Where was he hurt?

Mr. Boswell. It was the Small of both his Legs.

Mr. Baron Carter. Did he complain of both Legs being hurt with the Fall off the House?

Mr. Boswell. He did; it was twenty-four Feet high.

Mr. Ward. Was he dressed of both his Legs?—Mr. Boswell. Yes.

Mr. Ward. Whether the Deceased, before he went into the Sick Ward, had any Irons or Thumb-screws on him?—Mr. Boswell. No.

Mr. Baron Carter. Did you see him carried through the Lodge into the Sick Ward?—Mr. Boswell. Yes.

Mr. Baron Carter. What way was he carried?

Mr. Boswell. Cross the Yard.

Mr. Baron Carter. How long was he in the Sick Ward?

Mr. Boswell. Two Months.

Mr. Baron Carter. Where was he afterwards?

Mr. Boswell. In the Queen's Ward.

Mr. Baron Carter. Did he go out of the Sick Ward into the Queen's Ward?

Mr. Boswell. He went into another Ward before?

Mr. Baron Carter. Was it the Pump Ward?

Mr. Boswell. Yes; he went into the Pump Ward.

Mr. Baron Carter. Did any one meddle with him when he went cross the Yard?—Mr. Boswell. Nobody.

Mr. Aiton. Please to ask, my Lord, how he was in Health after he was abroad.

Mr. Boswell. He lay three Weeks next Door to the Gaol, at the Dolphin; being very intimate, I asked him how he did; he said, very well. And he worked for me in the Gaol now and then a Day, when he was able.

Mr. Baron Carter. How was he when he was out of the Gaol?

Mr. Boswell. He said he was very well in Health, but his Legs were not quite come to.

Mr. Baron Carter. Did he complain of one or both Legs?

Mr. Boswell. Of both.

(Samuel Davenish.)

Mr. Baron Carter. Did you see Blifs after his Fall from the House?

Mr. Davenish. Yes.

Mr. Baron Carter. What State of Health was he in?

Mr. Davenish. In a good State of Health, only lame of his Foot; I never saw any thing otherwise.

Mr. Baron Carter. Did you see him after he was out of Gaol?

Mr. Davenish. I did, and drank with him at the Marshalsea Gate; he was in very good Health.

Mr. Aiton. Please to ask, if he ever saw any Irons upon Blifs.

Mr. Baron Carter. You hear the Question, answer it.

Mr. Davenish. No, directly or indirectly.

Mr. Baron Carter. Did Aiton behave himself well to his Prisoners?

Mr. Davenish. He never behaved himself indecently to any of the Prisoners.

Mr. Baron Carter. Was his Behaviour good or bad?

Mr. Davenish. Very good; I never saw an ill Action of his in my Life.

(Benjamin Brown was sworn.)

Mr. Baron Carter. What do you say?

Mr. Brown. As to what?

Mr. Baron Carter. As to Blifs?

Mr. Brown. I saw Blifs when he fell from the House, and he complained of both Legs; one was worse than the other.

Mr. Baron Carter. What was Aiton's Behaviour towards the Prisoners in general?—Mr. Brown. Very good.

(John Bowdler was sworn.)

Mr. Baron Carter. What do you know of Blifs?

Mr. Bowdler. I was in the same Ward with him seven Months, and he was very hearty and well.

Mr. Baron Carter. How was he after the Fall from the House?

Mr. Bowdler. He had hurt one Leg by the Fall.

Mr. Baron Carter. What was the Prisoner's general Behaviour?

Mr. Bowdler. I never had anything but very good Usage while I was there, which was three Years and three Months.

Mr. Baron Carter. Was the Prisoner there all that Time?

Mr. Bowdler. Yes.

(Elizabeth Gosling was sworn.)

Mr. Baron Carter. How was Blifs after his Fall, when he was brought into Prison?

Mrs. Gosling. He had sprained one of his Ankles, and was carried into the Sick Ward for three Months; he lived at my House, and said, he was as hearty as ever in his Life, only as to the Sprain of his Ankle.

Mr. Baron Carter. What was the general Behaviour of the Prisoner?

Mrs. Gosling. I never heard him have an ill Character, or that he struck any one in his Life.

(Robert Gresham, the Man that kept the Dolphin Alehouse, was sworn.)

Mr. Baron Carter. What State of Health was Blifs in after he came out of Prison?—Mr. Gresham. In February 1726, or 1727 he came to lodge at my House, with two more, and lodged there near three Weeks.

Mr. Baron Carter. Pray take Notice of the Question that was asked. What State of Health was he in?

Mr. Gresham. He looked pale, but eat his Victuals well.

Mr. Baron Carter. Did he complain of any ill Usage?

Mr. Gresham. I never heard him complain of any ill Usage.

Mr. Baron Carter. Did you see him after he had been in the Country?

Mr. Gresham. Yes; he came to my House, I was not at Home when he came, but went up after; and he said the Weather was too sharp for him, and he caught Cold, and could not stay in the Country.

(Jane Lapworth was sworn.)

Mr. Baron Carter. What are you?—Mrs. Lapworth. Nurse of the Hospital. I was there on the 11th of March; Blifs was in there a few Days before.

Mr. Baron Carter. What Condition was he in?

Mrs. Lapworth. He was ill of a Fever, Dr. Coatsworth had the Care of him, and he took Medicines for a Fever and Flux.

Mr. Baron Carter. When did he die?—Mrs. Lapworth. I went to the Hospital on the 11th, and he died on the 25th or 26th.

Mr. Baron Carter. Did he say what was the Occasion of his Death?

Mrs. Lapworth. I heard him say no more, than that he had been in the Country, and caught an Ague and an intermitting Fever.

Mr. Baron Carter. What do you take to be the Cause of his Death?

Mrs. Lapworth. The Fever was the Cause of his Death.

Mr. Aiton. I desire she may asked, whether after he was laid out there were any Bruises in his Head or Face.

Mr. Baron Carter. What say you to that Question, Woman?

Mrs. Lapworth. His Head was shaved, and I saw no Wound, Bruises, or Scabs in any Part whatsoever.

Mr. Aiton. Please to ask if his Wife was there.—Mrs. Lapworth. No.

Mr. Aiton. Did she sit up with him in his Illness?

Mrs. Lapworth. She sat up one Night.

Mr. Aiton. Please to ask, if he voided Blood or not.

Mr. Baron Carter. Answer that.—What do you hesitate at?

Mrs. Lapworth. Not during my Time, from the 11th to the 26th of March.

Mr. Harding. Did you see no Marks about him?—Mrs. Lapworth. No.

Mr. Aiton. My Lord, I'll rest this Part of my Defence here, but beg Leave to call some Witnesses to my Character.

Mr. Baron Carter. Call who you will.

(Sir John Darnell, Serjeant at Law, and Judge of the Marshalsea Court, was sworn.)

Sir John Darnell. My Lord, I did not hear any thing of this Affair, till I came here to the Assizes. I think, my Lord, 'tis five Years ago since I had the Honour of having the Patent for Steward of the Palace-Court; and it is three Years since Aiton has been in the Office that he now is in; and in all the Time that I have known, him both as Turnkey, and when he came to be Deputy, I always thought him a very humane Man. I have often heard Complaints of the Prisoners, and have spent whole Days to mediate between their Keeper and them; and never found but he was very willing to have them made easy. This only I must say, that he was careful of the Custody of them. In my whole Observation, I neither thought him cruel or severe.

Mr. Ward. Do you believe he was guilty of murdering Prisoners by Durefs?—Mr. Baron Carter. I can't ask him that Question.

Mr. Marsh. Was there no Application by Petition to you, as Judge of the Court, from the Deceased?

Sir John Darnell. No; I never heard that he was a Prisoner.

Mr. Marsh. Was there no Petition to you in relation to six Persons being put in Irons?—Sir John Darnell. No.

(Edmond Halfey, Esq. was sworn.)

Mr. Baron Carter. Sir, the Prisoner calls you to his Character.

Mr. Halfey. I have known the Prisoner ever since he was at the Marshalsea, both before and since he was Deputy, and never heard an ill Character of him, but that he was a very honest Trader, and a humane Man, and paid very well for what he had.

Mr. Ward. Does he keep a Shop?—Mr. Halfey. He buys Bread and Beer. (Malthus Ryall, Esq. one of his Majesty's Justices of the Peace for the County of Surry, was sworn.)

Mr. Ryall. I have known the Prisoner better than twelve Months, and I thought him improper for the Post he was in, from his too great Compassion.

John

John Lade, Esq. (one of his Majesty's Justices of Peace for the said County) was sworn.

Mr. Baron Carter. You must speak to the general Character of the Prisoner.

Mr. Lade. I live in the Neighbourhood, and most commonly am applied to if any Abuses have been committed in the Prison; and I never have heard any Complaint of the ill Usage of Prisoners.

Mr. Baron Carter. What is his general Character?

Mr. Lade. His general Character is good.

Mr. Haysey was sworn.

Mr. Haysey. The Prisoner was four Years a Servant with my Father, and his Behaviour was very well; he was a good-natur'd Man.

Mr. Ward. In what Capacity did he serve your Father?

Mr. Haysey. As a Butcher.

John Morris was sworn.

Mr. Morris. For almost fifty Years last past I have visited all the Prisons about London, and I believe I have discharged three hundred poor Prisoners, and I never found better Usage in any Gaol than in this.

Mr. Aston. I desire he may give an Account what Sort of Place the Strong Room is.

Mr. Morris. I have been of the building Trade, and have taken particular Notice of the Strong Room; and would choose it rather than any other on the Common Side. This rises ten Inches from the Surface, and is boarded, and covered at Top with a Tarpaulin; and the others go down a Step.

Mr. Aston. Please to ask if any Wet could come in.

Mr. Morris. I don't believe any Wet could get in.

Mr. Marsh. It had not been built long when he saw it.

Mr. Terrant, in the Borough.

Mr. Terrant. I live in the Borough, and the Prisoner has as good a Character as any one in the Neighbourhood.

Mr. Aston. I desire, my Lord, he may be asked as to the Strong Room.

Mr. Terrant. I was curious to see the Strong Room. It is a boarded Place of nine Feet Square.

Mr. Baron Carter. Did you see it?—Mr. Terrant. Yes.

Mr. Baron Carter. Was it dry?—Mr. Terrant. It was.

Mr. Baron Carter. Was there any Stench?—Mr. Terrant. It is very close.

Mr. Marsh. When did you go to see it?

Mr. Terrant. About two Months ago.

Mr. Marsh. Was it over the Common Sewer?—Mr. Terrant. No.

Mr. Ward. Was it dry Weather when you saw it?—Mr. Terrant. It was.

Mr. Taylor, of the Borough.

Mr. Aston. I desire he may acquaint the Court what is my Character.

Mr. Taylor. In relation to his Character he is a very honest Man, and a Man of Humanity to all People.

Mr. Aston. I desire he may be asked as to the Strong Room.

Mr. Taylor. The Strong Room is dry; there is a Drain runs some Distance from it, but not near it.

Mr. Whitaker, of the Borough.

Mr. Whitaker. I have been with Aston in and out of Gaol, and never saw him do any thing ill.

Mr. Aston. Please to ask him, my Lord, about the Strong Room.

Mr. Baron Carter. Give an Account of what you know of that.

Mr. Whitaker. The Strong Room is dry, there is no Drain runs under it, but there is a Drain about five Yards from it.

Mr. Lamb was sworn.

Mr. Lamb. I have had the Happiness of knowing him these three or four Years. He has had a good Character, and was a Man of Humanity.

Mr. Sydall, of the Borough, Apothecary.

Mr. Baron Carter. What was the Prisoner's Character?

Mr. Sydall. Having had recourse to the Gaol, the Prisoners told me he had a very good Character.

Mr. Brown was sworn.

Mr. Baron Carter. What Character had the Prisoner?

Mr. Brown. I believe as good as any Man's can be.

Mr. Harrison was sworn.

Mr. Harrison. I have known his Character these three or four Years, and he is a very modest Man, and of a good Behaviour.

Mr. Aston. My Lord, I humbly apprehend I have called a sufficient Number of Witnesses to my Character, and will rest my Defence here. I apprehend it can't be conceived, that any Man can be guilty of such Inhumanity as is here laid to my Charge, and to live a Year.

Mr. Baron Carter. You must not say that; for then there could have been no Room for the Prosecution.

Mr. Aston. By all Circumstances, my Lord, this Man must certainly die a natural Death; and I humbly apprehend, that they must be mistaken in point of Time, for that no Irons were used the second time of his attempting to escape.

Mr. Marsh. I would not be wanting to my Clients, and yet would preserve all Rule and Order, and must beg leave to observe—

Mr. Serj. Baynes. I have been concerned in several criminal Prosecutions, and never knew it admitted.

Mr. Strange. The Prisoner is not allowed Counsel to speak for him in his Defence; therefore the King's Counsel have no Right of Reply. It was not allowed in Huggins's Trial.

Mr. Baron Carter. In Huggins's Trial, Mr. Justice Page and myself would not allow it.

Mr. Baron Carter. Gentlemen of the Jury, the Prisoner stands indicted for the Murder of Thomas Bliss.

To prove this, a great Number of Witnesses have been called on the Part of the King, not less than sixteen, to make good the Charge.

The first Thing necessary to be proved is, that the Prisoner at the Bar had the Care and Custody of the Prisoners; for which Purpose John Wilson was called, who proved that Darby was Keeper, and the Prisoner Aston Turnkey and Servant, and acted under Darby. That Part stands plain, that the Prisoner at the Bar had the Care and Custody of the Prisoners; and if he has behaved in such a Manner to Prisoners as Death ensues, he must answer for it. It is said, that every Prisoner must be treat-

ed with Humanity, and the Law is very tender, and directs that no Prisoner shall die in Gaol, but the Coroner's Inquest must sit upon his Body; and the Reason of that is, that he should not be killed by the Duties of the Gaol.

The Question stands singly, whether upon what you have heard, there has been such a Behaviour of the Prisoner to Bliss, that it has been the Occasion of his Death. If that is so, then you will find the Prisoner Guilty.

Wilson spoke much of the Escape; he talked about it, but did not know when he escaped; he only goes to that. He says, that he never did see Aston beat him; but that he was well to some, and beat others, which came from the Prisoner's own Question; therefore I was put to ask it, and I have told you the Answer.

The next Witness, the Wife of the unfortunate Man, says, that her Husband was there for a small Sum of Money, but that is not material; her Husband was almost famished and starved, and therefore attempted a second Time to escape. The Means he used to escape is not material, that is not what you are to rely upon. She says, there was some Assistance given him; a Rope was provided, and he unfortunately miscarried in the Attempt; and he was brought back into the Prison again, and she saw him beaten by Nichols, Page, and Rogers; and, what is remarkable, she saw the Prisoner beat him with a Bull's-pizzle, and the End of a Rope; that he cried out, if he had any Mercy, he would have Mercy upon him. He then put him into the Strong Room. As to the Nature of the Place, that is a Consideration I shall take up by and bye. She says, she saw him with an Instrument of Iron on his Head; that the Blood came out of his Mouth, and out of his Thumbs; that he had Thumb-screws on his Thumbs, and Sheers on his Legs; that she saw him flung down, and saw the Prisoner on Top of him several times. After he had treated him in this Manner, he began to relent, thinking he might die, and it was time for him to take Care of him, and sent him a Piece of Meat. She says, his Legs were swollen, his Body was swollen; she got him a Pair of Stockings, but his Legs were so swollen, she could not get them on. After this, when he was removed to another Ward, she said, he grew something better. That when he was discharged, he used his Endeavours to get Work; (Gentlemen, you did observe the Question came from the Prisoner) but tho' he was with the Man that he treated with, he got another, he could not work, his Legs were swollen, and there were Marks on them. All the Time, to the Time he was put into the Strong Room, he constantly complained of one Breast and his Side; and afterwards, when he became so bad that he could not work, he was put into the Hospital. One thing is very observable, that all his Discourse was, when any one asked him concerning his Usage, that he said, he did believe that he should never recover it, but would lay his Death to Aston; this Evidence was given by the Widow; she was asked by a Question from the Prisoner, whether she told her Sister of this? She said, No; did you tell your Mother, No; her Mother and she were not upon good Terms, and she never was with her but a very short Time. Then she was asked, if Newland did not send for her; she said Yes; it was thought that he was a very considerable Man; and when she was asked, what did he say to you, he said, he would have her Husband done Right to. Then there was a Question asked of Hyster Long, as to Money, she (Bliss) said she was to have; and Bliss says, that she never did say any such thing.

Susannah Dodd; she gives you an Account that she has seen Bliss in Irons in the Strong Room; that he was treated cruelly; that he had then Screws upon his Thumbs. There was a very particular Circumstance, that he desired her to chew his Meat for him, for that he could not do it himself, by reason of having the Scull-cap on; that she carried him a Three-farthing Mug of Ale, and the Screws were upon his Thumbs, therefore, she was forced to give him the Drink, as he could not put the Mug to his Mouth to drink, because of his Thumbs being confined; that she saw Fetters, very large ones, on his Legs, and there was a Pair of Sheers cross his Legs; that he continued there two Days, and she saw him after, and saw his Thumbs bleed; and the Strong Room was a Strong Room, and ledead, and that she thinks it not an unhealthful Room.

Butler, she gives an Account of his Attempt to escape; and tells you, that she saw the Prisoner beat him (Bliss) with a Bull's-pizzle, and that when Nichols was beating him, she saw him fling the Deceased down, and saw Aston stamp upon him three times, and shewed the Place of his Breast that he complained of, and that his Death was owing to such Usage. It was his Belly and Stomach that he stamped upon, and that he was very ill when he did it; that both Legs were swelled; but that he said, he should do very well but for the Pain in his Side. She says, that the Strong Room was not fit to put in any human Creature; that he went out about August, and came about Christmas. The Prisoner asked as to his Character: she said, it was good and bad; and says, that she heard there was a Complaint made, that Aston was the Author of his Death.

Matthew Bacon taken no notice of, Sic MS.

Mrs. Gillis, she agrees as to the Fall from the House; and she says, that Nicholas, Page, and Rogers held Bliss till Aston beat him with a Bull's-pizzle; that he was carried to the Sick Ward. She was asked how long they were using him in this Manner; she said, half a quarter of an Hour. Reputation is not so material to be made use of; you are to consider if the Fact was done.

The next Witness was one James Abbot; he saw Bliss, (I will take it in his own Words) he saw him so drubbed, that he never saw any one so drubbed in his Life, with a Rope and Bull's-pizzle. He says, he did not see Aston there, but after charges him with it; and he agrees as to the cruel Behaviour of Aston. If the Act was committed, he might be there, and yet Aston not seen by him. He was asked, as to his (Aston's) Character; and he said, he saw him beat many.

Matthew Brandon says, that his Legs were much swollen, and the Skin was broke; that he saw the Marks of the Irons. As to the Fall from the House, and the straining of one of his Legs, he knows nothing of it. He swears directly to the Skin's being broke of both Legs; and he says, that he often talked with Bliss, and he said, that he did believe the Injuries he had received from the Prisoner would be the Death of him, and gave an Account, that the Marks round his Legs were circular; that it must be owing to the Irons, and not to arise by a Strain, is the Observation the Counsel make, but you will be governed by Sense and Reason.

May

Mary Remond; she says, that she saw him very often, and that his Legs were so bad, that the Irons were forced to be pulled off; that the Irons eat into his Legs; and into his Ankle, they had eat very deep; that the Skin was broke, and they were sore; this she saw in the Sick Ward: That he was in so terrible a Condition from his Poverty, that he had nothing to help him, no Cloaths, but a Piece of Blanket; she relieved him, and carried him some of her Husband's Cloaths. It is remarkable, that she carried him a Pair of Stockings, and they would not fit; she could not get them on. She says, they were her Husband's, and that her Husband was not a very large Man.

Peter Purchase; he says, that his Legs were very much swelled, and he took it to be the Marks of the Irons; he saw his Thumbs very black, which he took to be hurt by the Thumb-screws.

Commins; he says, that his Legs were very much swelled, and apprehends it to be occasioned by the Irons; compares it to the Fetlock of a Horse cut with a Clog; that the Strong Room was a Place of Terror, to keep them from being disorderly; and that he heard *Acton* say to *Blifs*, he thought he had given him enough, but he would give him more.

Edward Murfey says, That he never saw any thing so much beaten in his whole Life; that his Legs were black, and blue, and green. The Counsel desired you, Gentlemen, to take Notice what this Witness said, that he complained of his Side, which had been hurt by the Bruises he had received from *Acton*.

Roberts says, That he went to Mr. *Darby* upon a particular Occasion; but I can't mention to you what he said, because 'tis not Evidence; that he confirms the others in some Measure, that he had rather have larger Irons; that his Legs were so swelled, that he could scarce see the Pair of Fetters on the Side, because the Swelling came over.

The King's Counsel called three Witnesses, as to the Deceased working at *Southgate*. *Cowley* says, he wanted Work, and he was willing to let him have it. The Man went down, and came up again, and the second Day he treated him with Mutton Broth, &c. but this is not material. But he says, he complained of his Side, and always said he had received it from the Prisoner at the Bar; he said, there were Holes in his Legs, and that *Acton* was the Author of his Death.

Cowley, the younger, says the same; that they treated him like an old Acquaintance, and provided him with Broth; that the Man was so sick he could not work; that his Legs were swollen black and blue, and he complained of his Breast; both shewed with their Hands how, by pointing to their own Breast, and said, he pointed to his; and that *Blifs* said, if he died, he would lay his Death to that Rogue *Acton*.

Parker says, That he was to be his Comrade, to be employed in some Task-work; that though they laid him by the Fire, his Sickness increased, and they brought him to Town in a Cart; and all his Complaint was, thro' the Injury he had received from *Acton*; that his Legs were swollen.

Therefore, upon the whole, what Credit you will give to the Witnesses for the King, is in your own Breasts.

Now, as you have given great Attention to what has been said against him, you will take Notice of what has been said on his own Part; if it is contradictory, I can't say any Thing to that, you will weigh them in an equal Balance.

He has called twenty-three Witnesses, to answer the Evidence for the King. The first is,

Samuel Bullock; he says, That he saw *Blifs* brought in after his Fall; that he had hurt his Ankle; but he saw no Barbarity used; and saw him carried into the Sick Ward. The next is,

Robert Holmes; he says, That there were no Irons only on one Leg; and *Acton* always used him well, and if it had not been for *Acton*, he would have perished. This Character differs from what has been laid before you. He gave an Account that he caught a bad Cold, which was the Occasion of his Death; he says, that he never saw him in the Strong Room; and that as to his Health, it was very good the whole Time. This is their Opinion of *Blifs*; these People would make you believe that he was perfectly well, and had received no Injuries from *Acton*. He says, further, that he met the Woman on *Saffron-Hill*, he asked how her Husband did? When he asked her, she said, she thanked God he was dead, (the Woman was glad to get shut of him) and said he died of an Ague and Fever.

Chapman saw him after the Fall. The first Place he begins with, is the Sick Ward, and that *Acton* sent Doctor *Draper*, and that nothing was done to him in the Yard. The Yard is the Place that the principal Evidences speak to; that the Prisoner was humane to him, that he had so great Compassion for him, that he allowed him Two-pence Halfpenny or Three-pence a Day, till he was better; therefore, he would have you to believe he was a very humane Man, and that he could not use the Man as others say the Prisoner did. He says, that he was removed to the Pump Ward, and was Constable there, and came to the Tap; that he saw him at *Gresham's* very well, and saw him after he came from *Southgate* very well. It is very remarkable he should never complain of *Acton*. He says, that he looked upon it that the Occasion of his Death was, from the Cold he caught at *Southgate*; that the Strong Room was not so terrible a Place; that it was a dry Room, though a Strong Room; that the Prisoners were so far from thinking this Room a Terror, that they chose it; that he complained only of one Leg, which differs from the other Witnesses. All were conversant with it.

Thomas Fletcher you will find was a Surgeon; he says, one Leg was very much swollen, from the Fall he got; he said it was a Tumour, in his Way of Dialect; he went home, and brought proper Things, got some Ointment and a Sear-Cloth. He says, that *Blifs* told him he should never have been discharged but for *Acton*.

Thomas Whitfield; he tells you Mrs. *Blifs* told him, that her Husband had got Cold in the Country, and had a Fever and Ague. He was asked in relation to the Strong Room, which he said was the best Place on the Common Side; that the Prisoner had a good Character, and gave Victuals to many of the Prisoners that wanted.

Robert Walter says, he was not privy to any ill Usage *Blifs* received from the Prisoner; that he walked well, and talked heartily, and complained of nothing, only one Leg, which he apprehended he had hurt by the Fall. He spoke in praise of the Prisoner for his Humanity.

The next is *John Chope*; he says, *Blifs* was well in the February before he died; he complained of nothing of the Prisoner; that after he was dis-

charged, he says, he went to *Southgate*; that he came from thence, and after that complained of a great Cold.

William Bolland says, that he never saw the Prisoner misuse *Blifs*; that he complained only of his Leg; that he eat and drank well; that he saw him after he was discharged, and he said, that the Prisoner had been civil and kind to him.

Westbury says, That he complained of one Leg only; that he went into the Country and caught Cold, and that was the Occasion of his Illness.

Fandy; he says, that he lay with him in the Queen's Ward several Months. I don't apprehend he was in the Queen's Ward, but he did prove him to be there. I will tell you how that Matter was: This Man speaks to a considerable Length of Time after his escaping; the Time is not settled, both are at a Loss on the one Side and the other; it should have been reduced to a Certainty, because the Indictment is confined to the Second Escape. He says, one Leg was bruised only, the other swelled; that he liked to drink, and did not go to Bed, and sat up, and that was the Reason of it; that he saw *Blifs* in the Hospital, and he said to him that he had caught cold; that he was at Work in the Country, and that he was brought into that Condition by an Ague and Fever.

Hester Long has given a long Evidence; I hope you have taken it, because it is a very long Evidence, and affects the Character of *Blifs*. She says, That she saw him several Times, and that he was as well as ever he was in his Life; that he was to go to his Master for Seven Shillings and Sixpence, the Profits of his Labour; therefore he was fit to work, and had obtained that Liberty from *Acton*. It seemed he had some Discourse with Mrs. *Blifs*, and said she was her Sister-in-Law, and she desired Leave to lodge with her. After the Death of her Husband, she never heard any Complaint made about *Blifs*; that four Months ago, a Gentleman sent to her (*Blifs*) to swear against *Acton*; that *Long* was there, and *Anne Blifs's* Brother, and he cautioned her not to concern herself; that a Man's Life ought to be taken care of with the utmost Caution; that she was to leave her Master, one *Jennings*, to go to another Place; and *Jennings* said, that she should not make it up for forty or fifty Pounds. Her Brother said, that if she would make it up with *Acton*, she might have forty or fifty Shillings. *Blifs* denies that she had any Sum, that she was never offered forty or fifty Pounds to swear, and her Master said she should not take any, and advised her, that if they would give a hundred Pounds not to take it, to hinder the Prosecution. She (*Blifs*) says, that *Jennings* let her have two or three Guineas, and she went into another Service, and not being very capable, had two or three with her to lay it out for her.

Cole says, That *Anne Blifs* told him, she was to have five Pounds for swearing against *Acton*. This Discourse was upon *London Bridge*. How far you will think this probable, not having any other Discourse, that she should immediately introduce this, I must leave to you.

Rogers; he says, That he held the Man after the Fall; that he saw him that very Day; that he complained only of one Leg, and that he never knew the Scull-cap used.

Grace says, That he had seen such an Instrument in the Prison, and that it was made use of to keep their Heads steady, when Felons were burnt in the Cheek; that this Instrument was never designed for any Prisoner; that this was the County Gaol a few Years ago, and that it was not made use of since.

Boswell says, He knew *Blifs* when in the Sick Ward; that he was lame of both Legs; sometimes was lame of one, sometimes of both, but was very well in Health.

Samuel Davenish says, That he was with him frequently, and that he was always very well, only had a lame Foot, and said he had no Irons on. The Prisoner asked him in respect of his Behaviour; he gives him a very good Character, that his Behaviour was just, charitable, and humane.

Brown says, That he complained of both Legs, one was worse than the other; and as to his Behaviour, gives him a very good Character.

Bowdler, he was with him in the same Ward; and says, that he only complained of one Leg, the other was very well, and gave him a very good Character.

Gosling saw him carried into the Sick Ward, and says he only complained of his Ankle.

Robert Gresham says, That he lodged at his House three Weeks after he was discharged, and only complained of a Cold he had got from the bad Weather in the Country.

Jane Lapworth, the Nurse; she is a very maternal Witness indeed; she says, that he had an Ague and Fever, and gave a Description of the different Operations of it. He, poor Man, died of a Fever; he had Medicines applied by Doctor *Coatsworth*. She says, she apprehended he died of a Cold, which brought him into a Fever; what was very remarkable, she laid him out, and there were no Bruises on his Head; all his Body was clean from Scabs, or any thing that looked like ill Usage.

Now, Gentlemen, what Credit this will receive from you, I can't say; but this Evidence strongly contradicts all that have given you a different Account. I am very glad you have taken Notes; and I desire, if I have made any Mistake, you will tell me, on either Side.

As to the Character of the Prisoner, his Witnesses say he is a very humane Man; and if you have them down, they are in Number sufficient too.

My Brother *Darnell* says, he has been Steward of the Palace Court about five Years, and never heard any Complaint against the Prisoner; that it is three Years since *Acton* has been in the Office he now is in, and in all that Time he thought him a very humane Man, and never thought him cruel or severe.

Mr. *Halfey* says, he was a very humane Man.

Mr. *Ryall*, Mr. *Lade*, Mr. *Haysey*, give him a very good Character.

Mr. *Morrison* says, That the other Rooms were under Ground, and this Strong Room was ten Inches above; it was a dry Place, and covered over the Top with Lead.

Mr. *Terrant* says, That he thinks the Strong Room a very dry Place; and gives *Acton* a good Character.

Then, Gentlemen, Mr. *Taylor* says, he was a Man of Humanity; and that there was no Drain near the Strong Room.

Mr. *Bowdler* gives him a good Character; and four or five other Witnesses have been called up, and given him a very good Character. As to the Strong Room, I don't find much Evidence to affect the Prisoner as to that. There is great Difference in Opinion as to what immediately

gave him the Distemper to carry him off. A great many again say, that he did seem to be pretty well in Health; but what will particularly affect the Prisoner, is what happened in the Prison Yard. Upon the whole, if you are satisfied that the Prisoner treated *Bliss* in that Manner as the King's Witnesses said, and that was the Occasion of his Death, and that he had treated him ill, and beat him, you will find him Guilty; but if he was not so treated, and it was not the Occasion of his Death, you will find him Not Guilty.

There are great Contradictions in the Evidence, I scarce ever heard so great. It is a Matter of great Consequence, and deserves your mature Consideration.

Then one was sworn to keep the Jury, and they withdrew, and Baron Carter went to Dinner; and when he returned, they gave their Verdict.

Cl. of Arraignment. Gentlemen, are you all agreed in your Verdict?
Omnes. Yes.

Cl. of Arraignment. Who shall say for you?

Omnes. Foreman.

Clerk of Arraignment. William Acton, hold up thy hand. (Which he did.) Look upon the Prisoner; how say you; Is he guilty of the Felony and Murder whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

XV. The Trial of WILLIAM ACTON, for the Murder of JOHN BROMFIELD, at Kingston upon Thames, in Surrey, before the Hon. Mr. Baron Carter, August 2, 1729.

Die Sabbati, 2 Die Augusti, 1729.

Proclamation was made for all Persons concerned to attend.

Clerk of Arraignment.

YOU good Men that are impanelled to inquire, &c. answer to your Names, and save your Fines.

Clerk of Arraignment. William Acton, hold up your Hand. (Which he did.) You stand indicted by the Name of William Acton, &c.

How sayest thou, William Acton, art thou guilty of the Felony and Murder whereof thou standest indicted, or Not Guilty?

William Acton. Not Guilty.

Cl. of Ar. Culprit, how wilt thou be tried?

William Acton. By God and my Country.

Cl. of Ar. God send you a good Deliverance.

He was also severally arraigned upon two other Indictments; one for the Murder of Robert Newton, and the other for the Murder of James Thompson, to which he severally pleaded Not Guilty, and put himself upon God and his Country in Manner aforesaid.

Then Proclamation was made for Information.

Cl. of Ar. Thou the Prisoner at the Bar, those Men that thou shalt hear called are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore if thou wilt challenge them, or any of them, your Time to speak is as they come to the Book to be sworn, before they are sworn.

Then the same Pannel was going to be called over, which had tried him the Day before.

Upon which Mr. Paxton, the Solicitor for the Crown, three several Times insisted upon a new Pannel.

Mr. Strange. The other Pannel cannot write; these are Men of Ability and Experience.

Then the Pannel was called over.

Mr. Ward. We challenge Robert Parkhurst, we have an Affidavit ready to produce if Occasion (but the Challenge being allowed, the Affidavit was not read).

Then the Jury sworn were as follows:

Thomas Cole,	William Goswell,	William Browne,
Miles Poole,	John Sigins,	John Walter,
Vincent Hollis,	George Wadbrook,	Robert Patten,
Charles Buckland,	Thomas Bandford,	James Wellbeloved.

Cl. of Ar. William Acton, hold up thy Hand. (Which he did.)

Mr. Strange. My Lord, you will please to admit him to the other Bar.

Mr. Baron Carter. It shall be allowed.

Cl. of Ar. You of the Jury, look upon the Prisoner, and hearken to his Charge. He stands indicted by the Name of William Acton, &c. (prout in the Indictment mutatis mutandis.)

Mr. Acton. I desire it may be read in Latin.

Mr. Baron Carter. You had the Indictment Yesterday read in Latin, you found it no Advantage to you; if you purpose any Advantage by it, you may have it read.

Mr. Acton. I desire my Counsel may hear it read.

Mr. Baron Carter. Let it be read. (Which was accordingly done.)

Mr. Harding. My Lord, and you Gentlemen of the Jury, I am Counsel for the King. The Prisoner at the Bar stands indicted for the Murder of John Bromfield. The Indictment sets forth, That—

We Will call our Witnesses, and don't doubt, if we prove him guilty, but you will find him so.

Mr. Ward. Gentlemen of the Jury, you see what the Nature of the Indictment is; it is for the inhumane and barbarous Treatment of John Bromfield, of which he died. If we shew you, that that was the real and true Cause of his Death, it cannot be doubted but that he put him to Death. Gaolers ought to treat their Prisoners with Humanity; they are to confine them in a Place of a secure Custody, but not to treat them inhumanely.

On the first of March, 1725, Capt. Bromfield became a Prisoner in the Marshalsea Prison, Gentlemen; he fell under the Displeasure of Acton, the Prisoner at the Bar, and in order to satisfy his Resentment, he beat him inhumanely and unmercifully, that the Marks and Strokes of the Blows were visible after his Death. Not satisfied with this, he put him in double Irons, which the Man could scarce well bear; and put him into a Hole which is damp, dirty, and strait; so that he could not stand upright, or lie at length: He was kept there for several Days. The Prisoner then began to relent, and took him into another Place, but did not take the Irons off at that Time; but the Man having contracted an ill State of Health, when the Prisoner thought it would be the Occasion of his Death, he then took off the Irons; but that was too late, for he soon died. This, Gentlemen, will shew you the Reason why, consequently, the Coroner's Inquest should have sat upon the Body of Captain Bromfield; but no Coroner's Inquest did sit; and the Reason is plain that it did not, for if it had, they would have seen that he had come to his Death by a violent Occasion. If we prove this to be the Case, Gentlemen, you will do Justice to your Country, and find him guilty.

We will call our Witnesses to prove the Facts.

William Wheeler was sworn.

Mr. Ward. Do you know the Prisoner at the Bar?

Mr. Wheeler. Yes.

Mr. Ward. Do you know whether he was Turnkey in 1725?

Mr. Wheeler. He was Turnkey to Mr. Darby.

Mr. Ward. What was the Business of Turnkey?

Mr. Wheeler. To take care of the Prison and Prisoners.

Mr. Ward. Did you know Captain Bromfield to be a Prisoner then?

Mr. Wheeler. Yes; he was a Prisoner in the Beginning of the Year 1725.

Mr. Ward. Give an Account of what Usage you saw Captain Bromfield have.

Mr. Wheeler. I lodged in the same Room with him. We were locked up; and coming down Stairs there was a Hatch, which was locked, and one Perkins kept the Key of it; and he made Words to let Captain Bromfield come down.

Mr. Ward. What was Perkins?

Mr. Wheeler. Servant to the Gaoler.

Mr. Ward. Go on.

Mr. Wheeler. There were some Words passed; but at last Perkins did let the Captain down, and he went into the Chandler's Shop, and Perkins and the Captain fell into greater Disputes; and the Captain took a Knife, and jabbed it into Perkins's Breast.

Mr. Ward. Did you see Acton there?

Mr. Baron Carter. What did he do then?

Mr. Wheeler. He dropt down the Penknife, and it was found in the Chandler's Shop. The Captain was carried into the Pound.

Mr. Baron Carter. Where is the Pound?

Mr. Wheeler. The Pound and the Chandler's Shop join.

Mr. Baron Carter. Where was he carried from thence?

Mr. Wheeler. He was carried from the Pound to the Lodge; further I could not see. He took him away refractory.

Mr. Ward. Did you see him with Irons on?

Mr. Wheeler. I saw him with Irons on in the Evening.

Mr. Foster. What did Acton order?

Mr. Wheeler. After the Court broke up, Acton came down and spoke to the Captain; and asked him, what was the Reason that he stabbed the Man in a Passion.

Mr. Ward. Did you see the Fetters on?—Mr. Wheeler. I did.

Mr. Ward. How long was he confined in the Hole?

Mr. Wheeler. He continued in the Hole from the Time he was taken out of the Lodge, till the next Day Nine of the Clock.

Mr. Ward. Did you see Acton with him during all or any Part of this Time?

Mr. Wheeler. When Acton had ironed him, he turned him over from the Master's to the Common Side.

Mr. Ward. How long had he the Irons on?

Mr. Wheeler. He had the Irons on about five Days; Acton sent him from the Hole to the Common Side, to George's Ward.

Mr. Ward. When did he die?

Mr. Wheeler. He died the latter End of June.

Mr. Baron Carter. When did he die?

Mr. Wheeler. About four Years ago, the latter Part of June 1725.

Mr. Baron Carter. Tell me when the Fact was?

Mr. Wheeler. I can't tell the Month.

Mr. Ward. Did you see him after he was dead?—Mr. Wheeler. Yes.

Mr. Ward. What Condition was his Body in?

Mr. Wheeler. It was all black.

Mr. Ward. What was the Occasion of its being black?

Mr. Wheeler. It was said to be the Jaundice.

Mr. Ward. When did it turn black?

Mr. Wheeler. It turned black after his Decease.

Mr. Ward. Was it one continued black, or was it in Streaks?

Mr. Wheeler. It was one intire black.

Mr. Ward. Did the Coroner's Inquest sit upon him?

Mr. Baron Carter. That is no Charge upon the Prisoner. It was not in Fiens's Case; if the Coroner's Inquest had sat on all others, and had not sat upon this Man, then this had been Evidence; but as 'tis generally omitted, it is no Evidence.

Hugh Martin was sworn.

Mr. Ward. Did you know Capt. Bromfield?

Mr. Martin. Yes; he was Prisoner about the Beginning of the Year 1725.

Mr. Ward. Give an Account of what Usage he received from Acton.

Mr. Martin. He was Bedfellow with me in the Nursery Ward, and on a Court Day he was down in the Chandler's Shop; and one of Acton's Servants would have had him go up into his Ward, but he refused to go, and, upon that, the Servant would force him up.

Mr. Ward. What is the Servant's Name?

Mr. Martin. John Perkins.

Mr. Ward. Go on.

Mr. Martin. As they had a Scuffle together, Capt. Bromfield privately stabb'd him, and dropt down the Knife. There was an Outcry, and a Doctor was sent for; and in the Time that he was called, Acton's Servant carried the Captain to the Common Side.

Mr. Ward. Was *Acton* there at that Time?

Mr. Martin. I did not see *Acton*.

Mr. Ward. Who took him away?—Mr. Martin. *Acton's* Servants.

Mr. Ward. Did *Acton* give any Orders?—Mr. Martin. I don't know.

Mr. Ward. Did you see *Acton* in the Yard?—Mr. Martin. I saw *Acton* in the Yard, or between that and the Lodge.

Mr. Ward. Which Way was Captain *Bromfield* carried?—Mr. Martin. He was taken out of the Chandler's Shop, and carried through the Pound.

Mr. Ward. Was *Acton* in the Chandler's Shop, or Pound?

Mr. Martin. No.

Mr. Ward. Did you see *Acton* before Captain *Bromfield* was carried into the Yard?

Mr. Baron Carter. You say you saw *Acton* in the Yard, and that Captain *Bromfield* was put on the Common Side?—Mr. Martin. Yes.

Mr. Ward. After he was brought into the Yard, did you see any Thing done to him?—Mr. Martin. I did not see any Thing done to him, because I could not go out, I was confined.

Mr. Ward. Did you see any body beat him?

Mr. Martin. No, but I saw Irons on him.

Mr. Ward. What Irons?

Mr. Martin. They were double Irons; I saw him come out of the Hole the next Morning with Irons on, between eight and nine o'Clock.

Mr. Ward. Who put him in the Hole?

Mr. Martin. I was not there to see it.

Mr. Ward. What Sort of a Place is the Hole?

Mr. Martin. It is a little Place under the Stairs; a little bigger than a large Coffin in Width and Length.

Mr. Ward. Did he lye or stand?—Mr. Martin. He stood, but could hardly stand upright; he had nothing but the Earth to lie on.

Mr. Ward. Was the Earth wet?—Mr. Martin. It was dampish.

Mr. Ward. How do you know?—Mr. Martin. I saw it at that Time.

Mr. Harding. Was there any Door to it?—Mr. Martin. There was.

Mr. Harding. When it was shut, was there any Place to let in the Light?

Mr. Martin. There was the Key-hole, and a Crevice of the Door.

Mr. Ward. When did he come out?

Mr. Martin. Between eight and nine o'Clock the next Morning.

Mr. Ward. Where did he go afterwards?

Mr. Martin. Afterwards he lodged in *George's Ward*, opposite against the Hole, upon the Left-hand; I think it is called *George's Ward*.

Mr. Ward. Had he Irons on in *George's Ward*?—Mr. Martin. Yes.

Mr. Ward. How long?—Mr. Martin. I don't know.

Mr. Ward. Did you see him after he was dead?

Mr. Martin. I did; I helped him into his Coffin. His Body was a sad Spectacle; but I can't say whether by the Distemper or not.

Mr. Ward. What State of Health was he in before he was confined in this Hole?—Mr. Martin. He was in good Health on the Day the Scuffle happened.

Mr. Ward. What sized Man was he?

Mr. Martin. A middle-sized Man.

Mr. Ward. Was he in bodily Health?—Mr. Martin. I did not discern his Body; he was healthy, and eat his Victuals when he had it.

Mr. Ward. Did you hear him complain of any Illness?

Mr. Martin. I never did.

Mr. Harding. How did he appear?

Mr. Martin. As a Man used to appear with Irons on. He was altered miserably after, about a Week before his Death.

Mr. Harding. How long was it from the Time of his coming out of the Hole, to the Time of his Death?—Mr. Martin. I believe it may be three Weeks or a Month, to the best of my Knowledge.

Mr. Harding. How soon did you see him after he was taken out of the Hole?—Mr. Martin. I saw him the same Morning he was put in *George's Ward*.

Mr. Harding. How was he then?—Mr. Martin. He was in good Health, but went crippling by, having the Irons on.

Mr. Harding. What do you apprehend was the Occasion of his Death?—Mr. Martin. I believe the ill Usage, and lying in the Hole, were the Occasion of his Death, and for want of Necessaries.

Mr. *Acton*. When he was in *George's Ward*, whether he did not lye in a Hammock?—Mr. Martin. He lay under a Hammock.

Mr. Baron Carter. What Distemper do you look upon it he died of?

Mr. Martin. Some People were apt to judge that he died of the Jaundice. (John Saunders was sworn.)

Mr. Ward. Did you know Captain *Bromfield*?

Mr. Saunders. I did; he was a Prisoner on the Master Side; he came on the first of March, 1725.

Mr. Ward. Give an Account of what Usage he had.

Mr. Saunders. It was upon a Court Day, at the latter End of May, Captain *Bromfield* was brought up from the Master Side to the Common Side, and there locked up.

Mr. Ward. Did you see him brought along?

Mr. Saunders. He was brought along by *Rogers* and *Nichols*, and *Acton* followed, and ordered him to be taken to the Lodge, and ironed, and from thence they brought and put him into the Hole, under the Stairs, adjoining to *George's Ward*.

Mr. Ward. How long did he continue there?

Mr. Saunders. Three or four Nights and Days.

Mr. Ward. Was he let out in that Time?—Mr. Saunders. He was let out sometimes, when they thought fitting, to ease his Body.

Mr. Ward. What Sort of a Place is it?

Mr. Saunders. It is a Place under the Stairs, which a Woman used to put Greens in; it was not fit for a Christian to be in; there was no Floor, and a Cold Place, and there was nothing to sit on, but what the Woman put her Greens on, which was an old broken Chair.

Mr. Ward. Did you see him there?

Mr. Saunders. I saw him every Day.

Mr. Ward. What sized Man was he?

Mr. Saunders. He was taller than me, and I don't believe he could stand upright in the Hole.

Mr. Ward. Could he lye down?—Mr. Saunders. He could not lye at Length, and he durst not lye down, it was so damp and wet.

Mr. Ward. What did *Acton* order?

Mr. Saunders. *Acton* ordered him to be taken to the Lodge, and ironed.

Mr. Baron Carter. What did he order after?

Mr. Ward. Was there any Application made to *Acton*?

Mr. Saunders. One *King* attended *Bromfield*, and *Bromfield* desired me to go along with him to *Acton*; and I said it was more proper for *King*.

Mr. Baron Carter. Answer my Question.

Mr. Saunders. I saw Captain *Bromfield* carried into the Lodge, and from thence immediately into the Hole.

Mr. Ward. Was *Acton* there?—Mr. Saunders. I saw *Acton* there at the Time when he was carried to the Hole.

Mr. Ward. Was he by when the Irons were put on?

Mr. Saunders. He was by then, and ordered the Captain to be carried from the Lodge into the Hole.

Mr. Ward. Was he first ordered to the Lodge?—Mr. Saunders. That Order to carry him to the Lodge was first given.

Mr. Ward. What did he order after?

Mr. Saunders. He then ordered him to be carried into the Hole.

Mr. Ward. Whether you saw any other Force or Violence used to him by any one?—Mr. Saunders. As to this Purpose, *Acton* came himself, and saw the Irons put on.

Mr. Ward. Were the Irons taken off?—Mr. Saunders. I heard they were taken off by *King* and *Rogers*, with *Darby's* Leave.

Mr. Ward. Where was Captain *Bromfield* put, when he was taken out of the Hole?—Mr. Saunders. He was carried into *George's Ward*; I went with him into the Ward.

Mr. Ward. Were his Irons taken off then?

Mr. Saunders. They were taken off when he was ill and weak.

Mr. Ward. What State of Health was he in before he was put into the Hole?—Mr. Saunders. He appeared to me to be a Man in perfect Health; if he had any Distemper, I did not know it.

Mr. Ward. Do you believe his being confined in the Hole, and the ill Usage, were the Occasion of his Death?—Mr. Saunders. I do, in my Conscience, believe they were the Occasion of his Death.

Mr. Ward. How long did he live after this Usage?

Mr. Saunders. I believe, from his being first put into the Hole, to the Day of his Death, was about fourteen Days.

Mr. Ward. Did you see him after he was dead?

Mr. Saunders. I helped to put him into his Coffin, and his Body was of several Colours, black and yellow.

Mr. Ward. Were there any Marks upon his Body?

Mr. Saunders. I saw no Marks.

Mr. Harding. Was you with him when he died?

Mr. Saunders. I staid by him when he died; (he said the Night before he should not live till Morning) and he gave me his Hand, moved his Mouth, but could not speak.

Mr. Ward. You was with him when he died; did he declare then, or at any other Time, what was the Cause of his Death?

Mr. Saunders. The Night before he died he declared, that the Punishment (which was being put in Irons, and confined in the Hole) was the Occasion of his Death. In the Morning he could not speak.

Mr. Ward. Was there any Coroner's Inquest sat on the Deceased?

Mr. Saunders. No, there was no Coroner's Inquest sat upon any one then.

Mr. Baron Carter. If the Coroner's Inquest had sat upon all others, and not sat upon this Man, then this had been Evidence; but as it is not generally so, it is no Evidence.

Mr. Ward. How soon was he buried after he died?

Mr. Saunders. He was hurried away, I believe, the same Day of his Death. (Martha Johnson was sworn.)

Mr. Ward. Did you know Captain *Bromfield*?—Mrs. Johnson. Yes.

Mr. Ward. Give an Account of the Usage he had.

Mrs. Johnson. I never saw any thing done to him.

Mr. Ward. Did you see him in Irons?—Mrs. Johnson. I saw him come out of the Hole in Irons, and go into *George's Ward*.

Mr. Ward. Who brought him out?

Mrs. Johnson. When the Door was unlocked, he came out of himself.

Mr. Ward. Did you see him after he was dead?

Mrs. Johnson. I saw his Body.

Mr. Baron Carter. When you saw his Body, did you see any Marks?

Mrs. Johnson. His Body was covered when I saw it, he did not lie naked.

Mr. Ward. We shall call no more Witnesses; for if what John Saunders says is true, it is a full Proof of the Indictment.

Mr. Baron Carter. You have heard the Charge and Evidence against you, you may now proceed upon your Defence.

Mr. *Acton*. Captain *Bromfield* stabbed *Perkins*, and I went for a Surgeon, and whilst I was gone, *Bromfield* was put in Irons. Mr. *Darby* had him put in Irons, till the Man was out of Danger. After this, he was very well; and had the Yellow Jaundice, of which he died. As to the Coroner's Inquest, there was none ever sat upon the Bodies of any Prisoners at that Time.

Mr. Baron Carter. You are not to answer for that.

Mr. *Acton*. I will call my Witnesses. Call *George Carew*.

(George Carew was sworn.)

Mr. *Acton*. My Lord, one Witness says, that Captain *Bromfield* continued one Night in the Hole, and the other says, he continued two or three Nights.—Did you see Captain *Bromfield* stab *Perkins*?

Mr. Carew. *Acton* went for a Surgeon.

Mr. *Acton*. What was done whilst I went for a Surgeon?

Mr. Carew. John Littleton, who was Turnkey, came in with two or three more, and took *Bromfield* from the Pound, and carried him to the Lodge, and ironed him.

Mr. *Acton*. What was done with him after?

Mr. Carew. He was brought on the Common Side, and there ordered to be put in *George's Ward*.

Mr. Baron Carter. Who brought him there?

Mr. Carew. John Littleton.

Mr.

Mr. Baron Carter. Did Acton give any Directions for putting him into the Hole?—Mr. Carew. No.

Mr. Baron Carter. Who put him in?

Mr. Carew. John Littleton put him in.

Mr. Baron Carter. How long did he continue there?

Mr. Carew. Three or four Hours, as I heard.

Mr. Acton. How was he after he came out of the Hole, as to his Health?

Mr. Carew. I saw him come out of the Hole, and he was very well in Health.

Mr. Ward. He has contradicted himself; he just now said, he was carried from the Common Side to George's Ward.

Mr. Baron Carter. If the Man mistakes, you must allow him to correct himself. How soon after he came out of the Hole did you see him?

Mr. Carew. The next Day, I saw him walk about the Yard.

Mr. Acton. Please to ask, whether Bromfield was in Irons before I returned back from the Surgeon.

Mr. Carew. Yes, and he was put on the Common Side.

Mr. Acton. When did he die?

Mr. Carew. He was on the Common Side a Month before he had any Sickness.

Mr. Baron Carter. When did he die?—Mr. Carew. In six Weeks Time.

Mr. Baron Carter. What Distemper did he die of?

Mr. Carew. Of the Black Jaundice, as it was given out in the Gaol.

Mr. Acton. Did you see him a Week before he died?

Mr. Carew. Yes, and his Face was yellow and black.

Mr. Ward. You saw him when the Scuffle happened; he was very well then?—Mr. Carew. I can't say he was very healthy in Constitution.

Mr. Ward. Who carried him to the Hole?

Mr. Carew. He was carried by John Littleton to the Place.

Mr. Ward. Were there no Orders given by Acton?

Mr. Carew. Acton was gone before John Littleton came into the Pound for him; he was gone for the Surgeon, as he said he would.

Mr. Ward. Who carried him to the Lodge?

Mr. Carew. Littleton carried him to the Lodge, and after that to the Common Side.

Mr. Ward. Was not the Common Side shut?—Mr. Carew. It was then.

Mr. Ward. How did he get in?—Mr. Carew. He was let in.

Mr. Ward. How long did he continue on the Common Side?

Mr. Carew. Six Weeks.

Mr. Ward. Was he not put in the Hole?

Mr. Carew. I don't know that he was in the Hole at all, for I saw him put on the Common Side.

Mr. Harding. After the Stroke with the Penknife, was not Bromfield seized?—Mr. Carew. No.

Mr. Harding. When did Acton come?

Mr. Carew. Acton came down when Bromfield was in the Pound.

Mr. Harding. How long was Acton gone?—Mr. Carew. Some Minutes.

Mr. Harding. Might not Acton give Orders to Littleton, before he went for the Surgeon?

Mr. Baron Carter. I must not hang a Man upon a might or might not. Did Acton come back with the Surgeon?—Mr. Carew. He brought the Surgeon back, and stood by till Perkins was dressed.

Francis Cartwright was sworn.

Mr. Acton. I desire, he may give an Account of what he knows of this Matter.

Mr. Cartwright. Mr. Acton came out of the Court into the Pound, hearing a Noise, and they told him that Captain Bromfield had stabbed Perkins; Bromfield was ironed, and Littleton put him into the Hole, without Acton's Directions.

Mr. Baron Carter. Was he in the Pound before Acton came down?

Mr. Cartwright. Yes.

Mr. Baron Carter. Did Acton say any Thing about ironing him?

Mr. Cartwright. No, but said, that he would fetch a Surgeon.

Mr. Baron Carter. When was he taken out of the Hole?

Mr. Cartwright. He was taken out in about six Hours. They usually lock up the Prisoners at nine o'Clock at Night, after Lady-Day, and he was taken out, and put in George's Ward, about that Time.

Mr. Baron Carter. How long did he remain there?

Mr. Cartwright. He staid there three or four Months after the Thing was done.

Mr. Baron Carter. Who used to lock the Prisoners up?

Mr. Cartwright. The Servants to Acton used to lock them up every Night.

Mr. Baron Carter. Answer me another Question. What State of Health was Captain Bromfield in?—Mr. Cartwright. He was always a very weakly Man, but very mischievous.

Mr. Baron Carter. When was he taken ill?

Mr. Cartwright. After I was gone.

Mr. Baron Carter. Was he ill whilst you was there?

Mr. Cartwright. He was not ill, only poor and weak.

Mr. Ward. When was Bromfield ironed?—Mr. Cart. Littleton ironed him, while Acton was gone for the Surgeon, and put him into the Hole.

Mr. Ward. Where was he ironed?

Mr. Cartwright. He was carried first into the Lodge and ironed, and then put into the Hole.

Mr. Ward. Where is the Hole?—Mr. Cart. On the Common Side.

Mr. Ward. Did you see George Carew there?

Mr. Cartwright. I don't know whether he followed him down.

Mr. Ward. Did Carew go along with Littleton, when he put him into the Hole?—Mr. Cartwright. I can't say, whether he did or not.

Joseph Wood, a Surgeon, was sworn.

Mr. Acton. Please to ask him, my Lord, if I came to fetch him.

Mr. Baron Carter. What say you to that?

Mr. Wood. Acton came to me, and desired me to go along with him; which I did, and found a Person stabbed in the Breast. The next Day I went to the Person who had wounded him, and I asked him how he could be so barbarous.

Mr. Baron Carter. That is not material. What State of Health did Bromfield seem to be in?

Mr. Wood. Bromfield seemed to be pretty well in Health.

Mr. Acton. Where did you see Bromfield?—Mr. Wood. In the Lodge.

Mr. Acton. Did you say any Thing to him?

Mr. Wood. I said, I find you are ironed: I think you deserve it; and he said, that Darby ordered him to be ironed, and he was glad Acton went for a Surgeon.

Mr. Ward. What Time did you see Bromfield?

Mr. Wood. The next Morning, about nine o'Clock.

Mr. Ward. Where did you see him?—Mr. Wood. In the Yard.

Mr. Ward. How long did you stay there?

Mr. Wood. I staid there a trifling Time, about half an Hour, and left him there.

Lewis Jones.

Mr. Acton. I desire, my Lord, he may give an Account of what he knows as to Captain Bromfield.

Mr. Jones. Bromfield came in April from the Master Side to the Common Side, and was put in Irons by John Littleton.

Mr. Acton. Please to ask what State of Health he was in.

Mr. Jones. Bromfield was in a sad State of Health, he fell sick of the Gaol Distemper, he had the Jaundice on him.

Mr. Acton. What did he die of?—Mr. Jones. A Fever.

Mr. Acton. How do you know?

Mr. Jones. I am a Surgeon; I took Notice of him continually.

Mr. Acton. How did I behave myself to Captain Bromfield?

Mr. Jones. You was kind to him at all Times.

Mr. Acton. Please to ask, my Lord, how I behaved myself to the Prisoners in general.

Mr. Jones. Acton would never suffer any Thing of Hardship.

Mr. Acton. Have you seen any Acts of Friendship?

Mr. Jones. Both your Pocket and your Table have been made use of.

Mr. Baron Carter. Did you see Captain Bromfield put in the Hole?

Mr. Jones. I saw Nobody put in the Hole.

Mr. Ward. Did not you see Bromfield in the Hole?

Mr. Jones. I never saw him in the Hole.

Mr. Harding. I beg leave to make an Observation (and was going on).

Mr. Baron Carter. You can't observe; I don't think you have used me well before. A Gentleman that is a young Counsel, should open no more than the Record.

Mr. Harding. I opened no more than the Fact.

Mr. Baron Carter. Gentlemen of the Jury, the Prisoner at the Bar stands indicted for the Murder of John Bromfield. The Indictment sets forth,—

You are to consider, whether you have sufficient Evidence, to induce you to believe him Guilty of this Fact. Whatever is opened by the Counsel, that is not proved to you, is to have no Weight with you. It is set forth, that he was beat, and that the Marks and Strokes were upon him. I don't observe by the Evidence, that any Stroke was given to the Man at all.

Gentlemen, let the Consequence be what it will, Evidence is to determine every Man's Fate.

The Indictment sets forth, that Darby was Keeper of the Gaol on the 15th of July, and that Bromfield died the second.

The Fact is charged preceding to that Time; the Fact is laid in April, and all this is laid to be in the Space of five Days.

Wheeler, the first Evidence for the King; he says, that Acton was Turnkey, and Servant to Darby; that he knew Bromfield; that he lodged in the Nursery, and coming down the Stairs, there was a Hatch upon the Stairs, and Perkins kept the Key; that he and the Captain quarrelled, and that they went into the Chandler's Shop, and quarrelled further, and then Bromfield stabbed him with a Pen-knife, and thereupon dropt the Knife. He was carried from thence to the Pound, and carried from thence away to the Lodge, and was refractory; but he did not hear Acton order any Thing.

He says, Gentlemen, that he saw Fetters on him, when he came out of the Hole the next Morning; and that he was turned from the Master's to the Common Side; that his Body was all over black, and turned so after his Decease. He says, that it was not in Streaks, but one continued Blackness.

The second Witness, Hugh Martin, says, that he knew Captain Bromfield; that he was his Bedfellow; that he saw the Captain in the Chandler's Shop, and Perkins refused him a Favour, and Bromfield stabbed him; that he did not see Acton there, but saw him in the Yard, and saw him go to the Court-House. That he saw Bromfield on the Common Side with Fetters on, and saw him in the Hole, but saw no Beating; that he continued in there all Night, and the Hole is a little Place, has no Floor, and is damp; that there is no Place to let in the Air and Light, but the Key-hole and Crevice. He says, that he saw Bromfield in George's Ward in Irons; that it was three Weeks or a Month before he died; that he wanted Necessaries, and that he was apt to judge he died of the Jaundice.

On the 11th of March, 1725, Saunders says, that Bromfield became a Prisoner; that Nichols and Littleton brought Bromfield along; and that he saw him ironed by Acton's Orders. This is the only Witness that says Acton ordered it. That Bromfield, he believes, was in the Hole three Days, it might be a little longer; that the Hole was under a Pair of Stairs, there was no Light, nothing in it, but a Piece of a Chair that a Woman set her Greens on: That Bromfield could not stand upright, that he dared not lie down, because it was so wet; that King and Bromfield spoke to Acton to take the Irons off, but he could not do it without Darby's Order. It was his Opinion that Bromfield was well, and that the hard Usage was the Occasion of his Death. That he saw his Body after he was dead, and it was of several Colours. He was asked, if he saw any Sign of a Stroke on his Body, and he said that it was all of a Colour. He says that Bromfield told him, that the Usage of the Hole, and the Fetters, where the Occasion of his Death, the Night before he died. So that what he said is Evidence, and ought to have its Weight; such Cruelty should not have been continued.

Martha Johnson; she says, that she saw Bromfield come out of the Hole in Irons.

So that there is but one Witness that says he was put there by Acton's Order; and the Prisoner insists, that he did not order him there; and if he did, he did not die by Durels, but by the Jaundice.

George

George Carr, the first Witness for the Prisoner, says, he was there; and *Acton* went for a Surgeon, and *Littleton* came from the Lodge, and took *Bromfield* there, and ironed him, and put him into *George's Ward*, but that *Acton* gave no Directions; that he was in there three or four Hours, and that he saw him well the next Day, and that he walked about the Yard. That he fell ill of the Jaundice, and his Face was black and yellow a Week before he died. He was asked by the King's Counsel, if he was a healthful Man? And he said, he was not. He says, that *Acton* was gone before *Littleton* came; so that in his Opinion, *Acton* did nothing; and says, that *Bromfield* died of the Jaundice.

The second Witness for the Prisoner says, that he saw *Acton* run out of the Court into the Pound, and *Acton* said he would go for a Surgeon. That *Littleton* ironed him, and put him into the Hole, and it was all done before *Acton* came from the Surgeon. He was there before *Littleton* came, and said, he would go and fetch a Surgeon. He says, that *Bromfield* was in the Hole six Hours; that he locked him up every Night, and he looked upon him to be a weak Man.

Wood says, that he saw *Bromfield* the next Day, and talked with him about Irons; and he said he was ironed by the Direction of Mr. *Darby*; and that *Acton* was always very kind to him.

Jones says, that *Littleton* ironed *Bromfield*; and that it was in April, and he died in June. He says, that he was a Surgeon, and that *Acton* was always very kind to the Deceased.

Gentlemen, in the first place you are to consider, whether the Man was put into the Hole by the Direction of *Acton*; and in the next Place, if it was done by *Acton*, and this was not the Occasion of his Death, you will acquit him as to that. But if you believe *Acton* ordered him into his Hole, and that it was the Occasion of his Death, he was guilty of Duress; but that will be contrary, four Witnesses to one.

The Jury agreed upon their Verdict immediately, without going out of Court.

Clerk of Arraignment. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Cl. of Ar. Who shall say for you?

Omnes. Our Foreman.

Cl. of Ar. Hold up thy Hand. (Which he did.) Look upon the Prisoner; How say you; Is he Guilty of the Murder and Felony whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

XVI. The Trial of WILLIAM ACTON, for the Murder of ROBERT NEWTON, before Mr. Baron Carter, at the Affizes held at Kingston upon Thames, for the County of Surry, August 2, 1729.

Die Sabbati, 2 Die Augusti 1729.

The said William Acton having been before arraigned for the Murder of Robert Newton, the Counsel proceeded as follows:

Mr. Harding. MY Lord, and you Gentlemen of the Jury, I am of Counsel for the King. This is an Indictment against William Acton for the Murder of Robert

Newton. The Indictment sets forth—

Mr. Marsh. My Lord, and you Gentlemen of the Jury, this is an Indictment against the Prisoner at the Bar, William Acton, for the Murder of one Robert Newton. It sets forth that *Darby* was principal Gaoler, and *Acton* under him. *Newton* and *Hartness* were Chums or Ward-mates: and whilst they were there, one of them attempted to escape; they were prevented in that; and *Acton* clapped on *Newton* very severe Shackles, and he was ordered into a Place called the Strong Room, a Place, we think to satisfy you, was a Room not at all fit to put Persons into. We say it is a very bad Place, and a very dangerous Place to the Health; there this *Newton* was confined for a considerable Time; there he was locked up, and the Key kept by an inferior Officer of the Gaol. And *Acton* was so very sensible he was in a declining Way, that purely for his own Safety, he first ordered him out of that Place into the Lodge, then carried him into the Sick Ward. He continued there some time, and complained of this Hardship, this Imprisonment, and the Hardship put upon him by *Acton*; and that that Rogue of a Man was his Murderer: For that he had applied to the Judge of the Court, and he was pleased to make an Order, after being very angry with what *Acton* had done, to release him out of his Hardship; but he, notwithstanding, disobeyed that Order. Therefore, if we call our Witnesses to shew he contracted by this Usage an illness of which he languished and died, it will remain on the Prisoner to shew what he died of, and that he died of some other Distemper; and then you will judge of the Fact.

Mr. Ward. I am Counsel of the same Side, and we will call our Witnesses.

Captain Tudman was sworn.

Mr. Ward. Did you know Robert Newton?

Mr. Tudman. I did; he was a Prisoner in May 1725.

Mr. Ward. Give an Account of what you know concerning him?

Mr. Tud. *Newton* and *Hartness* lay in the Park when they were Prisoners in the *Marshalsea*; and they broke out, and afterwards were retaken, and committed to the Prison again; and *Acton* put them in Irons. *Newton* fell sick, and languished for some time, and died.

Mr. Ward. Who had the Care of the Prisoners then?

Mr. Tud. Mr. *Darby* was Head Man, and *Acton* was under him.

Mr. Ward. Was *Newton* Ironed?

Mr. Tud. I went to see him in the Lodge; he was ironed there, and then sent to the Strong Room.

Mr. Ward. How long were the Irons continued on?

Mr. Tud. Till he petitioned Sir *John Darnell*.

Mr. Strange. If he petitioned Sir *John Darnell*, and there was any Order, they ought to produce it in Writing, and prove it. It might be a Parole Order, and that may be given in Evidence.

Mr. Ward. Did you hear any verbal Order given by Sir *John Darnell* for his Release?—Mr. Tud. No.

Mr. Ward. How long did *Newton* lie in the Strong Room?

Mr. Tud. I can't guess at the Time.

Mr. Ward. What was done after the Irons were put on?

Mr. Tud. I cannot say.

Mr. Ward. Where did he die?

Mr. Tud. He died in the Sick Ward. I saw him four or five Days before he died.

Mr. Ward. What Sort of a Place is the Strong Room?

Mr. Tud. The Strong Room is built of Wood, and is a very strong Place to keep Prisoners in like a Shed.

Mr. Ward. Is there not a Common Sewer runs under it?

Mr. Tud. The Common Sewer is pretty near it, within twenty or thirty Yards.

Mr. Ward. Who was he ironed by?

Mr. Tud. I saw him ironed by *Darby*.

Mr. Ward. Was *Acton* Head Turnkey?—Mr. Tud. Yes.

Mr. Marsh. Was there any Coroner's Inquest sat upon him after he was dead?—Mr. Tud. There was not.

Mr. Harding. Was there any Place to let in the Air?

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Mr. Tud. There was a little Hole to let in the Air.

Mr. Baron Carter. From the Time that he was put in Irons, how long did he live?—Mr. Tud. I can't charge my Memory.

Mr. Marsh. Had he any Illness before he was put in Irons?

Mr. Tud. He had no Illness before he was put in Irons; he was a hale, strong, young Man.

Edmund Carr.

Mr. Marsh. Did you see *Newton* in the *Marshalsea*?

Mr. Carr. I was a Prisoner there when he and another broke out; they were taken again, and carried into the Lodge, and when I saw them come out of the Lodge, they were brought along by *Rogers* in Irons, and put into the Strong Room, and he locked them up there.

Mr. Baron Carter. What was the Name of the other?

Mr. Carr. I have forgot.

Mr. Baron Carter. Was it *Hartness*?—Mr. Carr. Yes.

Mr. Ward. How long did he continue in the Strong Room?

Mr. Carr. He continued there two Court Days, which is about fourteen Days.

Mr. Ward. You knew *Newton*. What State of Health was he in before he was put in that Room?

Mr. Carr. I knew *Newton* very well; he was a fat, jolly young Man, and seemingly very well.

Mr. Ward. When did he die?

Mr. Carr. He fell sick in the Strong Room, and was carried to the Sick Ward.

Mr. Ward. How long did he live after?—Mr. Carr. I cannot tell.

Mr. Ward. What was the Distemper he had in the Strong Room?

Mr. Carr. I do believe that it was the Gaol Distemper he took in the Strong Room.

Mr. Baron Carter. What is the Distemper of the Gaol?

Mr. Carr. The Ague and Jaundice.

Mr. Ward. You say he took the Distemper in the Strong Room; do you believe that was the Occasion of it?

Mr. Carr. I do believe that did occasion the Distemper.

Mr. Ward. What Irons had he on?

Mr. Carr. Double Irons; an Iron on each Leg, such as I had.

Mr. Ward. What might the Irons weigh?

Mr. Carr. Twenty Pounds, or less.

Mr. Ward. Who was with him, when he was brought from the Lodge?

Mr. Carr. I saw Nobody but *Rogers* and *Clark*.

Mr. Ward. Did you see *Acton* in the Lodge?

Mr. Carr. I did not look in to see if he was there or not.

Mr. Marsh. Who ordered the Irons to be put on?

Mr. Carr. I don't know.

Mr. Marsh. Did *Acton* go to the Strong Room?—Mr. Carr. I can't tell.

Mr. Marsh. Was *Newton* locked up there?

Mr. Carr. He was locked up every Night close.

Mr. Marsh. Had he Liberty of coming out of Days?

Mr. Carr. Not at first.

Mr. Marsh. How long was he confined in the Strong Room, before he had Leave to come out?—Mr. Carr. I cannot tell.

Mr. Marsh. How long was he in the Strong Room before he fell sick?

Mr. Carr. About fourteen Days or more.

Mr. Marsh. What Sort of a Place is the Strong Room?

Mr. Carr. It is a boarded Place, and there is a damp Hole under it; and there is no Drain to carry the Water off.

Mr. Marsh. I ask you, what kind of a Place it is? Whether there is any Place to let in the Air; and whether the Sun visits it?

Mr. Carr. It is an odious Place, and there is only a little Hole to let in the Air; it is built against the Side of a Wall, and the Sun does not visit it; it is covered with Boards, and seemed like the Deck of a Ship.

Mr. Marsh. What was the Occasion of his being taken out of that Room?—Mr. Carr. He was taken out for Sickness.

Mr. Marsh. How long was he in the Strong Room in all?

Mr. Carr. About fourteen Days.

Mr. Marsh. How long did he lie sick in the Strong Room?

Mr. Carr. I cannot tell.

Mr. Marsh. Where was he carried when taken out of the Strong Room?

Mr. Carr. To the Sick Ward.

Mr. Marsh. What Condition was he in when carried to the Strong Room?

E e

Mr.

Mr. Carr. He was very well; he then was a hale, jolly Man.
 Mr. Marsh. Was you with him in the Sick Ward?
 Mr. Carr. I was almost every Day.
 Mr. Marsh. How long before he died?—Mr. Carr. I cannot tell.
 Mr. Marsh. Was it within a Day or two?
 Mr. Carr. Within a Week.
 Mr. Marsh. Did he tell you what was the Occasion of his Death?
 Mr. Carr. He said, that the Confinement in the Strong Room was the Occasion of his Death.
 Mr. Marsh. Do you believe it to be the Occasion of his Death?
 Mr. Carr. He being a hale Man, and coming in fresh, I believe the Confinement was the Occasion of it.
 Mr. Marsh. Was there any Coroner's Inquest sat upon his Body?
 Mr. Carr. There was no Inquest sat upon him or any other.
 Mr. Acton. Please to ask, my Lord, if they were not let out of the Strong Room.
 Mr. Baron Carter. What say you to that?
 Mr. Carr. At first they were not, but afterwards they were.
 Mr. Baron Carter. What became of Hartness?
 Mr. Carr. He was let out.
 Mr. Baron Carter. Did he lie there as long as the other?
 Mr. Carr. Yes.
 Mr. Baron Carter. Did he contract any Illness?—Mr. Carr. No.
 Mr. Baron Carter. Were his Irons as heavy as Newton's?
 Mr. Carr. I can't tell, I never weighed them.
 Mr. Baron Carter. The Question I ask you is, whether the Irons were one as heavy as the other? Which I expect you to answer.
 Mr. Carr. I believe they were coequal.
 Mr. Baron Carter. Answer me another Question. You was saying there was no Drain to carry off the Water, where does the Water come in?
 Mr. Carr. There was a Place about as big as the Table in the Court, where the Water settles, and runs under the Room, and makes it damp.
 Mr. Baron Carter. What ill Smell is there?—Mr. Carr. A Sort of a damp Smell; and Abundance of Rats creep into it.
 Mr. Baron Carter. When the Prisoners are let out of Days, is the Door always kept shut or not?
 Mr. Carr. Sometimes 'tis locked up, sometimes not.
 (Edward Phillips was sworn.)
 Mr. Ameron. Did you know Newton?
 Mr. Phillips. I was a Prisoner in the Marshalsea during the Time Newton and Hartness were in the Gaol.
 Mr. Ameron. Did you see him in Irons?—Mr. Phillips. I saw Acton and Rogers in the Lodge when they were ironed.
 Mr. Ameron. Where were they carried after?
 Mr. Phillips. They were carried to the Strong Room.
 Mr. Ameron. What Kind of a Place is it?
 Mr. Phillips. It is a Place not fit for a human Person to be in.
 Mr. Ameron. Is the Common Sewer under it?
 Mr. Phillips. The Common Sewer runs by it.
 Mr. Ameron. How long did Newton stay there?
 Mr. Phillips. About fourteen Days.
 Mr. Ameron. How near is the Common Sewer to it?
 Mr. Phillips. The Soil that comes from the Necessary-house runs with in three or four Yards of it.
 Mr. Marsh. Was it infested with Vermin?
 Mr. Phillips. I saw Rats there, and the Side of a Man's Face eat away in three or four Hours after he was dead.
 Mr. Marsh. What might be the Weight of the Irons Newton had on?
 Mr. Phillips. The Irons he had on were twenty Pounds Weight.
 Mr. Marsh. How long was Newton in the Strong Room before he was taken sick?—Mr. Phillips. Ten or twelve Days.
 Mr. Marsh. What became of him then?
 Mr. Phillips. He was carried to the Sick Ward.
 Mr. Marsh. How long was he sick in the Strong Room?
 Mr. Phillips. I cannot say.
 Mr. Marsh. Were his Irons taken off?
 Mr. Phillips. His Irons were taken off, I believe, by Petition.
 Mr. Marsh. Who was the other Man?
 Mr. Phillips. The other was one Hartness.
 Mr. Marsh. How was he as to his Health?—Mr. Phillips. Very well.
 Mr. Marsh. What Sort of a Man was Newton?
 Mr. Phillips. He was a robust Man.
 Mr. Marsh. From the Time of his being put first into the Sick Ward, to the Time of his Death, how was he?
 Mr. Phillips. He continued to grow worse and worse till he died.
 Mr. Marsh. Did he say what was the Occasion of his Death?
 Mr. Phillips. I heard him say, that the ill Usage and Confinement were the Occasion of his Death.
 Mr. Marsh. What was your Opinion of him before he was put in the Strong Room?—Mr. Phillips. My Opinion is, that he was a strong young Man when he came in.
 Mr. Marsh. When did he tell you that his Death was occasioned by his Confinement and Usage?
 Mr. Phillips. I believe it was some Days after he was in the Sick Ward.
 Mr. Marsh. What, in your Opinion, was the Cause of his Death?
 Mr. Phillips. My Opinion is, that the Confinement and Usage were the Cause of his Death.
 Mr. Marsh. Was the Prisoner at the Bar in the Lodge when the Irons were put on?—Mr. Phillips. The Prisoner at the Bar was there with Rogers when they were put on.
 Mr. Marsh. Was there any Bed in the Strong Room?
 Mr. Phillips. There was no Bed there; and if he had had one, they would have prevented its coming in.
 Mr. Marsh. Do you know of any Application made to Darby, in relation to Newton?—Mr. Phillips. No.
 (Robert Smith was sworn.)
 Mr. Ward. Did you know Newton?
 Mr. Smith. I knew Newton very well; I knew him to be a lusty, hale

Man; and that he was confined in the Strong Room eight or ten Days, or more.

Mr. Ward. Did you see him in the Strong Room?
 Mr. Smith. I never saw him but through the Hole.
 Mr. Ward. Did he complain of his Irons?—Mr. Smith. Yes.
 Mr. Ward. Did you draw a Petition for him?—Mr. Smith. I did.
 Mr. Ward. You have seen the Strong Room, what Sort of a Place is it?
 Mr. Smith. I have smelt noisome Stench, and seen Persons dying in it.
 Mr. Ward. Was it damp?
 Mr. Smith. I believe it was damp; I saw it once open.
 Mr. Ward. Was it open when you saw Newton there?—Mr. Smith. No, I saw him through the Hole; Nobody was admitted to him then.
 Mr. Ward. How often was you there?
 Mr. Smith. I was there twice or thrice in the Middle of the Day to see him, and the Door was always shut.

(Mr. Demotet was sworn.)

Mr. Ward. Did you know Newton?
 Mr. Demotet. I knew Newton before he come in de Park, (which he spoke in a very broken Manner); I cannot speak English well.
 Mr. Ward. He is a Foreigner, and can't speak English to be understood, therefore we desire he may be allowed an Interpreter, who is here ready.
 Mr. Acton. He can speak English very well; here is one that heard him, who can prove it.

Mr. Baron Carter. When I went the Oxford Circuit, the Welch would not speak English, because it was a Dishonour to their Country: If he can talk English to be understood (which I shall judge of when he is examined), I can't allow him an Interpreter.

Mr. Ward. Give an Account, as well as you can, of what you know of Newton.

Mr. Demotet. I knew Newton the Time he broke out of the Room; he was retaken three or four Months after, and was carried into the Strong Room very soon in the Morning.

Mr. Ward. How long did he continue there?

Mr. Demotet. He continued there fourteen or fifteen Days, and lay on the Ground, and had nothing to keep him there.

Mr. Ward. Was he ironed?

Mr. Demotet. He came ironed out of the Lodge.

Mr. Ward. Who brought him out of the Lodge?

Mr. Demotet. Rogers and Nichols brought him down.

Mr. Ward. Was Acton there?

Mr. Demotet. Acton came and saw Newton locked into the Strong Room. When he was first put in, Capt. Delagol was confined there at the same time.

Mr. Ward. Was Newton sick in the Strong Room?

Mr. Demotet. He fell sick there; both of them were lousy; his Wife and young Child came to take care of her Husband, and petitioned to Sir John Darnell to have him released; he was put in the Sick Room, and there died in four or five Days after. His Wife broke her Heart, and she and the little Child died in the same Week.

Mr. Ward. What was the Occasion of his being sick?

Mr. Demotet. That he was on the Ground, he had no Bed to ly on, and the Water came in at the Top.

Mr. Ward. What Kind of a Place is the Strong Room?

Mr. Demotet. It is not fit to put a Man in, the Rain comes in.

Mr. Baron Carter. Was you ever in it?

Mr. Demotet. I was in it myself; Grace put me in there.

Mr. Baron Carter. How long was you in the Strong Room?

Mr. Demotet. I was in there for ten Minutes, and there were two dead Men in it at the same Time, and I fell sick for five Months.

Mr. Marsh. Was it infested with Rats?

Mr. Demotet. It was very much infested with Rats and Vermin.

Mr. Acton. Do you know Hester Overstoun?

Mr. Demotet. I do not know her. (All spoke in broken English.)

(Martha Johnson was sworn.)

Mr. Marsh. Did you know Newton?—Mrs. Johnson. I did, he lived in the Park, on the Master Side, before he broke out.

Mr. Marsh. Did you see him confined in the Strong Room?

Mrs. Johnson. I never saw him confined in any Place, but I saw him in Irons.

(John Johnson was sworn.)

Mr. Ward. Give an Account of what you know of Newton.

Mr. Johnson. I saw Newton in the Strong Room.

Mr. Ward. What Sort of a Place is it?

Mr. Johnson. It is a close Place.

Mr. Ward. Is it fit to put any one in?

Mr. Johnson. It is not fit to put a Man into.

Mr. Ward. Was there any Smell there?—Mr. Johnson. There was a noisome Smell, and so there was on all the Common Side.

Mr. Ward. Is it more or less healthy than the other Rooms on the Common Side?

Mr. Johnson. They are all unhealthy, it is much the same as the rest.

Mr. Acton. I desire he may be asked, when he went to Captain Delagol in the Strong Room, if the Door was open.

Mr. Johnson. It was open; it was opened for me to go to shave him.

(Ruth Butler was sworn.)

Mr. Ward. Did you know Newton?

Mrs. Butler. I remember Newton very well; he was confined on the Master Side in the Park, and there broke out; he was retaken, and brought to the Prison again, and put into the Strong Room by Mr. Acton's Order; I heard Acton give the Orders.

Mr. Ward. Was he ironed?—Mrs. Butler. He was ironed on both Legs; I heard Acton order them to be put on.

Mr. Ward. How long did he continue in the Strong Room?

Mrs. Butler. He continued there a good while, more than a Month; he was sick there.

Mr. Ward. How long was Newton confined in the Strong Room?

Mrs. Butler. About two Months.

Mr. Ward. Are you sure it was two Months?

Mrs. Butler. I really think it was so long.

Mr. Ward. When was he taken ill?

Mrs. Butler. He fell ill in the Strong Room, and continued there some time after he was taken sick, and then was carried to the Sick Ward, and died in three or four Days after he was put there.

Mr. Ward. When were his Irons taken off?

Mrs. But. His Irons were taken off in the Strong Room.

Mr. Ward. What was the Occasion of his Sickness?

Mrs. But. I can't tell what it was occasioned by, unless by the Rain and Wet that came in.

Mr. Ward. Was it covered at Top?

Mrs. But. It was boarded at Top, but the Rain came through the Top, the Boards not being close enough to keep the Rain out.

Mr. Ward. How near is the Common Sewer to it?

Mrs. But. The Common Sewer runs just by it, and smells very offensive.

Mr. Ward. Had Newton any Bed there?—Mrs. But. No.

Mr. Ward. Was it a fit Place for any Man to be put in?

Mrs. But. It was not fit for any Man to be in it.

Mr. Ward. What gave the Man his Sickness?

Mr. Bar. Car. She has answered that Question already.

Mr. Ward. Did he make any Complaint?

Mrs. But. He complained his Legs were sore with the Irons; I saw his Legs when his Stockings were off, in the Sick Ward, and his Legs were swelled, the Irons being too tight for him.

Mr. Bar. Car. Will you ask her any Questions?

Mr. Aiton. No, my Lord.

Nicholas Purden was sworn.

Mr. Ward. Do you know the Strong Room?

Mr. Purden. I was in it several Times, when two unhappy Men were in it, who came from the King's-Bench. Every Time it rains, the Rain runs through, and there stagnates, till it dries through the Boards.

Mr. Bar. Car. When was that?

Mr. Pur. About a Year and a Half ago.

Mr. Bar. Car. That is short of the Time laid in the Indictment.

Mr. Ward. I allow it short of the Time.

Edmund Cummins was sworn.

Mr. Ward. Give an Account of what you know of Newton.

Mr. Cummins. I remember Newton's being put in the Strong Room; at that Time it rained in, and settled between the Joists.

Mr. Ward. Did it rain in when Newton was there?

Mr. Cum. It did rain in then, and so it did when I was there.

Mr. Ward. Had Newton Irons on?

Mr. Cum. I saw him in Irons in the Strong Room.

Mr. Ward. What kind of a Place was it?

Mr. Cum. It was wet and dirty, the Rain coming thro' at that Time; and it was not fit to put any Person into.

Mr. Ward. Was it a wholesome Place?—Mr. Cum. No.

Mr. Ward. We shall call no more Witnesses.

Mr. Bar. Car. Now, Prisoner, say what you will.

Mr. Aiton. On the 26th Day of July, Hartnefs and Newton broke out of Gaol, and were retaken in Kent, and brought to the Gaol; and I dispatched a Messenger to Mr. Darby, to know if he would have them put in Irons; and he sent Word back, they should. They were not put in that Night, but were put in Irons the next Day, and went about the Yard; and in about eight or nine Days time were discharged. Newton was afterwards taken ill, and put in the Sick Ward, and there died.

Robert Holmes was sworn.

Mr. Aiton. Please to ask him, what he knows of Newton.

Mr. Bar. Car. Give an Account of what you know.

Mr. Holmes. Newton escaped out of a Room in the Park, and was retaken and brought to the Gaol, and I helped one of them down into the Lodge, and Aiton bid me go to Mr. Darby, to know how to dispose of them; and Darby's Orders were to iron them, and put them in the Strong Room.

Mr. Aiton. Please to ask, my Lord, if he brought the Message back to me, or any other Person.

Mr. Holmes. I came back to Aiton, and told him, that Mr. Darby's Orders were to have them put in the Strong Room, and ironed; and the next Day they were put in Irons by Greenway and Nichols.

Mr. Aiton. Did Darby come there the next Day?—Mr. Holmes. Yes.

Mr. Aiton. Please to ask, if they were locked up and unlocked, as the rest of the Prisoners.—Mr. Holmes. Yes, they were.

Mr. Bar. Car. What Irons had they on?

Mr. Holmes. Common Irons, as the Felons used to wear.

Mr. Bar. Car. How long were they confined there?

Mr. Holmes. Seven or eight Nights.

Mr. Bar. Car. What Day did they come in?—Mr. Hol. On a Thursday.

Mr. Bar. Car. How long were they in Irons?

Mr. Holmes. Seven or eight Days.

Mr. Bar. Car. What Condition of Health were they in then?

Mr. Holmes. In perfect good Health.

Mr. Aiton. How long did Newton continue so, after he was taken out of the Strong Room?

Mr. Holmes. Newton went into the Duke's Ward, and staid there six Weeks, and was in good Health all that Time; I drank with him several Times, and played at Trap-ball with him.

Mr. Aiton. Please to ask, whether his Friends did not bring him Necessaries.

Mr. Holmes. There were his Wife and Sister came to him; but Hartnefs's Wife did more than either.

Mr. Aiton. What was the Cause of his Death?

Mr. Holmes. The Gaol-Distemper; there were a great many sick at that Time.

Mr. Aiton. Were other Persons sick of the same Distemper at the same Time?—Mr. Holmes. It is my Opinion, but I can't be certain.

Mr. Aiton. What think you of the Strong Room?

Mr. Holmes. I think it is the best Room on the Common Side for any two or three to lie in, and I have known several desire to lie there.

Mr. Marsh. Consider with yourself, that many Persons have said, that he lay fourteen or fifteen Days in the Strong Room, and was then carried

to the Sick Ward; and you say, that he was six Weeks in the Duke's Ward.

Mr. Holmes. It was when he was taken out of the Strong Room, and carried to the Duke's Ward, he got his Illness, to the best of my Knowledge.

Mr. Marsh. When was he taken after the Escape?

Mr. Holmes. He was taken the latter End of August.

Mr. Marsh. When was he put in the Strong Room?

Mr. Holmes. He was brought to the Gaol the latter End of August, and put in the Strong Room on a Thursday.

Mr. Marsh. How long did he continue in the Strong Room?

Mr. Holmes. He continued there eight Nights.

Mr. Marsh. Was he sick there?—Mr. Holmes. He was not.

Mr. Marsh. What Day did he die on?

Mr. Holmes. I can't tell what Day.

Mr. Marsh. Do you know the Month?—Mr. Hol. He died in November.

Mr. Aiton. Please to ask, whether, when his Sister or Hartnefs's Wife visited him, he made any Complaints to them.—Mr. Holmes. No.

Mr. Marsh. What Sort of a Place is the Duke's Ward?

Mr. Holmes. It is a Place that will contain thirty or forty, and there are as many put in on Nights; it is the common Place where People are put into when they come into the Gaol. I imagine he got his Illness there.

Mr. Marsh. How long did he lie in the Sick Ward before he died?

Mr. Holmes. I did not visit him.

Mr. Bar. Car. If you can, ascertain the Time he died.

Mr. Marsh. I ask you when he was carried to the Strong Room, and how long he continued there?

Mr. Holmes. He was carried into the Strong Room on Thursday Night, and continued there till Thursday Se nnight.

Mr. Ward. Where did he go afterwards?

Mr. Holmes. From the Strong he went into the Duke's Ward, and continued there six Weeks.

Mr. Ward. Are you sure he continued there six Weeks?

Mr. Holmes. I am sure he continued there above a Month.

Mr. Ward. What Service have you, or what Capacity are you in? Do you serve in the Gaol under Aiton?

Mr. Holmes. None. By Mr. Darby's Leave I have a Lodging there.

Mr. Ward. You say, Prisoners have chose to lye in the Strong Room; pray name one.

Mr. Holmes. Capt. Thompson desired me to go to Mr. Aiton, to let him lie there.

Mr. Bar. Car. When was the Strong Room built.

Mr. Holmes. It has been built about four years, rather more.

Mr. Ward. How many Years ago is it that you was speaking of Newton?

Mr. Holmes. About three Years.

Robert Walter was sworn.

Mr. Bar. Car. What do you know of Newton?

Mr. Walter. After he was retaken, he was put into the Strong Room, and remained there eight Days, and then was put into the Duke's Ward, and continued there five Weeks.

Mr. Bar. Car. What Condition was he in?

Mr. Wal. He never complained for Want.

Mr. Bar. Car. What Distemper had he?

Mr. Wal. It was commonly said, the Gaol Distemper.

Mr. Bar. Car. What do you think of the Strong Room?

Mr. Wal. I have worked many a Day and many a Week in it, and asked it as a Favour to be there.

Mr. Aiton. Had Newton a Bed there?

Mr. Wal. Newton had a Bed; I lent it him.

Mr. Aiton. Was Newton confined there continually, or let out?

Mr. Wal. He was locked up, and let out as we were.

Mr. Marsh. When did Newton die?—Mr. Wal. I can't tell justly, in about ten or twelve Weeks after he was retaken.

Mr. Marsh. When was he retaken?—Mr. Wal. The latter End of August.

Mr. Marsh. When did he die?

Mr. Wal. He died in November, to the best of my Knowledge.

Mr. Marsh. How long did he continue in the Strong Room?

Mr. Wal. Seven or eight Days.

Mr. Marsh. When was he put in the Strong Room?

Mr. Wal. The next Morning after he was retaken.

Mr. Marsh. How long did he continue in the Duke's Ward?

Mr. Wal. A Month or five Weeks, and then was removed into the Sick Ward.

Mr. Marsh. How long did he lie there?

Mr. Wal. He lay in the Sick Ward five or six Weeks, or more.

Mr. Marsh. Did he make any Complaint to you?

Mr. Wal. I never conversed with him.

Mr. Marsh. When you worked in the Strong Room, had you any other Place to work in?

Mr. Wal. I had another Place to work in, in George's Ward, but I was hunted about by other Prisoners. I would choose to lie there, and have lain there for a Week together, rather than lie in a Place where there are thirty or forty; for it is better to lie in a clean Place where there are not so many.

Mr. Ward. You say, you furnished Thompson with a Bed; How came you to have a Bed to spare?

Mr. Wal. I purchased several Beds, and let them out to hire.

Mr. Bar. Car. He said he sent in a Bed like an Upholder.

Mr. Ward. I was really surprized, that a Prisoner should have more than one.

Sarah Hartnefs, Wife of — Hartnefs, was sworn.

Mr. Aiton. Please to ask, if she was in the Strong Room when Newton was there, if he had a Bed?

Mr. Bar. Car. What say you to that?

Mrs. Hart. I was in the Room with Newton, and he had a Bed there.

Mr. Bar. Car. Had he Liberty to go out?

Mrs. Hart. He had Liberty to go out of Days.

Mr. Bar. Car. When he went out of the Strong Room, where did he go?

Mrs.

Mrs. Hartnefs. I think he went into the sick Ward.
 Mr. Baron Carter. When he went out of that Room, how was he?
 Mrs. Hartnefs. Very well.
 Mr. Baron Carter. How long after was it before he was taken ill?
 Mrs. Hartnefs. He was not taken ill in three Weeks after.
 Mr. Baron Carter. Where did your Husband go, when he left the Strong Room?—Mrs. Hartnefs. Into the Petitioning-Room.
 Mr. Baron Carter. How long did Newton live after he went out of the Strong Room?—Mrs. Hartnefs. Six Weeks, or better.
 Mr. Acton. Please to ask her, if one Captain Delagoll was not there at the same Time?
 Mrs. Hartnefs. He was; and my Husband and Newton were very glad that they were favoured so much, in having so good a Gentleman with them, he having Candle there.
 Mr. Baron Carter. What Sort of a Place was the Strong Room?
 Mrs. Hartnefs. It was clean and dry; I could have wished my Husband there all the Time.
 Mr. Acton. Please to ask, my Lord, whether she ever heard them complain of ill Usage?—Mrs. Hartnefs. No.
 Mr. Baron Carter. Did Newton complain that the Irons had hurt his Legs, and that they were swelled?—Mrs. Hartnefs. No.
 Mr. Baron Carter. Who were the Irons taken off by?
 Mrs. Hartnefs. They were taken off by Darby's Order.
 Mr. Acton. Please to ask, if Newton ever complained of me?
 Mrs. Hartnefs. I never heard him say a miss Word of you.
 Mr. Acton. Please to ask, my Lord, if she applied to Darby to have the Irons taken off.
 Mrs. Hartnefs. I went to Darby on a Court Day, and he said, he would have them off.
 Mr. Ward. Who do you live with?—Mrs. Hart. One Col. Brown.
 Mr. Ward. Where does he live?
 Mrs. Hartnefs. He lives in Charles-street, Covent-Garden.
 Mr. Ward. How comes it that you live with Colonel Brown?
 Mrs. Hartnefs. I am Servant to Colonel Brown.
 Mr. Ward. What is your Husband?
 Mrs. Hartnefs. He is Cook to the Captain of a Ship.
 Mr. Ward. Where did Newton lye after he came out of the Strong Room?—Mrs. Hartnefs. My Husband and Newton were Bedfellows.
 Mr. Ward. I expected you worse than I find you. After your Husband came out of the Strong Room, where was he carried to?
 Mrs. Hartnefs. To the Petitioning-Room.
 Mr. Ward. Was your Husband in the sick Ward?—Mrs. Hart. No.
 Mr. Ward. How could they lye together?
 Mrs. Hartnefs. I spoke of this before they went out.
 Mr. Baron Carter. She does not say a Word as to the Strong Room; one lay in the Petitioning-Room, and the other in the Sick Ward.
 Mary Berkley was sworn.
 Mr. Acton. Do you remember Newton being in the Strong-Room?
 Mrs. Berkley. I do.
 Mr. Acton. Had he a Bed there?—Mrs. Berkley. He had.
 Mr. Acton. What kind of a Place is the Strong Room?
 Mrs. Berkley. It is a boarded Room, and floored at Bottom; it was every Day washed; I washed it.
 Mr. Baron Carter. Did he not complain of any Hardship?
 Mrs. Berkley. No.
 Mr. Baron Carter. Where did he go when he came out of the Strong Room?
 Mrs. Berkley. He went into the Duke's Ward.
 Mr. Baron Carter. How long was he there?—Mrs. Berk. Seven Weeks.
 Mr. Baron Carter. Where did Newton fall ill?
 Mrs. Berkley. In the Duke's Ward.
 Mr. Baron Carter. Did you see Newton when sick?
 Mrs. Berkley. I did see him, I was Nurse; his Distemper was the Gaol Distemper, an Ague and Fever; he was taken ill with a Shivering and Shaking.
 Mr. Baron Carter. Did you look after him all the Time he was ill?
 Mrs. Berkley. Yes.
 Mr. Baron Carter. When did he die?
 Mrs. Berkley. He died in November.
 Mr. Baron Carter. Did he complain of any hard Usage?
 Mrs. Berkley. No; he went about with his Fetters.
 Mr. Acton. Did you see him after he died?
 Mrs. Berkley. Yes, I washed him; he was a very clever, clean Corpse, without Spot or Blemish.
 Mr. Marsh. Did you see no Marks of the Irons?—Mrs. Berkley. No.
 Mr. Marsh. Did you wash the Strong Room with the Water that fell from the Heavens? You dried it up—
 Mr. Baron Carter. Did it rain in?
 Mrs. Berkley. It never rained in there; it was a dry, neat Place.
 Mr. Ward. Have you no Office in the Gaol?
 Mrs. Berkley. I looked after the Sick.
 Mr. Ward. Had you any Allowance as Nurse, and by whom paid?
 Mrs. Berkley. I had no Allowance.
 Mr. Ward. Had you nothing paid you?
 Mrs. Berk. Who should pay me?
 Mr. Ward. What did you do it for?
 Mrs. Berkley. I did it for Christianity Sake.
 Mr. Baron Carter. Did Acton make you any Allowance?
 Mrs. Berkley. I had Three-pence a-piece from the People that came in to the Ward, which was paid at the Bar.
 Mr. Ward. Had you nothing but Three-pence?—Mrs. Berkley. No.
 Mr. Ward. Who was you appointed by?
 Mrs. Berkley. The Men in the Gaol chose me.
 Mr. Ward. How came they to choose you?
 Mrs. Berk. They took me to be a sober, modest Woman, and so chose me.
 Mr. Baron Carter. You see you have an Answer; she is a sober, modest Woman.
 Mr. Ward. But 'tis difficult to get the Truth out of her.
 John Boswell was sworn.
 Mr. Acton. Did you build the Strong Room?

Mr. Boswell. I did; it was made to put Pirates in.
 Mr. Acton. Is it a wholesome Place?
 Mr. Boswell. It is a very wholesome Place; it is nine Inches from the Ground.
 Mr. Baron Carter. Is the Common Sewer under it?
 Mr. Boswell. It is not, it is twenty-four Feet from it.
 Mr. Baron Carter. How come you to know it?
 Mr. Boswell. Because I measured it several Times.
 Mr. Acton. Was there a Covering at the Top?
 Mr. Boswell. It was covered with whole Deals, and pitched and tarred.
 Mr. Morris was sworn.
 Mr. Acton. Do you know the Strong Room?
 Mr. Morris. I do, and it is better than any Ground-Room on the Common Side; there is a Step up above the Surface.
 Mr. Acton. Please to ask him, what Business he is.
 Mr. Morris. I am a Carpenter.
 Mr. Baron Carter. How is the Room covered?
 Mr. Morris. With Boards, and I think there is a Tarpaulin at Top.
 Mr. Baron Carter. How near is the Common Sewer to it?
 Mr. Morris. It is above eighteen Feet from it.
 Mr. Baron Carter. Is it offensive?
 Mr. Morris. I don't think there is any Thing offensive.
 Mr. Ward. Do you know when it was built?
 Mr. Morris. It was built about four or five Years ago.
 Overston was sworn.
 Mr. Acton. What did you hear Mr. Demotet say concerning me?
 Mrs. Overston. I heard Mr. Demotet say, he would hang Acton, right or wrong, to be an Example to all other Gaolers; and that he was maintained by some Gentlemen to hang him.
 Mr. Ward. How long ago was it that you heard him say this?
 Mrs. Over. It was the fourteenth Day of July last, in the Cellar of the Fleet Prison.
 Mr. Marsh. How came you to be in the Fleet?
 Mrs. Over. I went backward and forward to the Fleet.
 Mr. Marsh. What are you?
 Mrs. Over. A Servant, I live in Fetter-Lane.
 Mr. Demotet was called, to confront Overston.
 Mr. Marsh. Do you know that Woman?—Mr. Demotet. I do.
 Mr. Marsh. What was it you said to her?
 Mr. Demotet. I said, I would say nothing but the Truth, and do nothing but what the Law required.
 Mr. Marsh. Overston, What was it Demotet said to you on the 14th of July, in the Fleet Prison?
 Mrs. Overston. He was in the Cellar there, and said he would swear against Mr. Acton, right or wrong, in order to make an Example of him.
 Mr. Demotet. I said, I would say what was Truth.
 Elizabeth Clayton was sworn.
 Mr. Acton. What did you hear Demotet say?
 Mrs. Clayton. In the Cellar in the Fleet Prison?
 Mr. Marsh. Mistress, hold; Was not you a Prisoner in the Marshalsea?
 Mrs. Clayton. I was a Prisoner there twelve Months; but hearing that Demotet had sworn against Acton, I had a mind to talk with him about it; and he said, that Acton had killed a hundred, and that he would be revenged of him, if he swore himself to the Devil.
 Mr. Marsh. She was a Prisoner in the Marshalsea; how came she into the Fleet?
 Mr. Baron Carter. How came you there?
 Mr. Clayton. I went to Mrs. Overston, she was at one Mr. Solas Wife's.
 Mr. Dem. (In a Passion) She is an old Bawd, and brought Whores to Solas.
 Mr. Baron Carter. You must not behave yourself ill to Witnesses.
 Mr. Demotet. What she has said, is not true.
 John Hull was sworn.
 Mr. Acton. Please to ask him, what Demotet declared to him.
 Mr. Hull. Mr. Demotet declared, that he would hang Acton right or wrong, to be an Example to all other Gaolers.
 Mr. Ward. There is a very remarkable Difference in the Witnesses, in relation to the Place the Man was supposed to go to, after he came out of the Strong Room.
 Mr. Baron Carter. Gentlemen of the Jury, the Prisoner at the Bar stands indicted for the Murder of Robert Newton; the Indictment sets forth, that he put him, against his Will, into a Place called the Strong Room, and kept him there fourteen Days; that there were unwholesome, noisome Smells; that it was damp and wet, and that he got a Distemper there whereof he died. To prove this, they called several Witnesses. The first, was Captain Tudman; he says, that he knew Newton and Hartnefs, and that they broke out; and in a Month or two after, Newton was taken again, and brought into the Lodge, and ironed, and then carried into the Strong Room; he says, that there is a little Hole to put in Drink; and says, that before Newton went into this Place, he was a hale, strong young Fellow.
 Carr; he says, that he saw Newton in the Marshalsea; that he came ironed out of the Lodge, and that he was brought out by Rogers, and carried to the Strong Room, and he, and Hartnefs, remained there two Court Days; that Newton was a strong, hale Fellow, and that he fell ill in the Strong Room; Gentlemen, it was of the Gaol Distemper, which he thought the Jaundice, such as they were used to, no uncommon Disease. He was asked then, whether the Strong Room was opened on Days, and locked up on Nights; he says, that after two or three Days, the Door was opened on Days.—He says, Gentlemen, that there was no Drain to carry off the Water; that the Sun does not visit it; that it is built in a Corner in the Yard, and the Sun does not shine upon it, and says, that Wet comes from the Top; that he was with Newton a Week before he died, and Newton said, that the Confinement was the Occasion of his Death, and the Witness thinks so too. He says, Gentlemen, Hartnefs was all the Time in the Strong Room, and ironed, and caught no Distemper.
 Edward Phillips says, that he knew the Strong Room; that there is a Sort of a Pool, where the Water settles, that comes from the Necessary-house that is under it, so makes it damp; and says, that it was sometimes open; That, upon asking him his Opinion, if there were any noisome Smells, he says, that it was a noisome Place, and not fit for a human Creature to

to be in. He says, that the Irons were small, and he believes *Newton* was in the Strong Room ten or twelve Days, and that it was so long before he was taken ill; that *Hartnefs* was not so strong a Man as *Newton*, and he received no Injury by being there; but that *Newton's* Confinement was the Occasion of his Sickness.

Robert Smith says, that he knew *Newton*; that he was a lusty, hale Man; but he can't say that he was sick in the Strong Room; he was in it, and saw it opened.

Mr. Demotet says, that he knew *Newton*; that he broke out, and was retaken, and was put in the Strong Room, and continued there fourteen or fifteen Days, on the Ground, without having a Bed; that he came out of the Lodge ironed, and *Allen* came and followed him, and saw him locked up in the Strong Room; that his Wife came to see him, and he died in three or four Days after he came into the sick Ward; and that the Occasion of his Death was Vermin and Lice; that the Water came in at the Top, and it was not fit to put a Man in; that the Floor was bad. He says, that he himself was in the Strong Room about ten Minutes, and it was infested with Rats.

Martha Johnson says, she never saw him confined.

John Johnson says, that he saw *Newton* once in the Strong Room; that it is a close Place; that there is no Air, and it has the same noisome Smell as the Common Side, and the Door was opened for him to go and have him.

Ruth Butler says, that she knew *Newton*; that he was retaken and put in the Strong Room; that Irons were put on his Legs; that he fell sick there, and died in three or four Days in the sick Ward; that she can't tell the Occasion of his Death, unless the Injury caused from his Confinement. She says, that the Strong Room is boarded at the Top, but that the Rain comes in. Gentlemen, she says, what was not mentioned before, that he complained of his Legs.

Nicholas Purden said nothing to the purpose.

Cummins said, that it was an ugly Room; that it was never swept, and was wet and dirty.

This is the Substance of the Evidence for the King.

The Prisoner is infisted upon to be a severe Man; it is said, that he put *Newton* into this Place; now says he, if I did not do it, I am not affected.

What was the Consequence; if he did not put him into Irons, he put him in the Strong Room.

Holmes, the first Witness for the Prisoner, says, he was there when the Man came back, and said, that *Darby* ordered him to be put in Irons; admit he had given Orders, the Irons were not of so extraordinary a Weight; the Room was not so bad.

The Witnesses called for the King all agree, that he fell ill in the Strong Room; now the Witnesses for the Prisoner will shew you, that the Man was taken out of the Strong Room, and was taken into the Duke's Ward, where he remained a considerable Time; that when *Hartnefs* and *Newton* were uneasy under the Irons, they desired to have Relief, and applied to *Darby*, and he ordered the Irons to be taken off. That is a Confirmation that *Darby* had the sole Power. This is the Manner of the Evidence in his Favour. If *Darby* did do it, *Acton* was not to answer for it.

The first Witness is at a Loss as to the Time of the Man's Death. When he came in, according to the Evidence given for the King, he remained fourteen or fifteen Days in the Strong Room, and was carried to the Sick Ward, and died in three or four Days.

Holmes says, he was in very good Health; he drank with him several Times, and played at Trap-ball; and he believes he remained six Weeks before he died, and that he died of the Gaol Distemper. He says, that he was retaken the latter End of *August*, and died in *November*; here are two Months complete; and the Witnesses for the Crown account but for six Weeks. He says, that it is the best Room on the Common Side for two or three to be in; and that several, of his own Knowledge, desired to be there. The Counsel pressed him very much, to name any one Person that was there, by his own Desire; so he said, that one *Thompson* was there. He says, that it could not rain through, because it was just built.

Walter says, that he knew *Newton* in the Duke's Ward; and says, that he was there about four Weeks; that he heard him make no Complaint, but just before he was carried there: He had a good Opinion of the Strong Room, and requested to work there, and says, that he let *Newton* have a Bed; which contradicts all the other Evidences. He was asked about the

Beds, and said, that he got them by his Savings; and that he let them out to hire.

Hartnefs says, that she knows very well that *Newton* had a Bed, and her Husband and he lay together, and a Captain was there; that she never found the Room wet, nor any thing like it; that they went out of Days, and were locked up in the Strong Room of Nights; that *Newton* was six Weeks or two Months, before he died, in the Duke's Ward; that her Husband received no Damage. She says, that it was a clean Room; that she never heard *Newton* complain of his Irons, or ill Usage of the Prisoner. She says, that she went to *Darby* to have the Irons taken off, and he ordered them to be taken off, while she stood by, and gave Directions accordingly.

Barton says, that she saw *Newton* in the Strong Room, and she saw a Bed; so there are three Witnesses as to that. She says, she washed the Room every Day; it is very extraordinary, after so many have sworn it to be very dirty. She says, that he never did complain of the Prisoner; that he went into the Duke's Ward for seven Weeks; that she was Nurse, and that he died in *November*, and died of an Ague and Fever; that she laid him out, and never saw a finer Corpse; and that the Rain never came into the Strong Room. In order to take off Part of her Testimony, she was asked, Whether she was not obliged to the Prisoner at the Bar? She said, that she was Nurse, and that she had Three-pence a-piece of those she took care of; and that she was chosen by the free Election of the Prisoners.

The Prisoner called two or three others, to the Strong Room.

Boswell says, he built it, and that it was very wholesome, and it was twenty-four Feet from the Common Sewer.

Morris says, the Strong Room was very wholesome, and that it was better than any Ground-Room on the Common Side, and that there was a Tarpaulin at Top.

Overston was called to impeach the Credit of *Demotet*. She says, that in the Fleet Cellar, she heard him say, that he would hang *Acton* right or wrong, as an Example to other Gaolers, to deter them from being Rogues. The Prisoner called two others. *Elizabeth Clayton* says, she heard him say, that he would hang *Acton*, tho' he sent himself to the Devil; and the other, *John Hull*, heard him say, that he would hang *Acton* right or wrong. *Demotet*, being called to confront these Witnesses, denies he ever said what they assert he did.

This is the Evidence on both Sides; therefore you will consider if *Acton* caused him to be put into the Strong Room; for if he did not, then he must be acquitted: If he did put him in, you are to consider, whether this Place is such a Place as they have set forth.

There is not a single Witness for the King that does not give the same Account of the Strong Room: It is pretty extraordinary, that to a Man the Witnesses should remain in one Opinion for the self same Purpose; their Words were, that it was not fit for a Human Creature to be in.

The Witnesses for the King say, that he died in two or three Days after he was taken out of the Strong Room; the others say, that he lived two Months; therefore consider, if he was put in this Room, and it was not the Occasion of his Death, he ought not to be found Guilty, in that he was very well for a Month, some say six Weeks after; and that he fell sick of the Gaol Distemper in the Sick Ward.

If he did nothing in relation to the Irons, he must be acquitted as to that.

If the Room was such as was fit for a Man to be put in, there was no Harm in putting him in there.

If he did not die by Durefs, by being put in that Room, I believe he must be acquitted on that Head.

If he was put in the Strong Room by *Acton*, against his Will, and it was so unwholesome that he caught a bad Distemper, and died of it, you must find him Guilty.

The Jury agreed upon their Verdict immediately, without going out of Court.

Clerk of Arraignment. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Clerk of Arraignment. Who shall say for you?

Omnes. Foreman.

Clerk of Arraignment. William Acton, hold up thy Hand. (Which he did.) Look upon the Prisoner. How say you, Is he Guilty of the Felony and Murder whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

XVII. The Trial of WILLIAM ACTON, for the Murder of JAMES THOMPSON, at the Assizes held at Kingston upon Thames, in Surrey, before the Hon. Mr. Baron Carter, August 2, 1729.

Die Sabbati, 2 Augusti, 1729.

William Acton having been before arraigned for the Murder of James Thompson, and pleaded Not Guilty, the Counsel proceeded as follows.

Mr. Middleton. MY Lord, and you Gentlemen of the Jury, I am of Counsel for the King. The Indictment sets forth--- We will call our Witnesses to prove the Fact.

Mr. Marsh. My Lord, and you Gentlemen of the Jury, the Evidence for the King against the Prisoner at the Bar for murdering one James Thompson, is to this Effect: That the poor Man had the Misfortune to be troubled with a Diabetes; and, according to the Account given of that Distemper, it does occasion Persons to void a great deal of Water. The Prisoner was so far from compassionating him, that he put him against his Will into the Strong Room, and he lay there ten Days or more in a bad Condition; that no Regard was had to him; he was there suffered to continue without a Bed till his Left Side mortified. It was a very bad Place. Some of the Witnesses for the Prisoner did give an Account of it, that it was built for Felons and Pirates: This Place was built up for them, that is now said by the Prisoner to be the best Room in this Gaol. One of the Witnesses in the last Cause spoke of the Pirates being put there. When Thompson was in this Place, this was done; his miserable Condition was represented to Acton, and he made use of a very harsh Expression, 'Damn him, let him lie there, and perish.' We will call our Witnesses to shew the Fact, and it must be left to you to consider whether he is Guilty or not.

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There was so little Care taken of this Man, that after he was carried into the Duke's Ward, he was suffered to be put again into this Place, and there died.

Edmund Cummins was sworn.

Mr. Marsh. Did you know James Thompson?---Mr. Cummins. Yes.

Mr. Marsh. Whose Care was he under?

Mr. Cummins. He was under the Care of Acton.

Mr. Marsh. Who put Thompson in the Strong Room?

Mr. Cummins. He was put in the Strong Room out of the Ward.

Mr. Marsh. What was the Occasion of his being put there?

Mr. Cummins. I don't know what was the Reason of his being put there; but Acton gave that Reason, that the Ward Company complained of him.

Mr. Baron Carter. He was asked, who put him into the Strong Room? And he told you the Ward Company.

Mr. Cummins. My Lord I could not say so.

Mr. Baron Carter. I heard you say so.

Mr. Cummins. My Lord, I heard you---just now indulge a Witness for the Prisoner to explain herself. I thought your Lordship would not take so much notice of one of the King's Evidence making a Mistake. I came here to speak the Truth; and if your Lordship will not give me leave to explain myself, I will go down.

Mr. Baron Carter. Indeed you behave yourself very impertinently; but go on.

Mr. Cummins. Mr. Acton did say that was the Reason, that the Ward Company complained of him for making Water.

F f

Mr.

Mr. Marsh. How long was Thompson in the Strong Room?
 Mr. Cummins. He was there five or six Days; I saw him whilst he was alive there; he lay there on Nights, and had no Bed.
 Mr. Marsh. When you saw him there, what Condition was he in?
 Mr. Cum. I saw him in a bad Condition.
 Mr. Marsh. Where did he die?—Mr. Cum. In the Strong Room.
 Mr. Marsh. Did you hear Acton say any thing about it?—Mr. Cum. No.
 Mr. Marsh. Did you see him after he was dead?—Mr. Cum. I did.
 Mr. Marsh. How long was he dead when you saw him?
 Mr. Cum. He was alive over Night, and I saw him dead the next Morning. He had only a Night-Gown with him.
 Mr. Marsh. Did you see his Face?
 Mr. Cum. His Face was disfigured with the Rats; I saw the Marks.
 Mr. Marsh. What was the Occasion of Thompson's Death?
 Mr. Cum. He might die by lying in that Room.
 Mr. Marsh. What do you, in your Opinion, believe to be the Occasion of his Death?
 Mr. Cum. I believe his being put there was the Occasion of his Death.
 Mr. Marsh. How soon was he buried after he died?
 Mr. Cum. He was hurried away in an Hour or two after he died, and was buried.
 Mr. Marsh. Who gave any Orders for hurrying him away?
 Mr. Cum. The Men carried him away that used to do it.
 Mr. Marsh. When was he carried away?
 Mr. Cum. The very same Morning he died; in two Hours after.
 Mr. Marsh. How long was he in the Strong Room?
 Mr. Cum. Five, six, or seven Days.
 Mr. Marsh. Had he any Bed to lie on?—Mr. Cum. He had not.
 Mr. Marsh. I ask you, whether you saw him carried to the Strong Room, and whether Acton was present?
 Mr. Cum. Mr. Acton was there; and the Man was unwilling to go, and desired to stay; but Acton said, he should not.
 Matthew Brandon was sworn.
 Mr. Marsh. Did you know Captain Thompson?
 Mr. Brandon. I did; he was in the same Ward I belonged to, which is called Pump Ward.
 Mr. Marsh. Had he any Infirmary?
 Mr. Bran. When he was in the Ward he made a little Water; and some Complaint was made, and he was turned into the Strong Room.
 Mr. Marsh. Did you visit him when he was there?
 Mr. Bran. Several Times.
 Mr. Marsh. Did you hear Acton give any Orders about his being there?
 Mr. Bran. I did not.
 Mr. Marsh. How long did he lie there?
 Mr. Bran. Ten Days; then he was remanded back to his Ward, and lay there one Night; and then remanded back, and put in the Strong Room again.
 Mr. Marsh. Did he tell you any thing?
 Mr. Bran. He told me, that he was unwilling to go back to the Strong Room, for that it would be his Death.
 Mr. Marsh. Did you visit him there?
 Mr. Bran. Several Times; and the first Time I saw him he had nothing to lie on, and I furnished him with a Piece of a Blanket, and after with a Piece of a Quilt.
 Mr. Marsh. How long was it before he died that you saw him?
 Mr. Bran. I saw him two Days before his Death.
 Mr. Marsh. What Condition was he in?
 Mr. Bran. He could not stir; three or four Days before he died, he lay on his left Side.
 Mr. Marsh. Did you not see one of his Hips very sore, angry, and bad?
 Mr. Bar. Car. You know you must not lead the Evidence.
 Mr. Bran. There was a very bad, angry, sore Place.
 Mr. Marsh. Where was it?—Mr. Bran. It was in one of his Thighs.
 Mr. Marsh. When did you see it?—Mr. Bran. It was so when he was in that Room; I don't remember it before.
 Mr. Marsh. Did Capt. Thompson complain to you of any thing?
 Mr. Bran. He complained, before he went into the Strong Room a second Time, if he was to go in there again, it would be the Death of him.
 Mr. Marsh. How many Days was it after he was put in again to the Strong Room before he died?
 Mr. Bran. I can't justly say, but I believe about six or eight Days.
 Mr. Marsh. Where did he die?—Mr. Bran. In the Strong Room.
 Mr. Marsh. Did you see him after he was dead?
 Mr. Bran. I saw him the next Morning after; his Thigh looked not quite so angry, but there was a sore Place there.
 Mr. Marsh. Did you, in Behalf of the Captain, make any Application to Acton?
 Mr. Bran. Wilson, Cummins, and myself went to Acton, and represented his Condition to him, and desired he would be pleased to let him go to the Sick Ward; and Acton bid Wilson go about his Business; and that was all the Answer we could get.
 Mr. Marsh. When you saw him after he was dead, did you see any Marks about him?
 Mr. Bran. I saw his Nose and Ear, and Part of his Cheek eat away.
 William Jennings was sworn.
 Mr. Marsh. Did you know James Thompson?
 Mr. Jen. Yes; he was a Prisoner in the Marshalsea, in 1726.
 Mr. Marsh. Had he any Distemper then?
 Mr. Jen. He had no Distemper when he first came into the Ward.
 Mr. Ameron. What was the Occasion of his being removed out of the Ward?
 Mr. Jen. They found fault that he was troubled with a Diabetes.
 Mr. Amer. Did you hear Acton give any Orders to carry him to the Strong Room?
 Mr. Jen. Acton did order him into the Strong Room.
 Mr. Amer. How long did he remain there?
 Mr. Jen. He remained there eight or ten Days, at first, and then was

put into the Pump Ward, and stayed there two Nights, and then was put into the Strong Room again.

Mr. Amer. Did Acton order him in again?
 Mr. Jen. I heard Acton order him to be put there again.
 Mr. Amer. What was you then?
 Mr. Jen. I was then one of Acton's Watchmen; I went to see the Gentleman, and he said, he should certainly perish if continued in that Place; and I desired Acton to have him removed; and Acton said, What Business have you to meddle with it? Let him die like a Son of a Bitch, and be damned.

Mr. Amer. What, in your Opinion, was the Occasion of his Death?
 Mr. Jen. I believe his lying there in that Place was the Occasion of his Death.

Mr. Marsh. It was represented to be a clean Room, was it washed?
 Mr. Jen. I don't believe it was.
 Mr. Marsh. How long was you belonging to the Marshalsea?
 Mr. Jen. I lived four Years out of seven there.
 Mr. Marsh. Was it washed during that Time?
 Mr. Jen. It was very seldom, if ever washed.
 Mr. Marsh. Did you go into the Room?
 Mr. Jen. I have been in it several Times; I have rough swept it.
 Mr. Marsh. Is it dry at Top?—Mr. Jen. No, the Rain comes in.
 Mr. Richardson. Had Captain Thompson committed any Crime before he was put in there?—Mr. Jen. No.

Mary Seaband was sworn.

Mr. Marsh. Did you know Captain Thompson?
 Mrs. Seaband. I remember him; he was a Prisoner in Pump Ward, and he was removed from thence into the Strong Room; but I don't know upon what Occasion.

Mr. Marsh. By whose Order was he carried there?
 Mrs. Seaf. By Mr. Acton's.
 Mr. Marsh. How do you know?—Mrs. Seaf. Thompson said so.
 Mr. Marsh. You never heard Acton give Orders?—Mrs. Seaf. No.
 Mr. Marsh. Did you see Captain Thompson when in the Strong Room?
 Mrs. Seaf. I did; he had no Bed to lie on, and the Wet was under him.
 Mr. Marsh. How long was it before he died, that you saw him?
 Mrs. Seaf. I saw him the Minute he died.
 Mr. Marsh. Did he then declare any thing to you?
 Mrs. Seaf. He declared nothing to me then; but three Days before he died, a Gentleman came in to see him, and Thompson told him, it would be the Occasion of his Death if he was not removed.

Mr. Marsh. What Condition was he in in the Strong Room?
 Mrs. Seaf. His left Side mortified, which was occasioned by his hard lying on the Ground, and in the Wet.
 Mr. Marsh. Was not Part of his Face eat away?
 Mrs. Seaf. The Rats had eat out his left Eye.
 Mr. Marsh. How long did he continue in the Strong Room?
 Mrs. Seaf. I can't say how many Days, I believe he was there three Weeks.

Mr. Marsh. How do you know that his Face was eat away by the Rats?
 Mrs. Seaf. I have Reason to know, for they were very troublesome when I was there.

Mr. Marsh. Was it a proper Room to put any one in?—Mrs. Seaf. No.
 Mr. Marsh. Was it swept?—Mrs. Seaf. I never saw it swept; I was in it from the first of January till the sixth, Night and Day.

Mr. Marsh. Was it washed?—Mrs. Seaf. It was not washed while I was there; there were several Barrows-full of Dung in it then.

Mr. Marsh. What was there in it?
 Mrs. Seaf. Wet, and Straw, and Dirt.
 Mr. Marsh. How did it smell?
 Mrs. Seaf. Very badly; I have seen there a Score of Rats at a Time.
 Mr. Acton. Please to ask, what Time of the Day Capt. Thompson died.
 Mr. Bar. Car. What say you to that?
 Mrs. Seaf. He died about six o'Clock in the Morning, and was buried before Ten.

Mr. Acton. Who gave Directions for his Burial?
 Mrs. Seaf. I don't know.
 Mr. Acton. Was there any Person to view the Body?
 Mrs. Seaf. There were no Searchers.
 Mr. Acton. Who sent you to Capt. Thompson?
 Mrs. Seaf. Nobody sent me, I went of my own accord; I carried him twice Mutton Broth.

Call Thomas Snape. (Who was sworn.)

Mr. Ward. Did you know Capt. Thompson?
 Mr. Snape. Yes, he was first in the Pump Ward, and went from thence into the Strong Room.

Mr. Ward. By whose Orders?
 Mr. Snape. I can't tell; he was removed from the Pump Ward to the Strong Room, and was there for some Time, and then went into Pump Ward again, and was there some small Time, and then carried back again to the Strong Room.

Mr. Ward. How long did he continue in the Strong Room the second Time?

Mr. Snape. He was there nine or ten Days both Times.
 Mr. Ward. Did he die in the Strong Room?—Mr. Snape. Yes.
 Mr. Ward. Did you see him after he was dead?
 Mr. Snape. Yes, I saw his Corpse laid out, and his Side was very bad; it was black, and turned as to a Mortification.

Mr. Ward. How long was it before he died that you saw him?
 Mr. Snape. Three or four Days.

Mr. Ward. Did he make any Complaint?—Mr. Snape. No.

Mr. Acton. Was he confined there all the Time, or did he go about?
 Mr. Snape. I saw him go out and in to the Strong Room.

Mr. Ward. When was he laid out?
 Mr. Snape. Between six and seven o'Clock in the Morning.

Eleanor Ewer was sworn.

Mr. Ward. Did you know Captain Thompson?

Mrs.

Mrs. Ewer. I remember the Captain; he was in good Health when he went into Gaol.

Mr. Ward. When did he die?

Mrs. Ewer. He died the ninth or tenth of July.

Matthew Bacon was sworn.

Mr. Marsh. Did you know Captain Thompson?

Mr. Bacon. I did; he was arrested and put into Prison the latter-end of May, 1726. I remember he was brought into the Pump Ward, and continued there three Weeks; and then was removed to the Strong Room.

Mr. Marsh. How long did he continue in the Strong Room?

Mr. Bacon. He lay there about ten Nights, and then came into the Pump Ward, and remained a Night or two; and from the Pump Ward, went back again to the Strong Room.

Mr. Marsh. How long was he in the Strong Room the second Time?

Mr. Bacon. He was there about ten Days more before he died.

Mr. Marsh. Did you see him there, the latter-part of the time, before he died?—Mr. Bacon. I did.

Mr. Marsh. In what Condition did he lie?—Mr. Bacon. He had bundled up a Piece of a Blanket to lay his Head upon.

Mr. Marsh. Did he make any Complaints of his Hardships?

Mr. Bacon. He said, a Day or two before he died, that the cruel Usage, and lying hard, would kill him.

Mr. Marsh. Did he complain of any Sore, or Hurt, or of his Side?

Mr. Bacon. I can't say he did; but after he was dead, his left Hip appeared black.

Mr. Marsh. What, in your Opinion, was the Occasion of his Death?

Mr. Bacon. The hard and cruel Usage was the Occasion of his Death.

Mr. Marsh. Was the Strong Room washed, or swept, or kept clean?

Mr. Bacon. It was not; and if any Person swore so, they did not swear true.

Mr. Baron Carter. Was you there every Day?

Mr. Bacon. I can't say every Day.

Mr. Richardson. Was it fit to put a Man in?

Mr. Bacon. It was contrived for a Punishment, for People who had committed great Crimes against the Government.

Mr. Richardson. Were there other Rooms fit to put Thompson in?

Mr. Bacon. Yes, there were.

Mr. Richardson. Was there any Application to have him removed?

Mr. Bacon. There was none by me.

Peter Purchase was sworn.

Mr. Ward. What Part of the Prison was Thompson confined in?

Mr. Purchase. He was first in the Pump Ward, and was taken out of that Room contrary to his Inclination, and put in the Strong Room.

Mr. Ward. How do you know it was contrary to his Inclination?

Mr. Purchase. He often said so.

Mr. Ward. Did you see him removed from the Pump Ward to the Strong Room?—Mr. Purchase. Yes.

Mr. Ward. Was he carried there?—Mr. Purchase. No, he walked there.

Mr. Ward. You was by when he went into the Strong Room?

Mr. Purchase. Yes.

Mr. Ward. Was you by when Acton gave Orders to carry him there?

Mr. Purchase. No.

Mr. Ward. Who was with Thompson when he went there?

Mr. Purchase. Nichols and Rogers went along with him; and they said, they had Orders to go to the Strong Room.

Mr. Ward. How long did he continue in the Strong Room?

Mr. Purchase. I can't be certain of the Time.

Mr. Ward. But you saw him in the Strong Room?

Mr. Purchase. I frequently visited him in the Strong Room.

Mr. Ward. Did you observe that it was washed or cleaned?

Mr. Purchase. It was not, during the Time I was a Prisoner there.

Mr. Ward. What kind of a Place was it?—Mr. Purchase. It was a wet, damp, nasty Place, not fit for a Christian to be in.

Mr. Ward. Do you know of any Application made to Acton concerning Captain Thompson?

Mr. Purchase. Wilson and I went to the Lodge to inquire for Acton, and told him, that Thompson said, the Confinement in that miserable Place, would be the Cause of his Death, and he desired to be removed to another Place; but Acton would not hear us, but bid us go about our Business.

Mr. Ward. When did you see him last, before he died?

Mr. Purchase. I saw him the Night before he died; and he then said, that the Confinement in that Place would be his Death.

Mr. Ward. Did you see him after he was dead?—Mr. Purchase. I saw his Body; he had on his Thigh something like a Mortification.

Mr. Ward. What was the Occasion of his Death?—Mr. Purchase. I believe, lying upon the bare Boards was the Occasion of his Death.

Mr. Ward. Was there any Water in the Room?

Mr. Purchase. At some times there was; when it rained, the Water came in at Top; I have seen the Rain come in.

John Wilson was sworn.

Mr. Marsh. Did you know Captain Thompson?

Mr. Wilson. Yes, he was committed a Prisoner the latter-end of May; he was a Fortnight or three Weeks in the Pump Ward.

Mr. Marsh. What Sort of a Man was he?

Mr. Wilson. He was a hearty, strong Man, of a merry Disposition, singing Songs, and Chorus's. He was in the Pump Ward, and after was put into the Strong Room; some People came to fetch him, and said it was by the Order of Nichols, Rogers, and others.

Mr. Marsh. How long did he remain there?

Mr. Wilson. He remained there a Week and better, in a bad Condition.

Mr. Marsh. Had he any thing to lie on?

Mr. Wilson. He had on a Banyan Camblet Night-gown, but lay upon the bare Floor, which was wet with the Water that came in.

Mr. Marsh. Where did the Water come from?

Mr. Wilson. It came from the Top of the Room; I saw it rain through.

Mr. Marsh. Could he come out?

Mr. Wilson. He had a Power of coming out of the Room in the Day-time, but he had no Power of coming to lie any where else on Nights; he lay two Days in the Pump Ward, and then was put into the Strong Room again; and then desired me to go to the Petitioning Room, to get him into another Place.

Mr. Marsh. Did you make any Application in his Behalf?

Mr. Wilson. I went with Purchase to Acton, but was not heard.

Mr. Marsh. What did Acton say to you?—Mr. Wilson. I began to tell the Story relating to the Man's Misery, and Acton said—

Mr. Marsh. What did you tell Acton?

Mr. Wilson. I said, he would perish if not removed; and Acton bid me go and trouble my Head with my own Business.

Mr. Marsh. Did he order him to be taken out of the Strong Room?

Mr. Wilson. No.—I then went to the Nurse of the Sick Ward, to desire her to entertain him in that Ward; and she would not do it, because she had not Orders; so he continued in the Strong Room very miserable. I took him out, and put him in the Chimney Corner to dry himself; and when he came to dry himself before the Fire, he smelt very ugly and nasty (this was after the second time of his going into the Strong Room); then he went back, and lay very miserably for three or four Days.

Mr. Ward. Did you ever see the Strong Room washed?

Mr. Wilson. I never saw it washed all the Time the Captain was there; within these twelve Months, or within these six Months, it has been washed.

Mr. Ward. Was it covered at Top?

Mr. Wilson. There was a Tarpaulin laid over it lately, since he was there.

Mr. Ward. What State and Condition was it in when Thompson was there?

Mr. Wilson. It is in a better State and Condition now; I have seen the Water pour in, and it was in as bad a State when he was there, as ever; and there was no Tarpaulin put upon it, till within these twelve Months.

Mr. Ward. How was the Floor?

Mr. Wilson. The Floor lies five Inches higher than the Ground, but the Boards not being thick, they were grown rotten, with the great deal of Water that settled there after a Rain, for the Room was worse the next Day.

Mr. Ward. What, in your Conscience, do you believe to be the Occasion of his Death?

Mr. Wilson. I believe, in my Conscience, that he was seemingly of a strong Constitution, and continued the same till his going into that Place; and that the Severity of the Weather, and his hard lying, were the Cause of his Sickness, of which he languished and died.

Phillips was sworn.

Mr. Marsh. Did you know Captain Thompson?

Mr. Phillips. Very well; he was troubled with a Diabetes when he first came in; he was put in the Pump Ward, and there he continued three Weeks or a Month; he was then removed to the Strong Room; I saw Acton and his two Servants there.

Mr. Marsh. What Condition was he in?

Mr. Phillips. He was in a very miserable, deplorable Condition, for he had that Distemper when he went into the Strong Room; he was offensive to the rest of the People of the Ward.

Mr. Marsh. Did you visit him in the Strong Room?

Mr. Phillips. I frequently went to him.

Mr. Marsh. How long was he there before he died?

Mr. Phillips. Ten Days.

Mr. Marsh. Did you see him there in a good or bad Condition?

Mr. Phillips. He lay in a miserable, deplorable Condition.

Mr. Marsh. Did you make any Application to Acton in his Behalf?

Mr. Phillips. I had endeavoured to speak to him, but never could meet with him.

Mr. Marsh. How long before he died was it that you saw him?

Mr. Phillips. I saw him the Night before he died.

Mr. Marsh. Did he make any Complaint to you?

Mr. Phillips. He said, that lying in that Condition would be the Death of him; and said, that it was by Acton's Order that he was put there.

Mr. Marsh. When did he say this?

Mr. Phillips. Some Days before he died.

Mr. Marsh. Did you ever see the Strong Room washed?

Mr. Phillips. I was in the Gaol nine or ten Months, and never saw it washed.

Mr. Marsh. How long ago?—Mr. Phillips. Two or three Years.

Mr. Marsh. Did it rain in?—Mr. Phillips. The Rain did come in; I saw Puddles of Water in it several times.

Mr. Marsh. Was it fit to put any one into?

Mr. Phillips. It was a Terror to every body to go there.

Mr. Marsh. What do you believe was the Occasion of his Death?

Mr. Phillips. I believe the Diabetes, and lying in that Manner, were the Occasion of his Death.

Mr. Marsh. Was there any other Room empty, fit to put him in?

Mr. Phillips. There was a Room over against his own Ward that was empty. There was another Room empty, and proper for any body to be put in, called the Petitioning Room.

Mr. Marsh. Had he any Marks about him when dead?

Mr. Phillips. I saw a Wound, and put my Fift in, which looked as if the Flesh had been gnawed away.

Mr. Marsh. There was a Ward called the Sick Ward; was there Room there for Captain Thompson?—Mr. Phillips. Yes.

Mr. Marsh. We shall call no more Witnesses. There is strong Evidence given as to the Fact, and the Strong Room.

Mr. Acton. With humble Submission to your Lordship, Captain Thompson was put into the Pump Ward, and a Complaint came from Captain Thompson; I will acquaint your Lordship what was the Manner of it. Captain Thompson had the Diabetes, and his Ward-mates said he stunk, and fined him, and took his Coat from him, and carried it away, and the Man had not Money to redeem it, or wherewithal to raise any, and desired he might go to some Place where he might be in Peace; I asked

asked him, if there was any particular Person he desired to be with, or if he would go into the Sick Ward? He said, he had rather go into the Strong Room, for if he went into the Sick Ward, they would fine him there again.

Christopher Gosling was sworn.

Mr. *Acton*. I desire he may give an Account of what he knows about Captain *Thompson*.

Mr. *Gosling*. I was sitting at the Lodge Door, and Captain *Thompson* came up to *Acton*, and desired him to let him go into the Strong Room; *Acton* said, he might go into the Sick Ward; and *Thompson* said, the Men in the Ward had tormented him so, that he had rather lie in the Strong Room; and *Acton* made Answer, You may lie there.

Mr. *Baron Carter*. What did they torment him about?

Mr. *Gosling*. About Pissing; he pissed very much there.

Mr. *Baron Carter*. What Answer did *Acton* make him?

Mr. *Gosling*. He bid him do what he would.

Mr. *Acton*. When he was in the Strong Room, did they not use to torment him?—Mr. *Gosling*. Yes.

Mr. *Baron Carter*. How long did he lie there?

Mr. *Gosling*. Five or six Weeks.

Mr. *Acton*. Please to ask him, if Captain *Thompson* did not say he was much beholden to me.—Mr. *Gosling*. He said so.

Mr. *Acton*. Was there any Anger, or any thing between us?

Mr. *Gosling*. No.

Mr. *Acton*. Did not Captain *Thompson* say, he desired to go into the Strong Room?

Mr. *Gosling*. He expressly desired to be removed into the Strong Room.

Mr. *Acton*. Had he a Bed there?—Mr. *Gosling*. Yes.

Mr. *Ward*. What do you call a Bed?

Mr. *Gosling*. A Pillow and Blanket.

Mr. *Richardson*. Is it very usual for People to lie in such Beds?

Robert Holmes was sworn.

Mr. *Acton*. Please to ask, if he did not come to me from Captain *Thompson*, and what was his Request.

Mr. *Baron Carter*. What say you to that?

Mr. *Holmes*. He was so tormented by the Ward, that he desired me to go to Mr. *Acton*, to desire him to let him (Captain *Thompson*) go into the Strong Room; and I asked Mr. *Acton*, and he gave him leave, and offered him to go into the Sick Ward.

Mr. *Acton*. What was the Occasion of his desiring to go there?

Mr. *Holmes*. He was so nasty, that the Ward chid him, and he could lye sweet and clean in the Strong Room.

Mr. *Baron Carter*. Did *Thompson* come up along with you?

Mr. *Holmes*. He did; he was not sick at that Time, but some Time after he fell sick and died.

Mr. *Baron Carter*. Did he make any Complaint?

Mr. *Holmes*. At last he did make Complaint, that he was ill, but did not then desire to be released.

Mr. *Acton*. Had he Liberty to go in and out of the Strong Room?

Mr. *Holmes*. He had, whenever he pleased, only some unlucky Fellows locked him in.

Mr. *Ward*. Had he Liberty to lye out?—Mr. *Holmes*. No.

Mr. *Ward*. I ask you whether *Acton* went with him to the Strong Room?

Mr. *Holmes*. I can't say he did; he gave him Leave to go into the Strong Room.

Elizabeth Gosling was sworn.

Mr. *Baron Carter*. How came Captain *Thompson* to be in the Strong Room?

Mrs. *Gosling*. By his own Desire, he was troubled with an Infirmary.

Mr. *Baron Carter*. How do you know it was by his own Desire?

Mrs. *Gosling*. I heard him say so.

Mr. *Baron Carter*. Had he Liberty to go out Night or Day?

Mrs. *Gosling*. He had the Liberty to come in and out.

Mr. *Ward*. What are you?

Mrs. *Gosling*. My Husband is a Prisoner.

Mr. *Ward*. I ask you whether he has any Office in the Gaol?

Mrs. *Gosling*. My Husband took a Room before of Mr. *Burleigh*, and continues under Mr. *Acton*.

Benjamin Brown was sworn.

Mr. *Baron Carter*. What do you know about *Thompson*?

Mr. *Brown*. He said, God blefs Mr. *Acton*, for he had saved his Life by putting him in the Strong Room, for if he had continued in the Ward, he had died.

Mr. *Richardson*. Did he give any particular Reason why he should have died?

Mr. *Brown*. That if he made Water in the Room, he was to pay a Quarter of Gin.

Mr. *Richardson*. Did you visit him in the Strong Room?

Mr. *Brown*. I oftentimes visited him.

Mr. *Richard*. Had he a Bed?—Mr. *Brown*. He had a Gaol Bed.

Mr. *Baron Carter*. Had he the Liberty of going in and out?

Mr. *Brown*. Yes.

Mr. *Richard*. Was not the Strong Room a Place of Confinement?

Mr. *Brown*. Yes; but when I was a Prisoner, I had the Liberty of the Gate, having several Causes in my own Right.

Mary Barton was sworn.

Mr. *Acton*. What did you hear Captain *Thompson* say?

Mrs. *Barton*. I heard him say that he asked Leave to lie in the Strong Room, and that he was disturbed in his own Ward.

Mr. *Acton*. Please to ask, if he did not say, that he had rather go to the Strong Room, than come to the Sick Ward.

Mr. *Baron Carter*. Answer that.

Mrs. *Barton*. He said, He might have gone, if he would, into the Sick Ward, but he had rather go to the Strong Room, because he could be there in Peace.

Mr. *Acton*. Had he a Bed in the Strong Room?

Mrs. *Barton*. Yes, such a Bed as poor People lye on, a Flock-bed; it was a broad Bolster, which he could lye at his whole length, and turn himself upon, such as they had in the Gaol.

Mr. *Baron Carter*. Was he locked up on Nights?—Mrs. *Barton*. No.

Mr. *Ward*. She is kept by *Acton*; she had Three-pence out of every Prisoner.

Mr. *Baron Carter*. She was put in by the Gentlemen.

Mrs. *Barton*. Yes, or else they would have tore the Gaoler to Pieces.

John Bowdler was sworn.

Mr. *Bowdler*. I was in the Ward when Captain *Thompson* went out; and the Ward being uneasy with him, he said he would make Interest to Mr. *Acton* to go into the Strong Room; and he took his Bed and Bedding, and went into the Strong Room.

Mr. *Acton*. Please to ask, whether *Thompson* told him he had made Interest.

Mr. *Bowdler*. *Thompson* said, that he had asked Leave of *Acton*, and he had granted it.

Davenish was sworn.

Mr. *Davenish*. In the Month of June 1726, I was sent into the Pump Ward to Captain *Thompson*, and his Ward-Mates swore at him, and called him Nasty Son of a Bitch.

That his Ward-Mates were very uncivil; that he was troubled with a Diabetes; and he said, he would desire Mr. *Acton* to let him go to the Strong Room; and the next Day I saw a Woman washing of it. When he was there, I asked him several Times if he wanted any thing; for Mr. *Wittingham* said, he would relieve him if he wanted for any thing; and he said, the Woman of the Sick Ward came to him, and he wanted for nothing.

Robert Walker was sworn.

Mr. *Baron Carter*. What do you know about Captain *Thompson*?

Mr. *Walker*. He was carried to the Strong Room by his own Consent; and asking him the next Morning how he did, he said, extraordinary well.

Mr. *Baron Carter*. Had he a Bed there?—Mr. *Walker*. Yes.

Mr. *Baron Carter*. Did he complain of any Illness?

Mr. *Walker*. I saw the People making Game of him.

Mr. *Baron Carter*. Was he locked up on Nights?—Mr. *Walker*. No.

Mr. *Acton*. A Nurse sat up with him on Nights, Mrs. *Conner*; she had been Nurse of the Sick Ward.

Benjamin Johnson was sworn.

Mr. *Baron Carter*. What have you to say to *Thompson*'s consenting to go to the Strong Room?

Mr. *Johnson*. I spoke to him two Days before he went there; and he said, he should be glad if *Acton* would grant him the Favour of lying there.

Mr. *Baron Carter*. Had he a Bed there?

Mr. *Johnson*. I saw him carry his Bed there; and he thanked God that Mr. *Acton* was so good to let him lie there, for he hoped it would be the saving of his Life.

Ralph Malban was sworn.

Mr. *Baron Carter*. What do you know of Captain *Thompson*?

Mr. *Malban*. I can say nothing, but that when I was in the Ward one Night I saw a great deal of Abuse offered him; and the next Day I asked him how he came to suffer such Abuses; and he said he had a noisome Distemper, and so they abused him; and in a Month or three Weeks I saw him again, and he then said, he had Leave to get into the Strong Room, and thanked God for it.

Thomas Fletcher was sworn.

Mr. *Baron Carter*. What do you know of *Thompson*?

Mr. *Fletcher*. I know *Thompson* had the Diabetes, and that his Fellow-Prisoners did often reflect upon him. I was out of Prison, and then came in again, and I asked *Thompson* how he did; he said, very well as to his Health, except as to the Diabetes; and *Acton* had given him Leave to lie in the Strong Room.

Here the Prisoner rested his Defence.

Mr. *Baron Carter*. Gentlemen of the Jury, the Prisoner at the Bar stands indicted for the Murder of one *James Thompson*. The Indictment sets forth, that the said *James Thompson* died by Durefs, so that the Prisoner was thereby Guilty of Murder.

There were several Witnesses called for the King. The first was *Edmund Cummins*; he says, that he knew *Thompson* very well; that he was in the Pump-Ward, and that he was put in the Strong Room, as *Acton* said for having the Diabetes, some of the Ward complaining of his being nasty; that he came out sometimes, and he saw him after he died; and he was very quickly buried; and he saw a Mark upon his Face. He says, that *Acton* did order his Burial, because he was carried by those that usually carry Corpses to be buried. He says, that he was resolved to stay in the Ward, and would not have gone out, but *Acton* would not let him stay.

Matthew Brandon says, he saw *Thompson* in the Strong Room, and he did hear the Prisoner order him to be put there. He says, that there was a Complaint of the Ward that he was nauseous: That two Days before his Death he could not stir at all; that he had a sore Place on his left Side, and he says, that he complained if he should go there again it would be the Death of him. He says, that *Wilson* and *Cummins* went to *Acton*, and they represented the Condition he was in, and desired he might go to the Sick Ward; and *Acton* said to *Wilson*, Go about your Business. He says, that there was a Mark upon his Nose and Ear, and the Wound was not so angry after his Death as it was before.

Jennings says, he was not so ill when he came there, but only had the Diabetes; and the Prisoner ordered him into the Strong Room where he continued eight or ten Days, and then came out for two Days; and then was ordered back by the Prisoner. He desired *Acton* to have *Thompson* removed; and *Acton* said, Let him die like a Son of a Bitch, and be damned. He said, he died the next Morning, and died in this Strong Room. That the Strong Room was seldom washed, it was rough-swept; but what he means by that I cannot see: He says, that it was not dry over Head.

Mary Seaband says, that he was removed into the Strong Room, and *Acton* gave no Orders concerning him; there was some Wet under him, but she does not explain from whence it came, therefore it might come from the Distemper. She says, that his Side mortified; that there was some Disfiguration on the Side of his Face, it was eat by the Rats. She thinks it a very strong Room, and it was not a proper Place to put any Person in; that it was never washed; that about Six in the Morning he died, and was buried about Ten.

Snape cannot say, whether *Thompson* went by his own Consent or not; but that he went from the Pump-Ward to the Strong Room, and staid nine or ten Days, and then staid two or three Days in the Pump-Ward, and went back again, and staid nine or ten Days both Times. He says, he came in and out when he pleased. He says, that he saw his Corpse, and one Side of his Thigh was black, he saw him three or four

four Days before he died, and he never complained of his Thigh: It was very wonderful he should not complain of it.

Eleanor Ewer said nothing to the Purpose.

Bacon says, that he came in the latter End of May 1726, and *Thompson* and he were in the Pump-Ward; that *Thompson* remained there three Weeks, and was carried from thence into the Strong Room; that he has seen twenty Rats there at a Time; when he had been there ten Days he came back, and staid in the Pump Ward two Days, and then returned; that he had no Bed, or but a little Piece of one. He says, that *Thompson* complained of the severe Usage, and that it would be the Occasion of his Death; but not of the Sore. He says, the Room was made on purpose to punish People for great Crimes against the Government; and *Thompson* told him; that it would be the Occasion of his Death.

Purchase says, that he saw him removed, and said he walked there; that he visited him very frequently, and the Room was not washed all the Time he was there a Prisoner; that there was no Complaint of his Sore, but of his Usage; he says, that it was wet, and the Rain came in at Top.

Wilson says, *Thompson* was in the Pump Ward; that he was very hearty and merry, and gave some Instances of his Mirth; that he was put in the Strong Room, and was in a bad Condition. He gives you an Account of the Floor; that there was Water there; that some came down from above, and some was made by *Thompson*. He says, that he was locked up on Nights, but not on Days; he went to *Atton* to intreat him to remove him, and he bid him hold his Tongue; he told him he should die if he was not put in another Place; and thereupon he went to the Nurse of the Sick Ward, but she refused his coming there. He says, there was a Tarpaulin put on the Top of the Strong Room about a Year ago, and before that the Wet came in, and he believes that this was the Cause of his Illness and Death.

Phillips says, that *Thompson* was troubled with a Diabetes; that he was in a miserable Condition; that he was in the Room ten Days before he died; and that he laid upon the Ground all the Time, and he was put there by the Prisoner's Order; and that he never saw the Room washed. He says, that he might have been put in a better Place, for there was Room in the Sick Ward; and he might have been put in a Room against his own Ward, for it was empty.

Gentlemen of the Jury, you will consider the State of this Indictment; and that there are necessary to be taken Notice of two Things.

The first is, that *Thompson* was put in the Strong Room against his Consent.

The next is, that the Confinement there, was the Occasion of his Death.

The Prisoner says, that he was very far from putting him there, for he asked Leave to go; so that a Charge is laid upon him who never gave *Thompson* any Offence, or used any hard Words to him; therefore he cannot be so barbarous as represented.

There are eleven Witnesses that he has called, who give an Account of *Thompson's* having the Diabetes, that the Ward was very uneasy with him; and because he had done in the Ward, what they used not to have done there, they took all his Cloaths away.

Christopher Gossling says, that *Thompson* was offered by the Prisoner to go into the Sick Ward, and he refused, which confirms what the other Witnesses say, (and then *Atton* bid him go whither he would,) and he said he would go into the Strong Room; and *Atton* said, if you go into such a Room (the Witness naming the Room) won't that be as well. If he went into the Strong Room on his own Desire, *Atton* is not guilty.

He says, that *Thompson* had a Pillow and Blanket, which is explained afterwards, that he could lie upon it and turn.

Holmes says, that *Thompson* was so tormented by the Ward, that *Thompson* desired him to go to *Atton*, to desire he might go into the Strong Room, and upon that *Atton* gave leave; and says, that he was desired to go to the Sick Ward; and says, that he was not confined in the Day-time, unless he was bolted in by his Fellow-Prisoners, that had played the Rogue with him.

Elizabeth Gossling; she gives an Account as her Husband did; that *Thompson* owned how friendly the Prisoner had been to him, and that it was so far from being looked on as a Punishment, that it was a Matter of Favour thought by *Thompson* to be there.

Brown says, that he talked with *Thompson*, and *Thompson* said, God bless *Atton*, he had saved his Life, for if he had stayed any longer in the Ward, he should have died; and says, there was a Bed there.

Barton; she heard the Captain say, that he asked Leave to go into the Strong Room, being quiet and easy to be there; and that he had rather be there, because he was always at Ease.

Bourlier says, that the Ward was uneasy; upon which *Thompson* made Interest to go there, and took his Bed and Bedding, and asked Leave of *Atton* to go.

Davensh says, that the People of the Ward came for him, and he saw him carried quite through. He goes into the Strong Room, and asked *Thompson*, how he came to be there; and he owned, by the Civility of *Atton*, that he was there. He says, that *Thompson* had a Bed, and that he went out and in when he pleased.

Johnson says, that *Thompson* said, that he thanked God that *Atton* was so good to let him be there.

There were two other Witnesses, who spoke to his asking Leave.

Gentlemen, now you will consider how the two Evidences tally, and what Injury there was done to *Thompson*.

For the King, they say, that he was put there without, and against his

Consent; and for the Prisoner, eleven Witnesses say, it was with his Consent. If you should be of an Opinion that it was without his Consent, then it deserves another Consideration; but if you should be of an Opinion that it was with his Consent, then there must be an End of this.

In the next Place, you will consider in relation to the Distemper. As to the Diabetes, some have said on one Side, that they looked upon it to be mortal, and that he never complained. It is very observable, that he never should complain.

In the next Place, they tell you, how he caught it, by lying upon the bare Boards. Some of the Witnesses for the King say, he had only a Sort of a Bed; and eleven Witnesses for the Prisoner say, he had a Bed; and if he had, he did not lie on the Ground, and could not have the Distemper from lying there; it was impossible.

The third Part is, whether he was a Prisoner in the Strong Room? You have heard, the Witnesses for the King all agreed that he went out on Days, though he was locked up on Nights.

The Witnesses for the Prisoner all agree, he went out on Days, and he was not locked up on Nights.

As to his going to the Sick Ward, the Witnesses say, that *Atton* ordered it, and he refused to go.

If this Place gave him the Distemper of which he died, and if he went without his Consent, you will find the Prisoner Guilty; but if he went out and in when he would, in consequence, he was not confined there; there is no Reason to find him guilty.

When he asked Leave to go to the Strong Room, the Prisoner gave it in a very humane Manner, and gave him his Choice, to go there, or into the Sick Ward.

Upon the whole, I must leave it to you.

The Jury agreed upon their Verdict immediately, without going out of Court.

Clerk of Arraignment. Gentlemen, are you all agreed in your Verdict?

Omnes. Yes.

Clerk of Arraignment. Who shall say for you?—*Omnes*. Foreman.

Clerk of Arraignment. *William Atton*, hold up thy Hand. (Which he did.)

Look upon the Prisoner, how say you; Is he Guilty of the Felony and Murder whereof he stands indicted, or Not Guilty?—*Fore*. Not Guilty.

Mr. Strange. The Prisoner, my Lord, has been very much fatigued, and desires, upon paying his Fees, he may be now discharged.

Mr. Atton. My Lord, I desire you will discharge me now.

Mr. Bar. Car. I can't comply with your Request.

Mr. Strange. *Mr. Paxton*, speak to the Judge. Upon which *Mr. Paxton* went out of Court.

Mr. Strange. *Mr. Oglesborpe*, I desire you will interfere, and speak to the Judge, and that you'll give your Opinion. Pray speak, pray tell whether you consent.

Mr. Ogle. Were I Prosecutor, I should desire the Prisoner might be released; not that I think him innocent, but that every *Englishman*, let him be never so unjustly acquitted, hath, by the *Habeas Corpus Act*, on his Acquittal, a Right to be discharged; nor can any Subornation of Perjury, or any Management of a Jury, prevent it, for they are cognizable at another Time.

(There being then a great Noise in the Court, interrupted his speaking for some Time, and as soon as it ceased, he went on again.)

As I said before, I am not the Prosecutor; if I were, I knew what I should have done. The Attorney General was ordered to prosecute by the Crown; and it is he, or his Representative, that should answer this Question, and not me; and since I am speaking, I desire to be indulged a Word more, that I may tell the Reason of my coming here.

Having had the Honour of being one of those Gentlemen who were appointed to inquire into several Matters, some of which have been this Day under your Consideration; not knowing, therefore, what Questions might arise, for the clearing up of which I might be necessary, I thought it incumbent on me to attend.

I have had nothing to do in conducting the Prosecution here, which has appeared evidently; therefore I can't imagine why any Application should be made to me.

Dominus Rex versus Atton.

*Michaelmas Term. 3 Geo. II.**

The Defendant was Deputy-Keeper of the *Marshalsea Prison*; and upon the Address of the House of Commons, was prosecuted for several Murders, supposed to have been committed by him on Prisoners in his Custody. He was tried on four several Indictments, whereon the only Question was, Whether a Place within the Prison, called the *Strong Room*, was a proper Place to confine disorderly Prisoners in? And the Jury upon all the four Trials acquitted him, to the Satisfaction of almost every Body; and in consequence of these Acquittals he was discharged. Presently after he was at Liberty, a single Justice of the Peace, upon Information of a fifth Person's having been put into the same *Strong Room*, and dying within a Year after, thought fit to commit the Defendant again for Murder; and upon a *Habeas Corpus*, *Strange pro Def.* moved he might be admitted to Bail, on producing Copies of the Informations, and Affidavits of the former Trials, and of the identical Nature of the Offences; but the Court refused to look into the Informations, though they were pressed with the Lord *Mohun's Case*, *Salk.* 124. where they looked into the Depositions taken by the Coroner, upon a Motion to bail: And, in the present Case, they remanded the Defendant; who lay in Prison till the next Assizes; when the Grand Jury did him the Justice to return the Bill *Ignoramus*, and he was discharged.

XVIII. Several Proceedings relating to the bailing Mr. BAMBRIDGE, both at the King's-Bench, and at the Session's-House, in the Old-Bailey, in 1729, previous to his Trial for Felony.

At the King's-Bench.

June 7, 1729.

THIS Morning Mr. *Bambridge* was brought by *Habeas Corpus* from *Newgate* to the Court of King's-Bench. The *Habeas Corpus*, and the Return, which contained the several Matters, where-

with he was charged, were read, viz. 1. A Commitment by the Honourable House of Commons, for many Barbarities, Cruelties, and Crimes, in the Execution of the Office of Warden of the Fleet. 2. An Indictment for the Murder of *Mr. Castell*. 3. A Charge of Felony for stealing Goods.

* *Sir John Strange's Reports*, Vol. II. p. 851.

The Prisoner's Counsel moved the Court, that he might be admitted to Bail; for that as to the first of the said Commitments it was ended by the Expiration of the Sessions of Parliament; as to the second, the Prisoner, upon a fair Trial, had been acquitted; and as to the third, it was a Charge brought in upon the Prisoner, on his being acquitted of the Murder, and no Bill of Indictment either found, or offered to the Grand Jury, though they continued sitting till the Day after the Trial; and more especially, was it reasonable to admit him to Bail, for that by a late Act of Parliament, he is obliged, on the Pains and Penalties of Felony, *forthwith* to make out true and perfect Lists of all the Prisoners in the Fleet, till June fourteen, and to give up all Securities, &c. which it was impossible for him to do, without having his Liberty to go to the Fleet, to inspect the Books, and examine the Officers there; and eight Persons being ready to become his Sureties, whereof Notice was given; therefore, it was hoped the Court would admit him to Bail. The King's Counsel alledged, that the Crime which the Prisoner stood charged with, on Oath, was Felony, without Benefit of Clergy: That, as to what was said of the Prisoner's being liable to the Pains of Death, in case he refuses or neglects *forthwith* to make out the said Lists, &c. the said Word *forthwith*, in this Case, imports a convenient Time, or as soon as is reasonable; and therefore, on behalf of the King, they hoped he should not be admitted to Bail. The Court were of Opinion, that as this Case is circumstanced, there were not sufficient Reasons to admit the Prisoner to Bail, the Crime he is charged with being Capital; and one of the King's Evidence being out of the way, the last Day of the Sessions at the Old Bailey, the Bill against him was not preferred, and the Court there having ordered the Prisoner's Detainer till next Sessions. The Court also declared their Opinion, that in case the Prisoner, to the utmost of his Power, complied with the Act of Parliament, in delivering such Lists, &c. he would be no way liable to the Penalties thereof; in the End he was remanded to Newgate.

Dns. Rex ver. } At the Sessions of Oyer and Terminer, and Gaol Delivery, held at Justice-Hall, at the Old Bailey, on the ninth Day of July, 1729, before Sir Robert Baylis, Knight, Lord Mayor, and others his Majesty's Justices.

The Solicitor for the Crown not being ready to try *Thomas Bambridge*, who stood indicted for Felony; the King's Counsel did not attend till the 9th of July, the 1st Day of the Sessions; when Lord Chief Baron *Pengelly*, being ill, was out of Town; and Mr. Justice *Reynolds*, being obliged to go the Circuit; there were only on the Bench, Sir *William Thompson* the Recorder, and Mr. Serjeant *Raby* the Deputy Recorder.

When Mr. *Bambridge* was brought from Newgate to the Old Bailey, he petitioned the Court, that he might be either tried, bailed, or discharged; and that in the mean time he might, under the Custody of the Keeper of Newgate, be permitted to go to the Judges Chambers, to inspect the Bail-books and Commitments, to enable him to perfect the Lists of all his Prisoners, which the present Warden had demanded; and which by a late Act of Parliament he is obliged to deliver, on the Pains of Felony without Benefit of Clergy; and the Judges going their Circuits on Monday next, his Petition set forth, that it might be too late for him, after the End of the Sessions, to inspect the said Books. The Court were pleased to Record the Petition, and to grant the first Part of it, viz. That he should either be tried, bailed, or discharged; and as to the other Part of his Petition, declared that he could not incur the Penalties in the said Act, if he did the utmost in his Power to perfect the said Lists.—And next Day, (July 10,) Mr. *Bambridge*, who had petitioned the Court to be tried, bailed, or discharged, was indicted, together with *James Douglas*, and *William Pindar*, (his Accomplices) for breaking open the Door, and feloniously stealing the Goods of Mrs. *Berkley*, a Prisoner in the Fleet; when the Grand Jury found the Bill against them all; whereupon *Douglas* and *Pindar* absconded.

And on 12th July 1729, being the last Day of the Sessions, *Thomas Bambridge* (being before arraigned) was brought to the Bar, to be tried for the Felony whereof he stood indicted; when Sir *William Thompson* spoke as follows:

Sir *William Thompson*. As I have the Honour to be a Member of the House of Commons, and as this Prosecution was ordered by Address from the House of Commons, it may be objected by the Prisoner, that I am both a Prosecutor and Judge.

Mr. *Bambridge*. I have no personal Objection to your trying me; but as you are a Member of the House of Commons, I have long had a Regard for you, and I beg I may not be understood as having any personal Objection to you; but I beg no Person belonging to the House of Commons may have any thing to do with it.

Sir *William Thompson*. Mr. Attorney, you see the Prisoner thinks me not a proper Judge to try him.

Mr. Att. Gen. I apprehend it is not a legal Objection; I believe it has frequently happened, that Members have sat as Judges, where Prosecutions have been ordered by the House of Commons.

Sir *William Thompson*. He may not think me divested of Partiality; it may be thought in me a remote Objection, but I would avoid lying under any Imputation of Partiality.

Mr. Att. Gen. I don't say it is not a legal Objection; as the Prisoner does insist upon it, it is not right in me to insist upon your trying him; but if you do not think proper to try him for the Sake of the Prosecution, and the Solemnity of it, I hope the Trial will go off till a Judge is here: But I am told there is Danger that some of the Witnesses may be gone out of the way; and as Witnesses are the most material in all Trials, I should be glad of its coming on as soon as possible.

Sir *William Thompson*. I will tell you how that Matter happens; there is not a Day next Week, that my Lord Mayor is not engaged in Business; suppose it should be put off till Monday Se'n-night, some of the Judges may be come home from their Circuits on Saturday Night; the Sessions shall be adjourned on purpose; there shall be all the Care in the World to support the Prosecution. As this Matter does happen, and the Prisoner still insists upon it, let it be Wednesday or Monday Se'n-night.

Mr. Att. Gen. I believe Monday will be the properest Day; Lord Chief Justice *Byre*, and Baron *Carter*, may be in Town then.

Sir *William Thompson*. He sees the Inconvenience; if he will wave the Objection, I am ready to try him, and he shall have all the Indulgence the

Law will allow; I do it not to wave the Fatigue; and as for Mr. Serjeant *Raby*, he is not well, he has had an ill State of Health for some Time, and is not able to try him.

Mr. Attorney. If it goes off to Monday seven-night, it may be put off till next Sessions; therefore I should think it better for the Prisoner to be tried now: I don't desire him; it shall be voluntary in him.

Bambridge. I insist upon the Objection.

Mr. Attorney. Pray let it be on Monday seven-night.

Sir *William Thompson*. It is the Attorney's Desire, that it may be adjourned till Monday seven-night.

Bambridge. The Trial I went under last Sessions, for the Murder of Mr. *Castell*, met with false Representations in the Papers; therefore, rather than run any Hazard of a Misrepresentation, I desire it may be adjourned to the Time Mr. Attorney mentions.

Sir *William Thompson*. What was inserted in the Papers I have nothing to say to.

Bambridge. If Things were misrepresented then, they may again; and I have suffered so much in my Character under such Misrepresentations, that I ought to be cautious how I conduct myself.

Then the Court was adjourned to Monday seven-night.

Luna 21^o die Julii, 1729.

Proclamation was made for Information.

Clerk of Arraignment. Set up *Thomas Bambridge*. (Which was accordingly done, and the Indictment read in English.)

Sir *William Thompson*. This Matter was put off till To-day (the Prisoner having thought fit to object against me), in expectation that some of the Judges would come to Town.

My Lord Mayor has sent to those in Town, and they sent Word, that it would not be convenient for them, being fatigued with the Circuit.

Mr. Attorney. Mr. Serjeant *Cheshire* and myself are ready, and the King's Witnesses are ready.

Sir *William Thompson*. I have had the Objection in my Mind; and the more I consider of it, the more I think it will be very improper for me to try him. I know no Instance, no Parallel.

There was an Act passed last Sessions of Parliament, to which I was a Party; the Prosecution was ordered by Address from the House of Commons, to which I was a Party; and it does remain a Scruple with me, that it does not become me to try this Man.

The Trial must be put off till next Sessions.

Lord Mayor. The Judges sent Word, that they were so fatigued with the Affizes, that their Health would not permit them to attend.

Mr. Attorney. I have been here twice: Next Sessions is the 27th of August; I must be out of Town, and cannot be able to attend the Trial.

Mr. Serj. *Cheshire*. I shall be one hundred and fifty Miles out of Town at that Time.

Sir *William Thompson*. The Sessions you don't usually attend; I wish it was otherwise: If you can tell me of any Case where a Judge acted as Prosecutor and Judge, I will try him.

Mr. Attorney. I can't recollect any Precedent; but the Court of King's Bench grants Informations, and try the Cause after.

Sir *William Thompson*. After the Court of King's Bench grants Informations, they hear both Parties. Whoever reads the Act passed last Sessions, if I had tried him, would say I was not impartial.

Mr. Attorney. If it is a Scruple the Prisoner makes, he cannot be discharged.

Sir *William Thompson*. The Trial must go over; it must take its Fate. Mr. Allen, take care of the Prisoner.

Dns. Rex ver. } At the Old Bailey.
Bambridge. }

Mercurii 27^o die Augusti, 1729.

MR. *Conningsby* attended on Behalf of the Crown, and made a Motion to put off the Trial of *Thomas Bambridge* till next Sessions; but the Court did not think fit to enter into the Argument then, and deferred it till the 29th of the same Instant.

Veneris 29^o die Augusti, 1729.

Mr. *Conningsby*. I am of Counsel for the King, my Lord. I have an humble Motion to make to the Court, that the Trial of Mr. *Bambridge* may be put off till the next Sessions; and when I ask this, it will be necessary to assign some Reason: The last Time I made the Motion to the Court, your Lordship was pleased to determine, that the Prisoner was not in the Meaning of the *Habeas Corpus* Act, as he waved being tried himself; and therefore it is discretionary in the Court what they will do in this Matter, as the Trial was before put off by the Prisoner's Concurrence. My Lord, the King's Counsel being out of Town, or upon the Circuits, is one Reason; but I don't barely insist upon that; for I have an Affidavit, that a material Witness for the King is absent, and can't be found; that he has absconded for Debt; but that we shall be able to have him by next Sessions, though not now; I submit it upon that.

Then the Affidavit was read, which was to the following Effect:

"*Nicholas Comer* maketh Oath, That he had sought after *Gifford Lane*, formerly Clerk to Mr. *Gybbon*, late Deputy Warden of the Fleet, to serve him with a Subpoena; but could not find him out, because he has absconded for Debt; but believes he shall find him by the next ensuing Sessions; and that it was not safe to proceed to Trial without his Testimony, &c."

Mr. *Conningsby*. I hope, upon this, my Lord, the Trial will be put off. Mr. Just. *Probyn*. While Mr. *Wynn* is speaking, I desire I may look over the Affidavit.

Mr. *Wynn*. (Counsel for the Prisoner.) My Lord, I hope the Reason given is not sufficient to put off the Trial: I will not mention now the long Time that he has been kept in Prison, it is so fresh in Memory.

As to the Absence of the King's Counsel, there is no Occasion for them, as that learned Gentleman is present; and I humbly apprehend, that can be no Foundation to put the Trial off.

The next Argument is founded upon the Affidavit of *Nicholas Comer*, That he had not been able to find *Lane*; and that *Lane* was a material Witness for the King: What Foundation he had to believe *Lane* a material Witness does not appear; and it is very easy to seek for a Man where

he is not to be found. The other Day, my Lord, there was nothing then pretended but the first Part of the Motion; and Mr. Paxton himself will own, that he could assign no other Reason than the Absence of the King's Counsel; and, I presume, as your Lordship would not allow that as a sufficient Reason then, I hope you will not now. At the latter End of a Sessions no Affidavit, they themselves are conscious, can have any Weight.

They supposed that your Lordship would hardly enter into it now, and, for that Reason, have very artfully spun it out: I called upon them then to give a Reason for putting the Trial off. Why was there not a proper Application Yesterday? The Affidavit would have been filed, and the Prisoner would have had a proper Opportunity to give Evidence as to the Character of Comer; and if any Thing is to be presumed, your Lordship will presume it in Favour of the Prisoner.

I will not take up any more of your Lordship's Time; but humbly insist, that your Lordship will proceed upon the Trial, or admit him to Bail.

Mr. Conningsby. The learned Gentleman, my Lord, insinuates, that we searched for Lane where he was not to be found: The Affidavit sets forth, That Comer searched at his Place of Abode, and at other Places, where it was thought he was likely to be. We do take upon us to say, he is a material Witness: If we swear falsely, that lies upon us to answer; and, I apprehend, the Crown would be no more surpris'd than the Prisoner.

Mr. Bambridge. As to Lane's being a material Witness, if you look upon the Indictment, you'll not see him upon the Back of it.

Mr. Paxton. That's not to the Purpose; for we seldom put the most material Evidence on the Back of the Indictment.

Mr. Bambridge. I beg Leave, my Lord, to mention one Circumstance, which is notorious, and now publicly talked of: There was one Gentleman of the Grand Jury, who was very solicitous to the rest of his Brethren to find this Bill, has laid violent Hands upon himself for the Injury done to me.

Mr. Justice Probyn. That is not to the Purpose.

Mr. Bambridge. He has not sworn to Lane's Place of Abode.

Mr. Paxton. There is one remarkable Circumstance, that the Court was adjourned for several Days, that the Prisoner might have a legal Trial, and it went off upon the Prisoner's Account.

Mr. Bambridge. I am surpris'd Mr. Paxton should say that; I did not speak one Word that Day.—I have in Writing what was said, which there is one ready to swear to; which he read over.

Mr. Justice Probyn. That relates to the Prayer of the Habeas Corpus Act. When People are in Custody a considerable Time, without some particular Reason, they should be discharged.

One of the Reasons always admitted, is the want of Evidence for the Prosecutor: If Endeavours have been used, and they cannot be had, that always is a sufficient Reason. As to the Affidavit, it is not so strong as usually is made upon such Occasions: It says, that he was concerned for the Prosecutor; but it don't appear how he was concerned. He says, that he had made Enquiry at Mr. Gybbens's House, but don't say that he ever lodged there; but goes on and says, that he enquired at several other Places where it was likely to find him; but don't say he lodged at those Places. Why won't you consent that the Prisoner should be bailed?

Mr. Conningsby. I don't know what Service it will be to him.

Mr. Wynn (afterwards Serjeant). I am surpris'd that any thing should be mentioned about the Appeal, which is a private Cause.

Mr. Conningsby. I mentioned nothing of the Appeal now.

Mr. Wynn. You did the other Day.

Mr. Baron Comyns. As, on the one Hand, Care should be taken that the Prosecution should be so carried on, that the Person guilty should be punished; so, on the other Hand, it should be carried on with such Speed, that no Person should be longer confined than necessary. It does appear, by the Concessions on all Hands, that the Prisoner has continued in Prison ever since May last: Though, by the Waver of not being tried, he is not intitled to his Discharge, yet he ought to be considered as to the Length of Time he has continued in Prison; unless you can show any Disadvantage to the Crown, if he is admitted to Bail. If it secures the Liberty of the Subject, on the one Hand, we shall take care, on the other, that the Bail shall be so sufficient, that he may be amenable to Justice.

Mr. Paxton. The Trial was put off upon Mr. Bambridge's own Motion.

Mr. Justice Probyn. He ought to be admitted to Bail. Mr. Bambridge, have you Bail ready?

Mr. Bambridge. I can't say I have this Instant; but if it is your Lordship's Pleasure to order Bail, upon giving Notice to the Solicitor for the Crown, I'll get them ready.

Mr. Justice Probyn. Give the Names of the Bail as soon as conveniently you can; for it should be done in Court.

Mr. Wynn. Can you undertake to get them ready in two or three Hours.

Mr. Bambridge. I have two or three ready in Court now.

Mr. Wynn. What Sum, my Lord, shall they be bound in?

Mr. Paxton. I desire, my Lord, they may justify in a particular Sum.

Mr. Justice Probyn. He shall enter into a Recognizance himself of two thousand Pounds, and the Bail one thousand Pounds a-piece.

Mr. Paxton. I should have an Opportunity to enquire into their Circumstances.

Mr. Williams. You know me.

Mr. Paxton. I know you to be a Tradesman in Long-Acre; but don't know what you are worth.

Mr. Justice Probyn. You that are here now may justify: You say you know one of them, only want to be satisfied as to his Circumstances.

Mr. William Beatniff (Coachmaker in High-Holborn). I am ready, my Lord, to justify.

Mr. Justice Probyn. Is he sworn?—Mr. Tanner. Yes, my Lord.

Mr. Justice Probyn. Mr. Beatniff, are you worth a Thousand Pounds when all your Debts are paid?—Mr. Beatniff. I am, my Lord.

Mr. Justice Probyn. Is Williams sworn?—Mr. Tanner. He is.

Mr. Williams. I cannot swear to a thousand Pounds; but I will swear to five hundred Pounds.

Mr. Justice Probyn. Are you worth five hundred Pounds, when all your Debts are paid?—Mr. Williams. I am, my Lord.

Mr. Bambridge. There is one of the Serjeants of the Compter has offered to be the other.

Mr. Justice Probyn. Let him be sworn.—Titus Parker, are you a House-keeper?—Mr. Parker. Yes.

Mr. Justice Probyn. Are you worth five hundred Pounds, when all your Debts are paid?—Mr. Parker. I am, with my Place.

Mr. Justice Probyn. I have nothing to say how you make it up; but I ask you, Whether you are worth five hundred Pounds, over and above what is necessary to pay your Debts?

Mr. Parker. I really believe I am.

Mr. Justice Probyn. That is not enough for you to say.

Upon which he would not swear otherwise, and withdrew; and Mr. Bambridge was directed to get another.

Sabbati, 30^o die Augusti, 1729.

The Calendar being called over, Mr. Bambridge was brought to the Bar.

Mr. Bambridge. The Person that I did propose for the third Man. I cannot have while the Court is sitting, for he is out of Town.

Serj. Raby. Then you can't comply with the whole.

Mr. Bambridge. I can't now; therefore I desire I may be referred to the Lord Mayor to take the Bail.

Mr. Harbing. The third Person was just now in Town; I saw him with an Agent of Mr. Bambridge at Fleet-Ditch.

Mr. Bambridge. My Lord, Harbing is one in the Conspiracy: I shall have you, and Comer too, by and bye.

Mr. Harbing. That audacious Front of your's will do you no Service.

Serj. Raby. You say you can't be able now to comply; you can't give Security now; and you desire it may be referred: Whoever takes that Authority upon them, will do it by the Order of the Court. Let it be referred to the Lord Mayor, and any two of the Aldermen upon the Roia. When do you propose to give in Bail?

Mr. Bambridge. I propose on Tuesday Morning.

Serj. Raby. Let it be Wednesday, and give three Days Notice: It will be better for you; for the Solicitor for the Crown may say that he had not sufficient Notice, and that may delay you.

Lord Mayor. You may attend me on Wednesday Morning at Ten o'Clock. Take care to give Mr. Paxton Notice.

On September 9th, he was bailed before the Lord Mayor and Court of Aldermen, at Guildhall, for the Felony of which he stood indicted; having given sufficient Sureties for his Appearance at the next Sessions at the Old Bailey; though he was continued a Prisoner in Newgate, being charged on an Appeal for the Murder of Mr. Gastell.

Dns Rex ver. Bambridge, At the Old Bailey, 20 October, 1729.

THE said Thomas Bambridge being brought to the Bar (the King's Counsel not being then in Court), Proclamation was made for Information.

Clerk of Arraigus. Thou the Prisoner at the Bar, these Men that thou shalt hear called, and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore, if you challenge them, or any of them, your Time to speak is as they come to the Book to be sworn, before they are sworn. [Then Part of the Pannel was called over, as follows:]

Clerk of Arraigus. Robert Johnson.

Johnson. Here.

Mr. Bambridge. I object to him. I am surpris'd he should be summoned: He was a Prisoner in the Fleet, and was cleared by the late Act of Insolvency; and so are half of the Persons that are now summoned.

Officer. I took the best Care I could.

Mr. Bambridge. These ought not to have been upon the Pannel: I am ready to be tried by any twelve honest and indifferent Men.

Lord Chief Justice Raymond. I don't know how this Matter is; if you have any just Cause, you may challenge any of them.

Clerk of Arraigus. John Lewis. (Who answered, and was sworn.)

Mr. Bambridge. Half of them were Prisoners.

Mr. Matthews. Have you any other Pannel?

Officer. There is another Pannel.

Clerk of Arraigus. William Berry (not here).

John Fowler (answered, and was sworn).

Clerk of Arraigus. Richard Evans.

Richard Evans. Here.

Clerk of Arraigus. Look upon the Prisoner.

Mr. Kettleby. Let the Prisoner look upon him, to see if he knows him.

[Then the King's Counsel came into Court.]

Mr. Serj. Cheshire. My Lord, there is a Witness, that is to go through the whole Cause, one Turner, who is very ill; and we shall have an Affidavit presently, that he can't, without Peril of his Life, come out. He was here on Friday, and this is the Act of God: Three or four Times the King's Counsel have attended, and hoped this would have been the last. It is our Duty to acquaint your Lordship, that he goes through the whole Cause: We are very sorry it has so happened; but we cannot try it, unless we are to try the Cause without this Witness.

Mr. Attorney General. It is impossible for us to go on without this Witness; this Accident is what we did not meet withal till the Court was sitting; there is a Messenger sent, and an Apothecary, to desire him, if possible, to come in any Manner, in a Chair, or otherwise; if not, we shall lay before your Lordships, by Affidavit, the Condition he is in when the Apothecary comes. This Witness is the most material in the Cause; it is impossible to charge the Prisoner, or try the Cause without him. The Witness was here on Friday, and there can be no Inconvenience to the Prisoner, for that in regard to this Indictment he is bailed; he is not in the same Case where he would be kept in Custody; but if that was the Case, it is a sufficient Cause to put off the Trial, supposing he was not upon Bail. I have attended here several Times, and should be glad to have done with this Attendance.

Lord Chief Justice Raymond. I can't say any thing to it till the Affidavit comes.

Mr. Bambridge. I did not hear one Word that that Gentleman said.

Lord Chief Justice. They have alledged, that a material Witness, that goes through the whole Cause, cannot with any Safety to his life attend.

There

There is no Affidavit come, so it cannot be taken Notice of till it does, and they say it cannot be any Inconvenience to you, because you are already bail'd. I wish you hear me, for I am hoarse.

Mr. Bambridge. My Lord, I do hear you, this Cause has been depending ever since May last.

Lord Chief Justice. You have no Occasion to take notice of that.

Mr. Bambridge. I don't know but this Witness is one of the People maintained in the Fleet, at Board-wages. It has been put off already several Times, and your Lordship knows, I surrendered on Friday to take my Trial.

Mr. Attorney-General. It was not our Fault it was not tried in July last, we had all our Witnesses then ready.

Mr. Strange. An Honourable Gentlemen made the Objection, then upon the Bench.

Mr. Attorney-General. I must observe, that the Prisoner insisted upon it himself.

Mr. Bambridge. I am very sorry, so weak a Stratagem as this is made use of to put it off.

Lord Chief Justice. Have a little Patience till the Affidavit comes, I cannot say any thing to it till then.

Mr. Bambridge. I have had a great deal of uncommon Sufferings in this Cause.

Lord Chief Justice. That is nothing to me, I can't say any thing to it; I am here only to try the Cause.

Mr. Bambridge. I have brought a Gentleman, Mr. Holder, one hundred Miles, and this Trial being put off from Time to Time, the Expence is so great, that it is enough to ruin any Man.

Lord Chief Justice. You must stay till the Affidavit comes.

Mr. Serj. Cheshire. This Witness swears to the stealing the Goods. Then Mr. Bambridge went from the Bar, and the Court waiting some time,

Mr. Paxton produced an Affidavit, which the Parties swore to in Court.

Mr. Attorney-General. I believe you should bring the Prisoner to the Bar. (Which was done accordingly.)

Mr. Serj. Cheshire. Now the Affidavit is come, there are three Witnesses, though I mentioned but one. Now it appears, from the Evidence of three Persons, that there is another Person, a Prisoner in the Fleet, that cannot come; he has had a violent Fever, that fell into one of his Thighs, and caused a dangerous Wound to be made, six Inches in Length and three in Depth.

Mr. Attorney-General. My Lord, we pray the Affidavit may be read, (which was accordingly done,) and is to the following Effect:

James Current, Surgeon, — Goodacre, Apothecary, Nicholas Comer, severally make Oath, each for himself; and James Current saith, "That he hath attended Captain John Lillingston about fourteen Days last past, and that he was seized with a violent Fever, which fell into his Thigh, and occasioned a Tumor, which was forced to be laid open; and Lillingston now lies dangerously ill; that the Wound is six Inches long, and three deep, and he cannot be brought out without manifest Danger of his Life."

"Goodacre; he swears that he has been to visit John Turner, and that he found him violently ill of a Pleuretick Fever, and he cannot be brought out of his Lodging without Danger of his Life."

"Nicholas Comer; he says, he was employed by Mr. Paxton, and he is well acquainted with John Turner and John Lillingston, and is well acquainted with their Affidavits, and says, that they are very material Witnesses, and it is not safe to proceed to Trial, without the Benefit of their Testimony; and that Turner did attend on Friday, though he was then ill."

Mr. Attorney-General. We that are Counsel for the King, cannot oblige the Attendance of Witnesses; we cannot keep them in Health; I should have been very glad to have went on with the Trial; what has been one of the Means of putting it off, was the Prisoner's insisting upon an Objection, that was made by an honourable Person, then upon the Bench. The Affidavit is so full, that I need not trouble your Lordship with any Observations upon it. The Course of all Courts is upon such an Affidavit to put off the Cause, and it is not safe to go to Trial without this Witness. By my Brief we cannot safely proceed, for the Prisoner was committed upon the Affidavit of Turner.

Mr. Solicitor-General. I apprehend, that what we apply for, is so reasonable, it will be granted.

Lord Chief Justice. The Affidavit is sworn by three Witnesses.

Mr. Kettleby. I am Counsel for the Prisoner. In Cases of Felony, Counsel may be assigned for the Prisoner upon Motions, but not upon Trials.

Lord Chief Justice. I allow it to be so, you may go on.

Mr. Kettleby. I hope the Trial will not be put off at this Time; this is so small a Matter to object, to put off the Trial; they don't mention when they first came to the Knowledge of this: If they came to the Knowledge of it so soon, that the Defendant might have had an Opportunity to send People to view the Persons ill too, then this Affidavit is not sufficient.

Lord Chief Justice. He was here on Friday.

Mr. Strange. It is not said in the Affidavit, that he was subpoena'd, he might attend as a Hearer.

Mr. Attorney-General. None of us knew it till just now. He don't lye in Prison upon this; he is confined upon the Appeal.

Mr. Kettleby. He has an Iron knocked off one Leg, and ready to be put upon the other.

And if this holds him, he may be continued for ever. I submit to your Lordship, that they must give Notice to put off the Trial, if it is to be put off; they don't say whether they knew of this Cause before, or not; Mr. Attorney said, he did not know of Lillingston's being ill.

Mr. Attorney-General. I knew Lillingston's being a Witness, by my Brief.

Mr. Kettleby. They should have set forth in the Affidavit, that they did not know of the Illness till this Morning, and that they did not know it before: If that had been the Case, it had been some Excuse; besides, the Jury has been charged with the Prisoner; the Attorney did not come in so soon: he has made an Objection against the Pannel, before the King's Counsel came in; they said they were to have an Information, of the Disability of one Witness. Now there are two ill, without saying when they first knew of their Disability.

Comer says, that he was employed under Mr. Paxton, and he knows they

are material Witnesses. If Mr. Paxton had given it upon Oath, that they were material Witnesses, I should have believed it; I don't know from whence Comer comes, I do not see it in the Information; he says, that he is acquainted with them; therefore concludes, they are material Witnesses. I must submit it, if they are material Witnesses or not; it is an easy Matter to get three or four People, may be Clerks Clerks, to swear, that they are material Witnesses, who I have no reason to believe had sufficient Reasons to ground their Belief upon that they were material Witnesses; should we not have had some Information before? Perhaps the Prisoner might have sent one to visit these People, who might have sworn, that they were as able to come, as these say they were unable; and I humbly beg leave to say, that the Affidavit is not sufficient. Besides, there is another Reason, why it should not be put off, he is surrendered by his Bail to take his Trial, and we do not know that they will stand again.

Mr. Attorney-General. They must stand till they are discharged by the Court.

Mr. Kettleby. They have not so much as given Notice to stand again, he has not had so much as an Opportunity of asking; I hope he may be tried, or else the Consequence must be, that he must lye by till December, and then Somebody else may have a broken Leg.

Mr. Wynne. I can't pass over this Affidavit, without making one Observation; I shall not call it an affected Delay, though it looks exceeding like it. The Affidavit last Sessions was not shewed the Beginning of the Sessions, that he might have had an Opportunity to answer it, but the last Day of the Sessions; I am sure then it looked like an affected Delay. The Affidavit was then not looked upon to be sufficient; the Objection then to Mr. Comer was, that he was no Solicitor. Is a Person sufficient to swear to Witnesses being material, that has only served a Subpoena? Mr. Paxton is the only Person that has appeared as a Solicitor. Another thing that is pretty extraordinary is, that the Bail is discharged; there may be no Render, but the Goaler will hardly part with him without fresh Bail.

I should be glad to know, if the Goaler will give Liberty for him or no; I would not add more to your Lordship's Trouble; but as this Case is, there is no Manner of Reason to put off the Trial.

Mr. Strange. I am Counsel of the same Side, and I must observe to your Lordship, that this Affidavit is not sufficient as to the Inability or Materialness of the Witnesses; as to the first it appears, that they must have had fourteen Days Time to have made this Inquiry; as to Lillingston, and though they pretend to say Turner was here on Friday, they do not say Lillingston was; they could have gone on without this Lillingston then, for it does not appear that he was here on Friday last.

That if it had suited the Convenience of the Court to have gone on on Friday, they must have gone on without Lillingston. There is a great Ambiguity in the Affidavit; it says, that the Tumor had been laid open, and that he had a Hole in his Leg, and lies in the Fleet, and that Lillingston positively cannot be brought out. Really, as to Lillingston, he has fallen in very particularly; the Objection arose as to him above fourteen Days ago, and they might have applied to the Court in time, so he ought to be laid out of the Case, and he is to be laid out of the Case.—It is sworn as to the other, that he was out on Friday; but whether he was subpoena'd or not, is not sworn. As to their Indisposition, the Apothecary only swears, that Turner was ill of a Pleuretick Fever; but I submit it, whether they must not swear positively, that he cannot come out. I dare say, there is no such Witness wanted. I take notice of this, to shew, that when they come to speak of Turner, they cannot speak so full as they do to Lillingston. Comer says, that it is not safe to go to Trial without this Witness, but he don't say whether it is safe to proceed to Trial with; I don't know whether the Trial is safe, if he was tried upon this Witness. Here is the Solicitor for the Crown, to be sure he knows the Secrets of the Cause, if this Man is so material a Witness, he ought to swear to it: We ought to have the best Account we can; and now we have not the best Account, because the Solicitor for the Crown does not take upon him to swear to the Fact. It is not made out that they are so material, that they can't go on without them; nor does it appear, that they are so bad not to be able to come out; though Mr. Attorney is pleased to say, that it cannot be any Injury to the Prisoner, for that his Bail must stand; I don't believe the Keeper of Newgate will venture to let him go out without fresh Bail, and whether that Bail will stand or not, I don't know.

Mr. Bambridge. On the 8th of this Instant, I served Notice on Mr. Paxton, that I would surrender myself on Friday, to take my Trial, and it is fourteen Days since Lillingston has been so ill: This is an Indictment for stealing the Goods of one Mrs. Berkley, who has lately declared that she is not concerned in the Trial. As to Comer, who has made the Affidavit, he is a common Ubiquitarian, and if I am to be confined upon his Affidavits and Harbing's, and the rest of the Conspirators, I shall be kept in Gaol to the Day of Judgment; and it is such an Expence, it will ruin any one. I am under a Necessity to importune the Court to be put upon my Trial, for there is a Person come out in a Chair, that is a material Witness for me, that is in danger of his Life, and cannot, in all Probability, live till next Sessions; it is Mr. John Bonham, the King's Jeweller.

Lord Chief Justice. You must make an Affidavit of it; I cannot mind any thing but upon Oath. You have mentioned, that there has been great Delays in this Affair: You should acquaint the Court that it has been put off irregularly: Has it not been done in this Place, that the same Sessions, that a Man has been brought to be tried, it has been put off? This is the Act of God.

Mr. Bambridge. They should have set forth the Time when they were taken ill.

Mr. Attorney-General. There is no Criticism in the Affidavit: I will ask any of those Gentlemen, whether they ever knew in the King's Bench, or Court of Exchequer, the Times mentioned?

Mr. Strange. In the last Instance (that they had been subpoena'd).

Lord Chief Justice. Subpoena'd is not the Question.

Mr. Attorney-General. Did you ever say they were subpoena'd in an Affidavit?

Lord Chief Justice. As to the Merits, I know nothing of that: This is nothing but a Motion to put off the Trial; I don't see any thing distinguishable in it. It would be very hard for him to lie in Gaol, if he was not admitted to Bail.

Mr. Serj. Cheshire. They say, it don't appear that the Man was subpoena'd: I ask any of those Gentlemen, to shew, if ever they found

it so in an Affidavit? I was surprised when either of them mentioned it: They insist so much upon it, that they will think there is something in it at last.

Lord Chief Justice. They must say what they can for their Clients.

Mr. Kettleby. We don't know who this Comer is: If Mr. Paxton will swear these People are material Witnesses, we will give it up.

L. C. J. Has not Comer been employed in the whole Prosecution, and been fully apprized of the Affidavits?

Mr. Att. Gen. This is the slightest of all their Objections; for they may as well desire the Attorney General to make an Affidavit: The Court expects no more than that a Person, acquainted with the Merits of the Cause, should swear that they are Material Witnesses. If it is done by a Person to show to the Court, that they have Reason to believe that they are material Witnesses, that is sufficient. He swears, that he had been employed to carry on the Prosecution for Felony against Bambridge, of which he is indicted, and acquainted with the Informations taken upon Oath. It is said, why did not Mr. Paxton swear it? May there not be two Solicitors in a Cause? Does it not often happen, that there is a Clerk in Court and Solicitor concerned in one Cause? Why don't they say a Clerk in Court should make it? We have done all that is requisite to show that they are material Witnesses. He could not swear it, unless he himself had seen the Informations.

L. C. J. He swears, that they cannot safely go to Trial without these Witnesses.

Mr. Att. Gen. He says, they both are material Witnesses, and it is not safe to proceed to Trial without them; and that is taking upon him to swear as much as ever was required. It is urged, that Mr. Bambridge's Bail has surrendered him: Supposing that he was quite out of Custody, and that he gave Notice that such a Day he would take his Trial, is that a Discharge of his Bail? No; his Bail is bound till he is discharged by the Judgment of the Court: Such Notice to take his Trial can be no Discharge. One of the Gentlemen says, that there was something like an affected Delay; we were ready to have tried him in July last.

L. C. J. That don't appear from you: Who has it arisen from?

Mr. Att. Gen. It might have been tried in July: There was then a Tenderness in the Judge, and a very laudable one; but he said, if Mr. Bambridge did not insist upon it, he would try him. When the Witnesses are here, then the Prisoner is for having it put off; when they are not here, then he is for having it tried.

Mr. Bambridge. That honourable Gentleman caused the Trial to be adjourned; and I must submit, whether it was known for a Judge, that was a Party, ever to try any Man. What the Attorney urged before was, that the Court of King's Bench ordered Informations, and then proceeded to the Trial of them. As to Comer, he is not a Clerk of Mr. Paxton's; he is only a *Hic & Ubiquitarian*.

Mr. Justice Denton. I am of the same Opinion as my Brother Raymond.

Mr. Bambridge. I will not take up the Time of the Court. If this Gentleman, who I before mentioned to be a material Witness for me, should die, it will be greatly detrimental to me; therefore, if your Lordship will let him be examined in Court, and leave the Ring in Court, I will consent to let the Trial be put off.

Mr. Kettleby. I should be very glad the Attorney General will take the Trouble to examine him.

Mr. Att. Gen. I can't take upon me to consent to any thing particular; but must submit it to your Lordship.

Mr. Justice Denton. Mr. Bambridge, why won't you bring your Witnesses into Court?

Mr. Bambridge. The High Sheriff, he not being well, was so good to let him be in his Room; he is there, and is coming in.

Mr. Att. Gen. I never knew it done in capital Cases.

L. C. J. I don't know that ever it was done.

Mr. Justice Denton. What do you say, that he may not live till next Sessions?

L. C. J. He is weak and aged; but, if I was upon my Oath, I don't see any Likelihood of his immediately dying.

Mr. Bambridge. He is seventy Years of Age.

L. C. J. He may live five Weeks.

Mr. Bambridge. If you will let him declare, that I bought the Ring of him —

L. C. J. If can't be done. In several Cases, where Witnesses have been going abroad in Civil Causes, it has been done.

Mr. Kettleby. If your Lordship don't consent to this, I hope the Court will indulge us in another Thing we pray —

Mr. Justice Denton. Mr. Attorney General says he won't consent.

Mr. Kettleby. Whether, if you put off the Trial, you won't admit this Gentleman to be examined?

Mr. Att. Gen. It never has been done without Consent; and I never knew it done in Capital Cases. I should be very tender to come to make a Precedent in a Capital Case: I have known it done in Civil Cases with Consent.

Mr. Kettleby. If this Affidavit won't do, I beg Leave further to desire there may be two Juries.

L. C. J. Let us make an End of one Thing first. We are all of Opinion the Affidavit is full.

Mr. Kettleby. I submit it entirely; and when I know your Lordship's Opinion, I am not only ready to give over, but am always convinced; and though Mr. Attorney is unwilling to make a bad Precedent in one Case, I hope he will be willing to make a good one in another. He was not here when the Prisoner made his Objections to the Jury, to have a disinterested Pannel to try him: It would be very odd to try the Warden of the Fleet by a Jury that came out of *Domus Mansionalis*; Prisoners that have been discharged by the late Act.

L. C. J. What would you have me do?

Mr. Kettleby. If it goes over to another Time, I hope the Sheriff will take care to have a good Jury: The first Pannel were most of them Prisoners; I am sure the Sheriff will do every thing that is right.

Sir John Williams (one of the Sheriffs). There is a new Pannel, where this Person, Johnson, is not one.

L. C. J. What do you think of the Sheriffs?

Mr. Kettleby. I have no ill Opinion of them; I would be bound Body for Body for them.

Mr. Att. Gen. This is the first time I heard of this Objection: I don't know any Foundation for it; for my Part, I never trouble my Head about Juries, nor ever will. I take it for granted, the Officer that summons them will do his Duty; if he don't, the Party has his legal Challenge.

Mr. Strange. If it is so understood, that he may be let out, according to the former Recognizance, we shall submit.

L. C. J. I don't see but he may be admitted to Bail upon that.

Mr. Bambridge. The Recognizance is here.

Mr. Att. Gen. Was it not to appear upon the Party's surrendering him in Court?

Clerk of Arraignment. It was.

L. C. J. Let me see the Recognizance; don't let me do Things in the Dark.

Clerk of Arraignment. The Recognizance is not returned: All that he prayed was, that the Appearance might be entered.

Mr. Bambridge. The Recognizance was to appear here, and not to be discharged without Licence.

L. C. J. The Recognizance is continued; it can't be discharged, without all the Conditions are performed.

Mr. Bambridge. I did not hear your Lordship before.

Whereupon the Prisoner withdrew.

XIX. The Trial of THOMAS BAMBRIDGE, Esq. for Felony, before the Right Hon. Sir Richard Brocas, Knt. Lord Mayor of the City of London, the Right Hon. Lord Chief Justice Eyre, the Hon. Mr. Justice Reynolds, the Hon. Mr. Baron Carter, the Worshipful Mr. Serjeant Raby, and others, his Majesty's Justices of Oyer and Terminer, and Goal Delivery, for the City of London, and Gaol Delivery of Newgate, for the said City and County of Middlesex, held at Justice-Hall in the Old Bailey, on Wednesday, Thursday, Friday, and Saturday, being the 3d, 4th, 5th, and 6th Days of December, 1729, in the third Year of Majesty's Reign.

Veneris 5^o Die Decembris, 1729.

Proclamation was made for all Persons concerned to attend.

Clerk of Arraignment.

Is the London Jury here?

Officer. Yes.

Clerk of Arraignment. Set Mr. Bambridge to the Bar. (Which was accordingly done.) You stand indicted by the Name of Thomas Bambridge, late of the Parish of St. Bride's, London; for feloniously stealing one Feather-Bed, a Bolster, two Pillows, two Blankets, one Quilt, two Cane Chairs, one Easy Chair and Cushion, two Stuff Chairs, two Tables, a Looking-Glass, Fire-Shovel and Tongs, Gridiron, one Pair of Bellows, three Pair of Window Curtains, China Ware, Value 5*l*. a Head of Mecklin Lace, Value 10*l*. a Head of Flanders Lace, Value 6*l*. six Silver-handled Knives, Value 3*l*. six Silver Forks, Value 40*s*. two Tea-Spoons, Strainer, and Tongs; four Ounces of Gold Lace, Value 10*l*. two Gold Seals; one Emerald, Value 3*l*. five Diaper Napkins, one Piece of Dimitty, a Sable Tippet, Value 3*l*. a Piece of blue and white Sattin, Value 7*l*. two Stone Seals set in Gold, Value 3*l*. three Silk Gowns, Value 6*l*. two Pieces of Sarfenet, Value 55*s*. a Garnet and other Rings, with other Things of considerable Value, the Goods of Elizabeth Berkley, on the 31st Day of October, 1727.

Clerk of Arraignment. How say'st thou, Thomas Bambridge, art thou Guilty of the Felony whereof thou standest indicted, or Not Guilty?

Mr. Bambridge. Not Guilty.

Clerk of Arraignment. How wilt thou be tried?

Mr. Bambridge. By God and my Country.

Clerk of Arraignment. God send thee a good Deliverance.

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— Thou the Prisoner at the Bar, these Men that thou shalt hear called, and personally appear, are to pass between our Sovereign Lord the King and thee, upon the Trial of thy Life and Death; therefore, if thou wilt challenge them, or any of them, thy time to speak is as they come to the Book to be sworn, before they are sworn.

Then the Pannel was called over, and the following Persons challenged by the Prisoner:

Francis Nolder,	Jos. Hartwell,	John Palmer,
John Mich. Harnick,	Richard Hughes,	John Bassett,
Thomas Caddey,	John Butler,	Stephen Brin,
Henry Houghton,	John Hopkins,	William Saul.

Then the Jury sworn were as follows:

Richard Collier,	Hery Palmer,	Austin Tyer,
Henry Clark,	Thomas Mallet,	William Lyon,
John Poole,	Jos. Collier,	John Taylor,
Edward Jones,	John Lyddall,	Thomas Test.

Then Proclamation was made for Information.

Clerk. Thomas Bambridge, hold up thy Hand. (Which he did.) You of the Jury look on the Prisoner, and hearken to his Charge: He stands indicted by the Name of Thomas Bambridge (prout in the Indictment, *mutatis mutandis*). And as the Clerk was reading the several Parcels, particularly when he came to the Rings, Mr. Bambridge spoke as follows:

Mr. Bambridge. I desire to know, how many Rings there are mentioned in the Indictment; whether one, two, or three, or four Score.

Then the Clerk did read the several Rings mentioned in the Indictment, and went on with reading the following Part of the Indictment.

H h

Mr.

Mr. Bambridge. I will not give your Lordship any unnecessary Trouble; but I desire the Clerk may read the Form of the Indictment in Latin.

L. C. J. Eyre. What do you desire?

Mr. Bambridge. The whole Indictment to be read, except the Parcels of the Goods.

L. C. J. Mr. Matthews, speak loud, when you read.

Mr. Bambridge. Is it *vicesimo die*?

Clerk. It is *tricesimo primo Octobris*. And then the Clerk of the Arraigns went on with reading the other Part of the Indictment.

Mr. Bambridge. That is not all the Indictment; I am informed, that several others are mentioned as Accomplices.

Mr. Kettleby. There are Pindar and Douglas.

L. C. J. Mr. Matthews, have you read all the Indictment? Are they mentioned?

Mr. Matthews. The latter Part of the Indictment is relating to Pindar and Douglas.

L. C. J. I have not that in my Paper: You should have put it in.

Mr. Matthews. My Lord, they are not here.

L. C. J. Read it.

Mr. Kettleby. You should have read it before.

Then Mr. Matthews read the remaining Part of the Indictment relating to them.

Mr. Holland. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King. This is an Indictment against Thomas Bambridge, for feloniously stealing and taking away several Goods, the Property of Elizabeth Berkley. The Indictment sets forth, That Thomas Bambridge, late of London, did on the 31st of October, 1727, in the first Year of his present Majesty, with Force and Arms, in London aforesaid, in the Parish of St. Bridget's, alias St. Bride's, in a felonious Manner, and with an evil Intent, steal and take away the Goods of Elizabeth Berkley in the Indictment particularly set forth, being in a certain Mansion-House, where the said Elizabeth Berkley and divers others did inhabit. This is laid against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Mr. Serj. Cheshire. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the King. Thomas Bambridge, the Prisoner at the Bar, stands indicted upon the Statute of the 12th of the late Queen: He is charged for feloniously stealing and taking away the Goods of Elizabeth Berkley, to the Value of 40s. and upwards, out of a Mansion-House, where she the said Elizabeth Berkley and several others dwelt. The Evidence, in support of the Indictment, will be this; that some Time before the 23d of October, in the Year 1727, the said Thomas Bambridge was Deputy Warden of the Fleet Prison, under Mr. Huggins; and at that Time the said Elizabeth Berkley was a Prisoner, and lodged in the second Gallery on the Master's Side; that some Time before the first Day of Michaelmas Term in that October, the said Thomas Bambridge, and some other Persons, viz. Pindar, Barnes, King, and Douglas, came in Company together, and entered the Room where the said Elizabeth Berkley was: The Room, Gentlemen, was furnished with very good Goods: They did, Gentlemen, pretend to rifle the Room, and take some Account of some of the Goods; and a Person in Company did write down, about twelve Lines, Part of the Effects; and the Man did not proceed any further then; but Bambridge, and the other Persons with him, hurried Mrs. Berkley away to the Common Side: There, Gentlemen, she was locked up; there she lay five or six Weeks, till he had turned her Senfes; and she has continued in that melancholy Condition ever since.

The first Time, Gentlemen, that they entered the Room, he wrote some Lines, and did take some Account of the Goods; but did not then proceed any further: But as he turned the Owner out of the Place, he put a Padlock on the Door, and she put her own Key in the Door, and locked the Door; and there was nothing done further at that Time.

Gentlemen, on the 23d of October, Bambridge and others, in Company with him, did come to this Place in the Gallery: He easily did remove the Padlock, but it was not so easy to force open the Door; and therefore, Gentlemen, he sent for one Greenway, a Carpenter, to bring Tools to force the Door open. He was sent for, Gentlemen; but they were impatient; and one of the People with the Defendant, in the mean Time with a Poker forced open the Door. When Greenway came, they did bid Greenway stay a little; then told him, they had no Occasion for him. When he came into the Room, the Prisoner himself did direct and assist in breaking open the Trunks and Boxes; and when they were all open, there were found several Rings, and some Jewels; and those Things that were light and portable Bambridge put in his Pocket: There were, Gentlemen, very good Apparel, all of them made up, Linnen and other Things of a considerable Value: For these, Gentlemen, Bambridge had provided a large Portmanteau, and put them up and carried them away. This, Gentlemen, was the second Time of his entering the said Room; and at this Time, I should tell you, Gentlemen, he did go on with the twelve Lines wrote before, and perfected the said Inventory, I suppose, by adding some more Goods. And then, upon this 23d of October, he was pleased Gentlemen to fix a Head to the Paper, and directed in what Words it should be wrote, which were these: *An Inventory or Appraisement of Goods, of and belonging to Elizabeth Berkley, distrained the 23d of October, 1727, for 56l. of an Arrear of Rent due to John Huggins, Esq.* Gentlemen, according to my Instructions, it will come from our Witnesses, that there was a Person who pretended to be, and was a Constable; and there was a Person there who pretended to appraise the Goods; but Nobody was sworn, as by Law they ought: In this Condition he did perfect the Paper before-mentioned.

In looking over the Things, Gentlemen, Bambridge did observe there was a Brush and a little Chalk, something usual among Persons that wear Jewels to clean them: He cried out, 'Look about, there are probably some Jewels; for there is something to clean them with;' and they looked and found some Rings, as Garnets, Emeralds, and Topazes; and when he had done he carried them away: But what he did with all of them afterwards, we cannot tell. Give me leave to say, my Brief informs me, that he did sell Part of them for fourteen Guineas to one West; some Gold Lace, near thirty Ounces, to one Mr. Harris; and some Silver Tea-spoons, gilt with Gold, he sold or presented to Corbett's Wife (who was one of his Tipstaffs): and her Bed and Bedding, which he was pleased to think was very good, he caused to be delivered to one Wilkins, to deliver to Jenkins a Wa-

terman, to be carried to his Lodgings at Wandsworth: This, Gentlemen, made a great Noise, and Mr. Huggins came to hear of it, and expostulated with the Prisoner, and said to him, You have taken a good many Goods belonging to Mrs. Elizabeth Berkley, under Pretence of seizing for an Arrear of Rent owing to me; how could you do so? There is no Rent due to me. Gentlemen, in this Manner he expostulated, How came you to do it? There is no Rent due to me, for there is an Agreement with my Deputy, Mr. Gibbons, who was to have the Produce of that Time; to what Value did you take? To which the Prisoner replied, I have only taken to the Value of Ten Pounds; notwithstanding, Gentlemen, he had sold a Ring for fourteen Guineas, besides thirty Ounces of Gold Lace, and some Tea-Spoons, and sent the Bed and Bedding to his House in the Country; this was indeed very extraordinary.

It is plain, Gentlemen, through his whole Conduct, he never intended to use this as a Distress; for when he sold the Cloaths of Mrs Berkley, he did not sell them as Goods taken by Distress, but to conceal from whence he had them; he said, These are my Wife's Goods.

It is very remarkable, and worthy your Observation, that though all the Cloaths were made into Garments or Apparel, he ordered and directed the Person who took the Inventory, to put down only so many Yards, sufficient to make a Gown or Petticoat; there was, Gentlemen, a Dimity Gown, which he particularly ordered to be put down, Dimity sufficient to make a Wrapper; which, Gentlemen, you will easily guess, was only to conceal its being wearing Apparel, that it might not be followed; or otherwise, why were they not entered into the Inventory in the Form they were, as made into Apparel? It is very extraordinary, that he should say so much of such and such a thing, only sufficient to make a Gown, or whatever it was; this, I hope, he will give a good Account of; this, Gentlemen, he ought to explain to you: After he had got the other Part of the Goods into his Possession, as he had said the former were his Wife's, these he said, were left in his Hands to make Money of; not saying any of them were Mrs. Berkley's, taken by Distress; but he sold Part of them as his Wife's Apparel, and Part as left with him by a Friend, to make Money of. We are far from thinking, where a Man takes a Distress for Rent, where Rent is due, tho' he does not let a Constable, or an Appraiser attend, and demean as they ought, that this is Felony; though this is a great Offence, and an enormous Abuse, and the Law will punish it civilly and criminally, but not capitally. If Landlords send Servants to make a Distress, and they misconduct themselves, and do not behave themselves rightly, it would be very hard to have that turned into Felony: We, Gentlemen, aim at no such thing; but that is to be taken into your Consideration, with my Lord's Advice. When there is no Pretence of Rent due, no Authority for distraining; when he makes use of a Pretence of Distraining, to get Goods into his Possession, to dispose of them as his own, or as left with him to sell; that Pretence to get them into his Hands, and dispose of them as his own, or as left with him to sell, and not sell them as prescribed by Law, after due Appraisalment, and returning the Surplus to the Owner, will make it Capital. Gentlemen, I need not tell you what the Law is in this Case; but, my Lord, I will dare to say, that tho' a Man comes by Goods lawfully, by Consent of the Owner, if he disposes of them to his own Use, it is Felony. For if I deliver Goods to a Carrier, to carry them to Deal, and he carries them to Sea; and he should open the Packs, and sell the Goods, this is Felony: This has been adjudged so by all the Judges in England, assembled for that Purpose.

There is a particular Case of an Attorney, which I shall take Notice of to you: It was in the 18th Year of King Charles the Second: He had, Gentlemen, a Mind to get Abundance of Goods, belonging to a Woman out of her House, into his Power and Possession: He did, Gentlemen, take a Process against her, and laid the Woman in Newgate; upon which he gets Judgment in Ejectment, and got Possession of her House; and then, Gentlemen, he gets Judgment, and takes the Goods out of the House, and takes them into his own Possession: There was a Colour of a Process of Law; but this was a Trick, to get the Goods from the Woman, and done with a felonious Intent; and the Man was hanged for it. These Things are proper for your Consideration. Without any further Observations, we will call our Witnesses, and submit it to your Lordship, and the Jury, whether the Prisoner's Conduct did not shew a felonious Intent, and whether the Distress was not made use of to get the Goods into his Possession, for his own Use.

Mr. Att. Gen. I am of Counsel of the same Side, for the King. The Indictment against the Prisoner at the Bar, is founded upon an Act passed in the 12th Year of the Reign of the late Queen Anne, Chapter the 7th, for taking away, and seizing feloniously, Goods of the Value of forty Shillings, in a Dwelling-house. Gentlemen, this being the Statute upon which it is founded; the Question before you is, upon the Fact being given in Evidence. At the Time when the Fact was committed in October 1727, T. Bambridge was Deputy Warden of the Fleet Prison, under Mr. Huggins; an unhappy Woman, Mrs. Berkley, a Prisoner in his Custody, being committed there for Debt, had a Room in the Prison, where she had several Things of Value; she being a Prisoner, and there having Goods of Value, the Prisoner at the Bar, who was Gaoler, ought to have suffered and permitted her, according to Law, to have the Use of her own Goods brought there, and enjoy them quietly, without Disturbance from him; but, Gentlemen, probably the Value of these Goods was the Temptation to the Fact afterwards committed. There were, Gentlemen, two Times that will be mentioned by the Witnesses, that he entered the Room, both in the Month of October; one some Days before the other. I don't find that the first Day is particularly fixed, but the second was the 23d of October 1727; and the first Time the Prisoner came, was some Days before the 23d of October 1727: the Prisoner then, with three or four other Persons, Pindar, Barnes, and King, came to the Chamber of Mrs. Berkley, in a violent Manner, and caused her to be removed out of her Room; and as a preliminary Step to what was intended, caused her to be carried down on the Common Side, and there locked her down; after they had disposed of her, they put a Padlock on the Door, and she locked the Door. I don't find that the Goods at that Time were particularly taken away by the Prisoner, but they thought fit to secure them; but before they took away Mrs. Berkley, they made her put her Key into the Lock, and lock the Door,

and they put a Padlock on it; this was the first Time of entering the Room; the second Time, after dark, the Prisoner, with *Barnes, Douglas, Pindar*, and a Person to whom they thought fit to give the Title of Constable, but whether he had any Authority or not to act as such, that don't appear to us, but it is incumbent on him to shew; then pulled off the Padlock; one should have thought, if any Thing fair had been intended, *Mrs. Berkley* should have been sent for to have opened, or at least, to have seen the Door opened. There was a Lock upon the Door, but the Prisoner ordered the Door to be opened; but he not having Strength enough himself, ordered another to break open the Door, which he accordingly did: The Door being opened by Force and Violence, without sending for *Mrs. Berkley*, they fell to rifling the Boxes; the Prisoner with his own Hands, broke open the Locks of three Boxes, and two Trunks; Things were taken out, and some of those of the most Value, the Prisoner thought fit himself to take, and put in his Pocket; those were two Cornelian Seals, Gold Rings, in Number five, which were of some Value; one a Garnet, another had a small Diamond in it, and another was an Amethyst Ring of some Value, which the Prisoner thought fit to put in his Pocket; a Silver-handle Knife and Fork, in a Shagreen Case, and other Things of Value, he put into a Portmanteau, which the Prisoner sent out of the Prison. After this was done, the rest of the Goods were taken away; and as *Mr. Serjeant* has mentioned to you, there was a Pretence of taking an Inventory of the Goods; if that shall appear only a Pretence and Colour, that will not vary the Case as to him. The Bed and Bedding (the Prisoner then wanted a Bed and Bedding) he thought fit to take away; and, if my Instructions are true, sent it down by Water to *Wandsworth*, to his Lodgings; and *Mrs. Berkley*, ever since that, has been kept on the Common Side, without Bed or Bedding, or at least was kept so for a Time: We apprehend the Witnesses will come up to this. This being the Nature of the Case, the Question to be submitted to my Lord, is, Gentlemen, what the Design of the Transactions, and Nature of it was? We apprehend the Design was to get these Goods wrongfully and feloniously into his own Custody, and take them to his own Use; if that was the Case, the Manner of taking them will not alter the Thing; for must observe to you, Gentlemen, if a Man designs to take Goods feloniously, let him put it in what Shape he will, if that is only the Pretence and Colour, it is Felony; nay, if by Colour of the Law, any Man possesses himself of Goods with a felonious Intent, in that case it is so far from being an Excuse, that it is an Aggravation of the Offence; for the Law will not admit, that under its Colour, a Man should be stripped of his Property; that instead of being a Defence against one Man, it should be an Injury to another; for if any Person should possess himself by Force of another Man's Goods, it is Felony. Besides the Case mentioned to you by *Mr. Serjeant*, I will take notice of one; that after Goods distrained, and the Goods carried away, there is got a Replevin of these Goods; if that Replevin was only colourably taken out, to get these Goods into his Possession, that Replevin will not excuse him from Felony. The Question is, whether if a Distress is taken, if that Distress is only colourably taken, it is not Felony? Therefore, though it can't be pretended, and none will have a Thought, I hope, that it is insisted on, if a Man intends fairly to make a Distress, and errs in the doing it, though he errs in a great many instances, that that should subject him to Felony; God forbid: Yet if he makes use of a Distress only as a Colour to get Goods into his Possession, when it is Felony, and Circumstances will come to be material, and his not observing the Method which the Law directs, will further shew with what Intent the Beginning was, and with what Intent he took the Goods, which, we apprehend, is material. But what, I apprehend, is most material for your Consideration, is to shew the concealed Manner of describing these Goods, the Method of disguising them, and the Manner of selling them. As to the first of these, it will appear, that the Wearing Apparel, instead of being described, as really they were, he ordered to be described, as so much Stuff and Silk sufficient for to make a Gown, Petticoat, or whatever it was. We apprehend there could be no other View in that, than to disguise it, that the Truth might not appear. And, Gentlemen, as to the Disposal of them, it will appear plainly, we think to you, such as shews that the Prisoner had no Intention to make use of his Distress; but that his original Design was, to convert them to his own Use. It is very truly said, by the learned Gentleman that has spoke before me, that where a Man possesses himself of Goods, though lawfully, supposing he disposes of those Goods for his own Use it will make it Felony. There have been Instances given you, where Persons came by Goods lawfully, but their Disposal of them to their own Use, made Felony. Now in the present Case, it will appear, the Goods, Gentlemen, were many: As to the Ring mentioned, particularly that in which the Amethyst was set, the Prisoner, after taking that Ring, sent it to one *Mendoza Salas* to inquire the Value, and disposed of it to him; as to the Garnet, with a Brilliant in the Middle, that was sent likewise to him to be disposed of, to inquire the Value of that also: As to the Wearing Apparel, that was sold to one *West* for fourteen Guineas; the Gold Lace was sold to one *Harris*; the gilt Tea Spoons were sold to *Corbett's* Wife; and as to the Bed and Bedding, he put it at first in another Place in the Prison, and after sent it to his own House, with the Portmanteau, wherein other Things of Value were put. If he had any Intent to dispose of these Goods, as taken by Distress, as a Satisfaction for any Demand, or Debt he might have, should not he have given an Account to *Mrs. Berkley*? And there was any Surplus, ought not he to have paid it over to her? It will be incumbent on the Prisoner, to shew that he accounted to her for the Surplus; but if there is no Colour of Right to make the Distress, no regular Method taken in the Disposal upon the Distress, no Account thereof given, we apprehend that it will appear a Pretence of Distress, and that only the Pretence of Distress was made use of to convert the Goods to his own Use; if so, this will amount to Felony. We will beg Leave to call our Witnesses, and then leave it to your Lordship's Directions.

Mr. Sol. Gen. Call *John Turner*. (Who was sworn.)
Mr. Bambridge. My Lord, *Mr. Attorney General*, in his Declaration that he has made, was pleased to admit, that if there was a legal Distress made, there could be no Attempt upon my Life,
Mr. At. Gen. My Declaration!

Mr. Bam. That *Mr. Attorney*, in his Declaration allowed, if it was a Distress—

Mr. At. Gen. My Declaration! I said, that it would appear as a Colour of Distress to commit a Fraud.

Mr. Bam. You meant in *fraudem Legis*.

Mr. At. Gen. I spoke in *English*, believing it to be more intelligible to you; you may make use of *Latin* Words if you will.

Mr. Sol. Gen. Did you know *Mrs. Berkley*, and when?

Mr. Turner. Yes; I knew her in *October*, 1727.

Mr. Sol. Gen. How came you to be acquainted with her?

Mr. Turner. By being a Prisoner in the Fleet Prison; she was a Prisoner at the same Time, and lodged in the second Gallery, within two or three Rooms of mine.

Mr. Sol. Gen. In what Part of the Gaol did you lodge?

Mr. Turner. I lodged on the Master's Side, in the second Gallery.

Mr. Sol. Gen. How long?

Mr. Turner. I had the Misfortune to be there two Years before this Seizure was made.

Mr. Sol. Gen. You mention a Seizure, give an Account how it was made.—*Mr. Turner.* I was called in by *Pindar*.

Mr. Sol. Gen. What Day?

Mr. Turner. Between the 23^d and 27th of *October*, 1727.

Mr. Sol. Gen. What were you called in for? What to do?

Mr. Turner. I was called in by *Pindar*, and he told me, that a Distress was to be made; for being an Upholder, *Mr. Bambridge* called me frequently to make Distresses.

Mr. Sol. Gen. Who was there?—*Mr. Turner.* *Pindar*, and I think *King*.

Mr. Sol. Gen. Was *Mrs. Berkley* there then?

Mr. Turner. Yes, but not *Bambridge*.

Mr. Sol. Gen. What did you do?

Mr. Turner. I took an Inventory of all that did appear; we did not then open any Boxes; we mentioned them in Grots, and took every Thing that appeared in the Room, as Earthen-ware, Bed and Bedding, and such like Things. In about fourteen Days afterwards, *Mr. Bambridge* came again, and I was called in.

Mr. Sol. Gen. Was there any Thing more done then?

Mr. Turner. Nothing more than taking an Inventory.

Mr. Sol. Gen. Was there any Constable there?

Mr. Turner. There was a Person there, who said he was a Constable.

Mr. Sol. Gen. Who was there the second Time, about fourteen Days after the first? Was *Mr. Bambridge* there?

Mr. Turner. Yes, after they had broke the Door open, I was called in, and she said, they had committed Felony.

Mr. Sol. Gen. Did you hear it said, whilst *Mr. Bambridge* was there?

Mr. Turner. Yes.

Mr. Sol. Gen. What did *Mr. Bambridge* say?

Mr. Turner. *Mr. Bambridge* wondered the Trunks were not opened before, and asked *Mrs. Berkley* for the Keys, and when she would not give him the Keys, *Mr. Bambridge* himself broke open the Trunks, and rifled them.

Juryman. Was it in the Presence of *Mrs. Berkley*.—*Mr. Turner.* Yes.

Juryman. Was she there all the Time?

Mr. Turner. She was there all the Time.

Mr. Sol. Gen. What did you do then?

Mr. Turner. When the Boxes were opened, I made an Inventory of all that was in them; here are both Inventories.

Lord Chief Justice Eyre. Tell us who broke open the Boxes.

Mr. Turner. *Mr. Bambridge* himself.

Mr. Sol. Gen. Tell my Lord what was particularly mentioned in the Inventory, what the first, and what the second Time.

Mr. Turner. The Inventory was dated the 23^d of *October*, 1727, for fifty-six Pounds, for Rent due to *John Huggins, Esq.*

Mr. Sol. Gen. Who wrote the Title?

Mr. Turner. *Mr. Bambridge* wrote it upon a loose Piece of Paper, and said, let the Title be so, and the Date be so.

Mr. Sol. Gen. When was the first Distress made? Distinguish the two Times.

Mr. Turner. I take it the former Distress was about the 27th of *October*, and the second, the 3^d or 4th of *November*.

L. C. J. Who made the first Distress? Who was there?

Mr. Turner. The first Distress was taken by *Pindar*, *Mr. Bambridge* was not there; then I took Inventory of the Boxes, and set down so many Ban Boxes.

Mr. Sol. Gen. Afterwards, you say, a particular Inventory was made on the 4th or 5th of *November*?

Mr. Turner. Yes, I believe it might be about that Time, but I can't be positive, not thinking it would be called in Question.

Mr. Sol. Gen. In what Manner did you make the Inventory?

Mr. Turner. I made the Inventory as *Mr. Bambridge* directed.

L. C. J. Give an Account what you inserted the first Time of taking the Inventory.

Mr. Turner. A Bedstead and Sacking-bottom, with China Stuff Furniture, a Feather Bed and Bolster, a Down Pillow, two Blankets, a Callico Quilt, two Pair of Sheets, two Pillow-biers, two Cane and two Stuff Chairs, an Easy Chair and Cushion, two Tables, a Looking Glass, a Fire-shovel, Tongs, Poker, and Wooden Fender, a Gridiron, a Pair of Bellows, a Hearth Brush, a Brass Hand Candlestick, two Tin Tinder-boxes, a Kettle and two Drinking Pots ditto, four Boxes and two Trunks, three Pair of Dimitty Window Curtains and Vallins, one Curtain-rod, two Hair-brooms, a large India Hand Tea-board, eleven printed Books, a Pewter Standish, two Knives, three Forks, two Tin Coffee-pots, a Sauce-pan and Skimmer ditto, a Chocolate-Mill, one hundred Vessels of Stone and Earthen Ware; this was the first Inventory.

L. C. J. Was there any Valuation of the Goods in the Inventory?

Mr. Turner. Yes, *Mr. Bambridge* desired me to have a particular Valuation of each Thing, which I gave to *Mr. Bambridge*.

Juryman. Have you a Copy of that Valuation?

Mr. Turner. No, I gave it to *Mr. Bambridge*.

L. C. J. When did you give it to *Mr. Bambridge*?

Mr.

Mr. Turner. When I finished it; a Day or two after the Distress.

Lord Chief-Justice. That was after the 4th of November.

Mr. Sol. Gen. Give to my Lord, and the Jury, the Reason for giving the Inventory to Mr. Bambridge.

Mr. Turn. It was, that Mr. Bambridge might know how to dispose of them.

Mr. Sol. Gen. Go on to the second Inventory.

Mr. Turn. A large Silver Handle Knife and Fork, two Silver Spoons, two Tea Spoons, Strainer and Tongs, a Bowl, and Handle of a Spoon ditto, three Gilt Tea Spoons, a Strainer and Tongs ditto, twenty Ounces and a Half of Gold Lace, two Cornelian Seals set in Gold, and a Ring I took to be a Crystal.

Mr. Sol. Gen. Do you know it when you see it?—Mr. Turn. No.

Mr. At. Gen. Who directed you to set down a Crystal?

Mr. Turn. I do not know particularly, every Body was of Opinion it was a Crystal.

Mr. At. Gen. How many Rings were there?

Mr. Turn. I saw but one Ring, the others were loose Stones.

Mr. Sol. Gen. You may go on with the Inventory.

Mr. Turn. One small Emerald, one small Garnet, a Seed Pearl, five Diaper Napkins, a stitched Top of a Toylet, with Lace Mullin Falls, a two Pinner Head of Mecklin Lace, a Pair of Ruffles, a Handkerchief and Apron ditto, one Flanders Laced Cap, worked Head, and a Pair of three double Ruffles, one Head of Half-breadth Lace, and a Pair of single Ruffles, ten odd Pieces of Flanders and Colberteen Lace, about four Yards of black Lace, a furbelowed Scarf and Hood, trimmed with black Lace, one Yard of blue Lustring, two Yards of white Sarfenet, blue Sattin sufficient for a Lining, strip'd Dimitty sufficient for a Gown and Petticoat, some old Persian for a Lining to ditto.

Mr. Sol. Gen. Before you go off from this Particular, I must ask you a Question or two; these mentioned in the Inventory, sufficient for a Gown and Petticoat, and sufficient for a Lining; were these Pieces of Silk, or were they made up into Cloaths?

Mr. Turn. These were Things that had been scowred and rolled up.

Mr. Sol. Gen. Was the Dimitty?

Mr. Turn. Yes, it was rolled up as coming from the Scowrers.

L. C. J. Was it in the Shape of a Garment?

Mr. Turn. Yes, it had been a Garment, but was then rolled up.

Mr. Sol. Gen. Was it in regard to the Lining the same.—Mr. Turn. Yes.

Mr. Sol. Gen. Be pleased to observe, the blue and white flowered Sattin, which is set down in the Inventory, to be sufficient for a Gown and Petticoat, was that made up?—Mr. Turn. That was made up.

Mr. Sol. Gen. How came you to put it down so much, sufficient for a Gown and Petticoat?

Mr. Turn. I observed at that very Time to Mr. Bambridge, and told him we usually did not distress wearing Apparel; upon which he then said, Put it down sufficient for wearing Apparel.

L. C. J. Give a direct Account of that Particular again.

Mr. Turn. I said to Mr. Bambridge,—Sir, we don't usually set down wearing Apparel; then Mr. Bambridge said, Put it down sufficient for such and such a Thing, particularly, Sarfenet sufficient for the Lining of a Gown, which was made up; if it was the Body of a Gown, he bid me put it down sufficient for a Body, and the rest of a Lining, sufficient for a Lining.

Mr. Sol. Gen. The Question is, Whether they were actually made up, and set down only sufficient?—Mr. Turn. Yes.

Mr. Sol. Gen. Mention them particularly.

Mr. Turn. There was Sarfenet sufficient for a Wrapping-gown, that was actually made up.

Mr. Sol. Gen. You just now said, that the Things you have mentioned you gave a Valuation of separately to Mr. Bambridge; was there any Valuation on the Inventory you kept?

Mr. Turn. The total Sum agrees with the same as Mr. Bambridge had, Twenty Seven Pounds, Sixteen Shillings and Nine-pence.

Mr. Sol. Gen. Do you remember any Discourse you had as to the setting the Value?

Mr. Turn. Upon a cursory View of taking the Inventory, I brought it to Thirty Pounds, and Mr. Bambridge said, You have over-rated these Things; you must consider there is a Charge attending this Distress, and paying you besides, and that would lessen the Value of the Things; and bid me consider it again, and upon looking it over again, I brought it to Twenty Seven Pounds Sixteen Shillings and Nine-pence.

Mr. Sol. Gen. Was you upon Oath?

Mr. Turn. When I signed the Inventory, and finished it, there was a Constable, and I did take an Oath, and I told Mr. Bambridge there ought to be two Persons to make the Appraisement; to which Mr. Bambridge said, I might take Pindar; but Pindar refused, so only myself signed it.

Mr. Sol. Gen. Pray give an Account, if you know, what is become of the Goods in the Inventory?

Mr. Turn. I do not know any thing of them but by Rumour.

Mr. Sol. Gen. Did you see any of the Things carried away by Mr. Bambridge?

Mr. Turn. Yes, the wearing Apparel and Seals; the Seals he put into his Pockets.

L. C. J. Tell what he put into his Pocket.

Mr. Turn. The gilt Silver Tea Spoons and Rings.

L. C. J. What did he put in the Portmanteau?

Mr. Turn. The Cloaths.

L. C. J. Were these in the Inventory?—Mr. Turn. Yes.

Mr. Sol. Gen. What became of the Portmanteau?

Mr. Turn. It was carried out of the Room by Mr. Bambridge's Servant.

Mr. Sol. Gen. Was there any Brush, such as was used to clean Jewels with?

Mr. Turn. Yes; Mr. Bambridge looked very narrowly, and at last a Brush appeared; and, upon seeing of that, he said, certainly there was

some Diamonds: Upon which Mrs. Berkley was very much chagrined; and she said, if you find them, will you take them? And after that he searched, and found the Rings and other Stones.

Mr. Sol. Gen. Was there any Discourse about Papers?

Mr. Turn. There was a large Parchment in a Case, she said it was a Decree: It was in a great round Case, which Mr. Bambridge took; upon which Mrs. Berkley said, What, will you rummage my Papers? Yes, says he; and if I find any Bonds or Bills, I will make use of them.

Mr. Sol. Gen. What became of her after they entered the Room?

Mr. Turn. After the first Seizure, she was turned out of her Room, and put on the Common Side, and kept there till the second Seizure was made, and then she was put into a Room without a Bed.

Mr. Sol. Gen. Was there any Furniture left?

Mr. Turn. There was Earthen Ware, and Stuff Curtains; but no Bed.

Mr. Sol. Gen. How has she lain since?—Mr. Turn. Without a Bed.

Mr. Sol. Gen. What Condition of Mind was she in?

Mr. Turn. Sometime; she talked very well, and much to the Purpose; at other Times she would talk wild, and would not believe that Lord Harcourt was dead; for she said, he would do her Justice upon them (meaning Mr. Bambridge and his Accomplice). I said he was dead: She made Answer, she would not believe me; for they would find him alive to their Costs.

Mr. Sol. Gen. How did the Woman behave herself?

Mr. Turn. The Woman was much reserved, and kept herself to herself very much. She talked much to the Purpose when she did talk; but it was difficult to get her into it.

Mr. At. Gen. In disposing of the Goods in the Manner you did, sufficient for such and such a Thing, what Reason had you to do it?

Mr. Turn. It was Mr. Bambridge's positive Directions: I should not have thought on it myself.

L. C. J. Who made the Difficulty first?

Mr. Turn. I did, and said it was not customary to put down Wearing Apparel in Inventories upon Seizures; upon which he bid me alter the Names: I said it was not proper to alter the Names, and they ought not to be mentioned at all.

L. C. J. What did Mr. Bambridge say?

Mr. Turn. Mr. Bambridge said, I must have you let them be set down; Stuff or Silk sufficient to make a Gown, or whatever it was.

L. C. J. Did you set them down according to the best of your Judgment?—Mr. Turn. I did.

L. C. J. Was that the real Value you set upon them?

Mr. Turn. The first Valuation was the Price I would have given for them; and when Mr. Bambridge said the Costs on the Distress would come to more, I reduced them three Pounds.

Mr. Sol. Gen. Would you have given the Value first set upon them?

Mr. Turn. Yes.

Mr. Sol. Gen. Had you any other Reason to alter the Value, than that Mr. Bambridge bid you?—Mr. Turn. No.

Mr. Bambridge. I desire, my Lord, he may be asked, Whether I did not insist upon having every Thing particularized in the Inventory.

Mr. Turn. Yes, you did.

Mr. Bam. You say, I did demand the Keys of Mrs. Berkley, and she refused to let me have them, and then the Boxes were opened.

Mr. Turn. Yes, I said so.

L. C. J. I thought you did.

Mr. Bam. My Lord, Turner said that there was some Gold Lace.—Whose was that?

Mr. Turn. It was the Trimming of the flowered Suit of Clothes; it was the Trimming of the Suit of Sattin Clothes; Part of the Lace was remaining on them.

Mr. Bam. Was there not several Things unmade?

Mr. Turn. I said, that called a striped Dimitty came from the Scowrer's.

L. C. J. As to the Dimitty, give an Account how that was set down.

Mr. Turn. That I set down, as it appeared to me coming from the Dyer's, as a Roll of Silk.

Mr. Bam. Were the Things taken away, Part mentioned in the Inventory, or the Whole?

Mr. Turn. All that I saw taken away was in the Inventory.

L. C. J. Is the Inventory the same you delivered to Mr. Bambridge?

Mr. Turn. He had every Article here, with the Prices annexed. It is a Wonder I had any Copy; for I did not apprehend that any Person would call upon me about it.

Mr. Bam. I desire Mr. Turner may acquaint your Lordship, as to the Conversation that was between me, Mrs. Berkley, and him, at the Time of making the Distress.

Mr. Turn. Mr. Bambridge said, it was a Shame she should live so long and not to pay any Rent; for that it amounted to Fifty Pounds and upwards, and she had Money enough to pay it; and said, I am informed you have been abused, and I will enquire into your Affairs, and see if I can't extricate you out of your Difficulties.

L. C. J. I think there was a Demand of Fifty-six Pounds; was that not?

Mr. Turn. I did not hear of any Demand; he only talked of it.

L. C. J. What did Mrs. Berkley say?

Mr. Turn. She said, it was the House of the King's; and if she was there, the King should find her a House.

Mr. Bam. I desire he may be asked, Whether, when I was in the Room, he did conceive what was done was with a felonious Intent.

Mr. Turn. I did think your Power was sufficient to do it.

Mr. Bam. Have you made any other Appraisements?

Mr. Turn. Yes.

Mr. Bam. Did you make any Alteration in them?

Mr. Turn. No.

Mr. Bam. Was the Appraisement done in a private Manner, or every Body know it?

Mr. Turner. Every Body did know it.
 Mr. Bam. Were Appraisements usually made publickly or privately?
 Mr. Turner. Pindar used to come and say, there are Goods to be distrained; so I did it.
 L. C. J. So it was left to you then, to appraise as your Discretion should lead you?—Mr. Turner. Yes.
 L. C. J. Pindar came to you now, in this Affair?—Mr. Turner. Yes.
 Mr. Bam. Pindar, my Lord, was indicted, to take off his Evidence.
 Mr. Justice Reynolds. Was there a Constable the first time of taking the Distress?—Mr. Turner. Yes.
 Mr. At. Gen. You said, there was a Man called a Constable: Did you know him to be a Constable?—Mr. Tur. I believe he was a Constable.
 Mr. At. Gen. Did you believe the Man that came a second time, to be a real Constable?—Mr. Tur. Yes. It has been enquired into since.
 Mr. Bam. If it was a Felony, it was a Felony committed in Oct. 1727, and not complained of till February or March last.
 L. C. J. You are not come upon your Defence yet.
 Mr. Bam. Do you not know the Name of the Constable?
 Mr. Tur. I think he was a Currier.
 Mr. Bam. Was it the Constable that usually attended upon Seizures?
 Mr. Tur. Yes.
 Mr. Filmer. You say, that Pindar was desired by Mr. Bambridge to assist in the Appraisement; what Business was Pindar of?
 Mr. Tur. He was a Distiller.
 Mr. Fil. Did he not undertake the appraising of the Goods?
 Mr. Tur. No, he refused it.
 Mr. Fil. Did not Mr. Bambridge press him to it?—Mr. Tur. Yes.
 Mr. Fil. Was there a Constable a second time?—Mr. Tur. Yes, both times.
 Turner was going away; but was called back at the Request of Mr. Bambridge, he desiring to ask him a Question or two more.
 L. C. J. Propose your Questions to the Court first.
 Mr. Bam. I desire he may acquaint your Lordship, whether, at the time when he appraised the Goods, I did not recommend it to Mrs. Berkley to pay the Rent; and said, I would stay some time, and save the Goods from being disposed of.
 Mr. Tur. Mr. Bambridge did say she was imposed on; and said, he would give her any Assistance, and bid her send to her Friends to get Money to pay the Rent.
 L. C. J. He said he would stay?—Mr. Tur. I did not hear him say it.
 Mr. At. Gen. What did he say?
 Mr. Tur. He said he would assist her, she being imposed on; and did desire her to send for Money to pay the Rent; but I did not hear him say any Words as to his staying for the Rent.
 (Thomas Wilkinson was sworn.)
 Mr. Willes. Do you know Elizabeth Berkley?—Mr. Wilkin. Yes.
 Mr. Willes. Did you know her in Oct. 1727?—Mr. Wilkin. Yes.
 Mr. Bam. I desire, my Lord, before he is further examined, he may be asked, what Money he has received, and how long he has been kept to give Evidence against me?
 L. C. J. That is not a Question fit to be asked.
 Mr. Bam. It is true, I am sure.
 Mr. Justice Reynolds. You must prove that.
 L. C. J. You cannot ask a Man any thing that tends to accuse himself.
 Mr. Bam. I don't ask to the Corruption; but whether he received the Money.
 Mr. Justice Reynolds. It carries an Imputation with it.
 Mr. Willes. He may prove it, if he can.
 Mr. At. Gen. If Mr. Bambridge proves it, it will go only to the Credit of the Witness.
 Mr. Willes. If he don't, it will go as to his own Credit. You knew Mrs. Berkley in October, 1727?—Mr. Wilkin. Yes.
 Mr. Willes. Where did she lodge?
 Mr. Wilkin. In No. 8, near the Front of the Yard.
 Mr. Willes. Where did you lodge?
 Mr. Wilkin. On the Common Side.
 Mr. Willes. Did you see Mrs. Berkley at her Door, when it was broke open?—Mr. Wilkin. Yes.
 Mr. Willes. What time of the Year was it?
 Mr. Wilkin. The latter End of October.
 Mr. Willes. What time of the Day?
 Mr. Wilkin. At six o'Clock at Night.
 Mr. Willes. Was the Door locked when she was there?
 Mr. Wilkin. It was locked with two Padlocks; one Pindar took off.
 Mr. Willes. Who was there?
 Mr. Wilkin. Mr. Bambridge, a Constable, and Barnes.
 Mr. Willes. Did Pindar take off the Padlock of his own Accord?
 Mr. Wilkin. Mr. Bambridge ordered him to take it off. There was another Padlock on, and Barnes went to fetch a Hammer to break it off.
 Mr. Willes. Who ordered him to fetch a Hammer?
 Mr. Wilkin. Mr. Bambridge.
 Mr. Willes. Did they attempt to break off the Padlock with that Hammer?—Mr. Wilkin. Yes.
 Mr. Willes. Was Mr. Bambridge by all the time?—Mr. Wilkin. Yes.
 Mr. Willes. Was the Door broke open with the Hammer?
 Mr. Wilkin. Barnes, because the Hammer would not do, went and fetched a Poker.
 Mr. Willes. What did he do with the Poker?
 Mr. Wilkin. He broke open the Door with it.
 Mr. Willes. Who stood by at that time?
 Mr. Wilkin. Turner, myself, Barnes, Pindar, and Mr. Bambridge.
 Mr. Willes. What did Mr. Bambridge order, after the Poker was brought?—Mr. Wilkin. After the Poker was brought, he ordered him to break open the Door, and so he did.
 Mr. Willes. When the Door was broke open, who went in with the Constable?
 Mr. Wilkin. All went in; Mr. Bambridge, Barnes, Pindar, the Constable, and myself.
 Mr. Willes. You mention a Constable; do you know him to be a Constable?—Mr. Wilkin. Only by his having a Staff.

Mr. Willes. Was that all the Reason you had to believe him to be a Constable?—Mr. Wilkin. Yes.
 Mr. Willes. Have you seen him at any other time?
 Mr. Wilkin. I saw him only then, and never since.
 Mr. Willes. Was Mrs. Berkley there?
 Mr. Wilkin. Yes; I went to fetch her up, and Mr. Bambridge insisted upon her opening the Door; but she would not open the Door herself; so Mr. Bambridge ordered the Door to be broke open.
 Mr. Willes. When he came up, and broke open the Door, and came into the Room, what did he do?
 Mr. Wilkin. Mr. Bambridge desired Mr. Turner to take an Inventory.
 Mr. Willes. Of what?
 Mr. Wilkin. Of all the Goods in the Room.
 Mr. Willes. Was Mrs. Berkley come into the Room?
 Mr. Wilkin. Yes, she was there.
 Mr. Willes. What did Mrs. Berkley say?
 Mr. Wilkin. She said, it was a Robbery, it was not Justice, it was Felony; and she did not doubt but he would be brought to account for it in time.
 L. C. J. Was she by?
 Mr. Wilkin. Yes, and saw the Room broke open, and Mr. Bambridge order Mr. Turner to make an Inventory.
 L. C. J. What did Mr. Bambridge say then?
 Mr. Wilkin. Set down such and such Things.
 L. C. J. What did they take an Account of?
 Mr. Wilkin. They took an Account of some Things before they opened the Boxes.
 L. C. J. Were the Boxes locked?
 Mr. Wilkin. There were two Boxes locked, and one nailed.
 L. C. J. Was there any Trunk?
 Mr. Wilkin. I don't remember that there was a Trunk.
 Mr. Willes. Was she asked to open the Boxes?
 Mr. Wilkin. Yes, but she refused.
 Mr. Willes. When she refused, who broke them open?
 Mr. Wilkin. Mr. Bambridge broke open three with a Hammer.
 Mr. Willes. Was she in or out of the Room at the time?
 Mr. Wilkin. She was in the Room.
 Mr. Willes. What did she say?
 Mr. Wilkin. She said it was a Robbery.
 Mr. Willes. When the Boxes were broke open, what was taken out?
 Mr. Wilkin. Three Suits of Cloaths.
 Mr. Willes. Who took them out?
 Mr. Wilkin. Some were taken out by Mr. Bambridge, and some by Mr. Turner.
 Mr. Willes. By whose Order?—Mr. Wilkin. By Mr. Bambridge's.
 Mr. Willes. What was there taken out?
 Mr. Wilkin. China, flowered Curtains, two Gold Seals, and two Rings.
 Mr. Willes. Had they any Stones in them?
 Mr. Wilkin. One had a Stone, the other not.
 Mr. Willes. Were all the Things in the Boxes carried away?
 Mr. Wilkin. Yes.
 Mr. Willes. By whose Directions?
 Mr. Wilkin. By the Direction of Mr. Bambridge.
 Mr. Willes. Were all of them, or only some?
 Mr. Wilkin. Some of them; the Bed was carried away.
 Mr. Willes. Who carried it away?
 Mr. Wilkin. I carried it away into a Lumber Room in the Prison.
 Mr. Willes. What became of it afterwards?
 Mr. Wilkin. I saw it carried to Dorset-stairs after.
 Mr. Willes. By whose Order?
 Mr. Wilkin. By Mr. Bambridge's: I stood there while it was gone; he gave Directions to carry them to the Water-side.
 Mr. Willes. Did he only give Directions to carry them to the Water-side; or any where else?
 Mr. Wilkin. He gave Directions to carry them to Wandsworth.
 Mr. Willes. When did he give these Orders?
 Mr. Wilkin. When he carried them out.
 Mr. Willes. What became of the Rings?
 Mr. Wilkin. I saw them put in his Pocket, and he called Savage and Douglas to bear Witness.
 L. C. J. What was the Reason for calling them to witness?
 Mr. Wilkin. Mr. Bambridge said, that he put them in his Pocket for fear of their being lost.
 Mr. Willes. What did he order to be put in the Portmanteau?
 Mr. Wilkin. Wearing Apparel, and such like Things.
 Mr. Willes. Where was it carried?
 Mr. Wilkin. Into the Lumber Room above Stairs.
 Mr. Willes. Why did he order them to be put into the Portmanteau?
 Mr. Wilkin. Because, he said, the Portmanteau would hold them all.
 Mr. Willes. The Cloaths, some of them, were very rich; were they not?—Mr. Wilkin. Yes.
 Mr. Willes. Were they put in the Portmanteau?—Mr. Wilkin. Yes.
 Mr. Willes. Was Mrs. Berkley by when the Rings were put in his Pocket?
 Mr. Wilkin. Yes, and he called Mr. Douglas and other Persons as Witnesses?
 Mr. Willes. What did Mrs. Berkley say?
 Mr. Wilkin. It was Felony and Robbery.
 Mr. Willes. Did he say any thing to Mrs. Berkley, when he put them in his Pocket?
 Mr. Wilkin. Mr. Bambridge said, he did nothing but according to Law, and he would answer it.
 Mr. Willes. Was there an Emerald?
 Mr. Wilkin. Yes, I think there was an Emerald, and a Garnet, out of a Ring: He put them in his Pocket.
 L. C. J. What did he put in his Pocket?
 Mr. Wilkin. Two Gold Seals, two Gold Rings, an Emerald, and a Garnet.
 L. C. J. Were the Rings plain?

Mr. *Wilkinson*. One of them I did not see perfectly.
 L. C. J. What was the other?
 Mr. *Wilkinson*. A Stone Ring; but the middle Stone was wanting.
 L. C. J. Were there any Things besides?
 Mr. *Wilkinson*. There were two Silver-handled Knives and Forks.
 L. C. J. I only ask as to those Things he put in his Pocket; did you see any other Things put in his Pocket?
 Mr. *Wilkinson*. No.
 Mr. *Willes*. Did you never see a Stone called an Emerald afterwards?
 Mr. *Wilkinson*. No.
 Mr. *Att. Gen.* Recollect how many Rings there were.
 Mr. *Wilkinson*. There were two Rings, and two Seals.
 Mr. *Att. Gen.* Are you sure there were but two?
 Mr. *Wilkinson*. Yes.
 Mr. *Att. Gen.* Had they Stones in them?
 Mr. *Wilkinson*. One of them had a Stone out in the Middle.
 Mr. *Att. Gen.* As to the Bed and Bedding; why did you say they were to go to *Wandsworth*? Do you remember the particular Hands he sent them by; to be put into the Boat?
 Mr. *Wilkinson*. *Tom King* was one; as to the others, I did not know.
 Mr. *Att. Gen.* What did Mr. *Bambridge* say in your Hearing?
 Mr. *Wilkinson*. First, he said, they were going to be sold at a Sale.
 Mr. *Willes*. Who directed you to go to *Dorset-stairs*?
 Mr. *Wilkinson*. He sent me down to the Stairs to the Waterman, and bid me tell him to go away, and not stay.
 Mr. *Willes*. Who did he bid you ask for?
 Mr. *Wilkinson*. He bid me ask for the *Wandsworth* Waterman.
 Mr. *Willes*. Where were the rest of the Goods carried?
 Mr. *Wilkinson*. To *Will's* Coffee-House in *Bell-Savage-Yard*.
 Mr. *Willes*. How came they to be carried there?
 Mr. *Wilkinson*. Mr. *Bambridge* lodged at *Will's* Coffee-House.
 Mr. *Willes*. What were the Things that were carried to *Will's* Coffee-House?
 Mr. *Wilkinson*. An Easy Chair was carried there; I carried it myself.
 Mr. *Willes*. How long was this after the Goods were taken from Mrs. *Berkley*?
 Mr. *Wilkinson*. Some Days: It was left with Mr. *Turner* to clean; and then it was carried to *Will's* Coffee-House.
 Mr. *Willes*. By whose Order was it carried?
 Mr. *Wilkinson*. It was carried by Mr. *Bambridge's* Order.
 Mr. *Willes*. Who was it delivered to?
 Mr. *Wilkinson*. It was delivered to the Man's Wife at *Will's* Coffee-House by Mr. *Bambridge's* Directions: I carried it up one Pair of Stairs.
 Mr. *Bambridge*. I desire he may acquaint your Lordship, if he did not fetch Mrs. *Berkley* to be present at the opening the Door.
 Mr. *Wilkinson*. I did.
 L. C. J. He said so, and that *Barnes* was ordered to fetch a Poker to open the Door.—I ask you, whether he talked with Mrs. *Berkley* for the Payment of Rent, for which the Goods were distrained?
 Mr. *Wilkinson*. Mr. *Bambridge* did say something to her about seizing for Rent, and he would stand by it: She said, he could not seize Wearing Apparel for Rent, and told him it was Felony, and downright Robbery.
 Mr. *Bambridge*. I must desire him to acquaint you, whether it was not some Days before the Goods were removed, after the last Distress.
 L. C. J. Answer that.
 Mr. *Wilkinson*. Five or six Days.
 Mr. *Bambridge*. Were they carried out publicly?
 Mr. *Wilkinson*. Yes.
 Mr. *Bambridge*. Were they carried out in the Day-time?
 Mr. *Wilkinson*. Yes.
 Mr. *Bambridge*. Were they not carried out of the Lumber Room publicly in the Day-time?
 Mr. *Wilkinson*. Yes.
 Mr. *Bambridge*. Was it a publick Room to put Lumber in?
 Mr. *Wilkinson*. Yes; but it was always locked.
 Mr. *Bambridge*. I think he has acquainted the Jury, that she was present all the time.
 Mr. *Wilkinson*. I think she was.
 L. C. J. Was Mrs. *Berkley* there during the time Mr. *Turner* made the Inventory?
 Mr. *Wilkinson*. I think she was.
 Mr. *Bambridge*. He said, that I called Mr. *Savage* and Mr. *Douglas* to see that I put the Things in my Pocket: Mr. *Douglas*, my Lord, has the Unhappiness to be charged in the Indictment as an Accessary, though he only came into the Room by chance, and so I am deprived of his Evidence: He was put in the Indictment to take off his Evidence.
 L. C. J. He is a Principal in the Indictment.
 Mr. *Bambridge*. He is a Gentleman of a very good Family; he is the younger Son of a Man of Quality. I desire Mr. *Wilkinson* may acquaint your Lordship, whether Mrs. *Berkley* was not present when I said to Mr. *Douglas*, Pray take notice that I put the Rings in my Pocket.
 L. C. J. Was she?
 Mr. *Wilkinson*. I can't say positively, because it was just at last: At the latter End, she would not stay in the Room.
 Mr. *Bambridge*. Was there not a Bed ordered for her to lie on?
 Mr. *Wilkinson*. There was a Bed brought out of the Lumber Room, a nasty Bed; and she said, that if she could not lie on a Bed of her own, she would not lie on that; but went away.
 L. C. J. You say she went away; you can't say she was there then?
 Mr. *Wilkinson*. I can't.
 Mr. *Bambridge*. I desire to know, if, when he carried that Bed up, he did not bring another down.
 Mr. *Wilkinson*. Yes; I said so before, that you did order another Bed; but I said it was a nasty one.
 L. C. J. Tell us, whether that was a good Bed or not?
 Mr. *Wilkinson*. I can't say it was, my Lord: She had Reason enough to complain of it; for I lay upon a better Bed myself, and that was not fit for her, who was a Gentlewoman.

Mr. *Bambridge*. Was it any other than what was usual for the People in the House?
 Mr. *Wilkinson*. I have known some lie on Sacks; but because they could get no better.
 Mr. *Bambridge*. Were there any better Beds there?
 Mr. *Wilkinson*. Yes; there were three, and you sent them away with her's: Ever since she has lain without a Bed, unless she has had one within these ten Days.
 Mr. *Bambridge*. I desire to know, whether Mrs. *Berkley* was turned out of her Room, or went out of herself, at that time?
 Mr. *Wilkinson*. She went out of it herself, when her Bed was taken away.
 Ambrose *Burgefs* was sworn.
 Mr. *Att. Gen.* Do you remember any Goods taken away in the Fleet Prison, and from whom?
 Mr. *Burgefs*. I was present, not at the breaking open the Door, but after.
 Mr. *Att. Gen.* When was it?
 Mr. *Burgefs*. About fourteen Days after the 23^d of October.
 Mr. *Att. Gen.* Go on.
 Mr. *Burgefs*. I heard, that Mr. *Bambridge* was going in to look on some Affairs of Mrs. *Berkley's*, and I went into the Room a little after the Door was broke open.
 Mr. *Att. Gen.* Who was there?
 Mr. *Burgefs*. There were Mr. *Bambridge*, *Turner*, *Savage*, *Pindar*, *Barnes*, and *Wilkinson*, and one or two more that were Strangers.
 Mr. *Att. Gen.* What did you see done there?
 Mr. *Burgefs*. I saw the Boxes broke open.
 Mr. *Att. Gen.* Who broke them open?
 Mr. *Burgefs*. Mr. *Turner* and Mr. *Bambridge* together.
 Mr. *Att. Gen.* What was there in them?
 Mr. *Burgefs*. Twenty Ounces of Orrice Lace, a great many good Cloaths, and a great many good Things.
 Mr. *Bambridge*. I desire he may raise his Voice; I cannot hear him.
 L. C. J. Raise your Voice.
 Mr. *Att. Gen.* Did you see the Boxes broke open?
 Mr. *Burgefs*. I was there present, and saw the Boxes broke open by Mr. *Bambridge* and Mr. *Turner*; and saw the China put into the Window, and some Orrice Lace; and saw an Emerald, or Ruby, which he put in his Pocket.
 Mr. *Att. Gen.* What did you see at that Time?
 Mr. *Burgefs*. I saw the Rings taken out.
 Mr. *Att. Gen.* What did you see put in his Pocket?
 Mr. *Burgefs*. One was a Pearl, the other an Emerald.
 Mr. *Att. Gen.* Were they set in Rings?
 Mr. *Burgefs*. They were both separate.
 Mr. *Att. Gen.* What is the Colour of an Emerald?
 Mr. *Burgefs*. It is of a greenish Colour.
 Mr. *Att. Gen.* These then were separate Stones?
 Mr. *Burgefs*. Yes.
 Mr. *Att. Gen.* Were there any Rings?
 Mr. *Burgefs*. I can't say.
 Mr. *Att. Gen.* What did he do with these Stones?
 Mr. *Burgefs*. Mr. *Bambridge* put them into his Pocket, and said they might be lost if put in the Portmanteau; and afterwards, as he was drinking Punch, he took them out of his Pocket.
 Mr. *Att. Gen.* Had she any Gold Lace there?
 Mr. *Burgefs*. There was Gold Lace: Mr. *Turner* went and weighed the Lace, and brought it back again; and said, it weighed twenty Ounces and an half.
 Mr. *Att. Gen.* Who took it away?
 Mr. *Burgefs*. I don't remember.
 Mr. *Att. Gen.* You were in Company; did you not observe who took it, or whether *Turner* carried it away?
 Mr. *Burgefs*. I did not, upon my Word, observe it.
 Mr. *Att. Gen.* Were you present at the Time of breaking open the Boxes, and taking out the Goods?
 Mr. *Burgefs*. I was present when three Boxes were broke open.
 Mr. *Att. Gen.* How long did Mrs. *Berkley* stay in the Room?
 Mr. *Burgefs*. To the best of my Remembrance, the whole Time.
 Mr. *Att. Gen.* You say you was present when the Boxes were broke open; was Mrs. *Berkley* there the whole Time?
 Mr. *Burgefs*. I do not know whether she went away before or not.
 Mr. *Att. Gen.* I think you said, you did not come till after the Door was opened?
 Mr. *Burgefs*. Yes.
 Mr. *Bambridge*. I think you have acquainted my Lord and the Jury, that there were some Stones; I desire you will inform him, and as to the Size of them, if they were small.
 Mr. *Burgefs*. Yes, they were.
 Mr. *Bambridge*. Was Mrs. *Berkley* there all the Time?
 Mr. *Burgefs*. I think she was.
 L. C. J. What did you ask him?
 Mr. *Bambridge*. What Size the Stones were of; whether they were small?
 Mr. *Burgefs*. Yes, they were.
 Burgefs was going away, and at *Bambridge's* Desire called back again.
 Mr. *Bambridge*. Mr. *Burgefs* declared, that he heard me declare, that I desired them to take notice, that I put them in my Pocket: Please to tell my Lord, and the Jury, what I said when I put the Stones in my Pocket.
 Mr. *Burgefs*. Mr. *Bambridge* shewed them in his Hand, and said, for fear they should be lost, they should be put in his Pocket.
 L. C. J. Did he desire *Savage* and *Douglas* to remember that he put them in his Pocket?
 Mr. *Burgefs*. I believe he said so to all.
 Savage was sworn.
 Mr. *Sol. Gen.* Was you present at the time when the Goods were seized?
 Mr. *Savage*. I was going by the End of the Gallery, and, hearing a Bustle, went up.
 Mr. *Sol. Gen.* Mention the time.
 Mr. *Savage*. At the time when the last Inventory was taken.
 Mr. *Sol. Gen.* What time of the Year?
 Mr. *Savage*. The latter End of October, 1727.

Mr. Sol. Gen. Give an Account of what you know of this Matter.

Mr. Savage. I was going by the End of the Gallery, and observed a Number of People at Mrs. Berkley's Door, and I went out of Curiosity, to see what was the matter, where I found Bambridge, Mrs. Berkley, Pin-dar, Baylis, Douglas, and Wilkinson, and after I had been there a very little Time, Bambridge asked Mrs. Berkley for Trunks and Boxes; I went into the Room to them, and Bambridge asked her for the Keys of her Trunks and Boxes; she said, I will give you none; to which he made Answer, If you won't, I have sufficient Authority of my own to open them, and I will do it; and ordered the Trunks and Boxes, upon her Refusal to deliver the Keys, to be broke open; and Bambridge broke open some of them himself.

Mr. Sol. Gen. What was there found there?

Mr. Savage. On Examination of the Trunks and Boxes, there were found Wearing Apparel, Gold Seals, Thread, and Gold Lace, Cloaths very good of the kind, fit for any Gentlewoman to wear.

Mr. Sol. Gen. Were there any other Things?

Mr. Savage. Yes, there were; for Bambridge found, in a Drawer of a Table, a Box, where there were Rings and Seals, and loose Stones.

Mr. Sol. Gen. How many Rings were there?

Mr. Savage. I think there were four; one was red, it was either a Garnet or a Ruby; one of them was whitish, with a cast of yellow, they called it a Crystal, I took it to be a Topaz.

Mr. Sol. Gen. Were there any other Stones?

Mr. Savage. Yes, I think there were; one was a blue or green, another was a Ring, where the Middle Stone was out, and two Diamonds on the Side, two Seals set in Gold, which I took to be Cornelian, one white and the other red; there was also a loose Stone, and a Pearl.

Mr. Sol. Gen. What was the loose Stone?

Mr. Savage. I can't say whether a Garnet or not.

Mr. Sol. Gen. What did he do with them?

Mr. Savage. After he had shewn them, he put them in his Pocket.

Mr. Sol. Gen. Were there any other Things?

Mr. Savage. There was a Silver Spoon, Knife, and Fork.

Mr. Sol. Gen. What did he do with that?

Mr. Savage. That was put in his Pocket, to the best of my Remembrance.

Lord Chief Justice. What became of the Seals and Rings?

Mr. Savage. He put them into his Pocket.

L. C. J. Did he bid you at that Time take Notice that he put them in his Pocket?—Mr. Savage. I do not remember that he said so.

Mr. Sol. Gen. What became of them after he put them in his Pocket?

Mr. Savage. I do not know.

Mr. Sol. Gen. Did he take them out of his Pocket there?

Mr. Savage. No, but he did in the Coffee-Room afterwards.

Mr. Sol. Gen. What became of the other Goods?

Mr. Savage. The most valuable Part of the Goods was packed up, and put into a Portmanteau Trunk.

Mr. Sol. Gen. You do not know what became of the other Goods?

Mr. Savage. I do not know of their being carried away, but there was some white China carried out of the Room.

Mr. Willes. Had not Bambridge a House at Wandsworth?

Mr. Savage. He had Lodgings there.

Mr. Willes. Were the Goods carried there?

Mr. Savage. I don't know otherwise than by Hearsay.

Mr. Att. Gen. Was you by when Mr. Turner made the Inventory?

Mr. Savage. Yes.

Mr. Att. Gen. Do you know of Cloaths being put down sufficient for a Gown, or whatever it was.

Mr. Savage. Yes, all the Cloaths were put down so.

Mr. Att. Gen. Do you know how they came to be put down so?

Mr. Savage. Bambridge ordered it.

Mr. Att. Gen. Did it arise from Mr. Bambridge or Turner?

Mr. Savage. Turner did object to it, and said it was not usual to put down Wearing Apparel.

L. C. J. Pray give an Account whether Bambridge gave any Reason for putting the Things in his Pocket?—Mr. Savage. I do not know he did.

L. C. J. Were they inventoried?

Mr. Savage. I was not privy to the Inventory.

Mr. Bambridge. How long was you in the Room?

Mr. Savage. I believe I was there soon after you.

Mr. Bambridge. Did you continue there all the time?

Mr. Savage. I believe I was there most of the time.

Mr. Bambridge. Did you see any of the Goods appraised?

Mr. Savage. I saw Turner write; but I do not know what he wrote.

Mr. Bambridge. Was it done in a clandestine Manner?

Mr. Savage. I cannot say.

Mr. Bambridge. What Conversation was there between Mrs. Berkley and me?—Mr. Savage. What passed was in relation to the Chamber Rent.

Mr. Bambridge. Did not I say for what I seized them?

Mr. Savage. You pretended to seize them for Chamber Rent.

Mr. Bambridge. Did I shew the Rings, or put them in my Pocket secretly?

Mr. Savage. They were shewn to every body in the Room.

Mr. Bambridge. Were the Rings shewn in the Coffee-Room?

Mr. Savage. Yes.

Mr. Bambridge. Where is the Coffee-Room?

Mr. Savage. In the Fleet Prison.

Mr. Bambridge. Was it a publick Place?

Mr. Savage. Yes, but it was in a private Room where you shewed the Rings, in which was only your own Company.

Jacob Mendez Solas was set up to be examined.

Mr. Filmer. Mr. Matthews, let him be sworn upon the Old Testament, he is a Jew.

Mr. Kettleby. I must object as such, to his being sworn at all.

Mr. Just. Reynolds. I remember a great Cause upon an Indictment, for the Stealing of Snuff from some Jews, and I remember they were admitted to give Evidence.

Mr. Solas. I am a Christian.

Mr. Att. Gen. The Objection is at an End, he is a Christian.

L. C. J. Are you a Jew or a Christian?

Mr. Solas. I am by Extract a Portuguese Jew, but am a Christian now.

L. C. J. Have you been baptized?

Mr. Solas. Yes, my Lord.

Then he was sworn.

Mr. Filmer. What do you know as to any Diamonds or Jewels that were brought to you?

Mr. Solas. One Captain Douglas brought a Ring to me, to have the Stone pulled out, that I might see how much the Gold weighed.

Mr. Filmer. What sort of a Stone was it?

Mr. Solas. It was an Amethyst, but Douglas said it was a Crystal.

L. C. J. Who did he tell you he had it from?

Mr. Solas. From Bambridge. Douglas, after I told him it was an Amethyst, and the Value of it, went and told Mr. Bambridge the Value; then Bambridge came to me.

L. C. J. What did Mr. Bambridge say?

Mr. Solas. He asked, whether I was sure it was an Amethyst; I told him yes, I was sure, though it was paler and appeared clumsy; and then Bambridge said he was glad of it, and asked me whether it was not worth while to put it in a Ring.

L. C. J. Did you tell Mr. Bambridge of the Value of it?

Mr. Solas. I cannot be certain of that.

Mr. Filmer. Did he say any thing of the Ring; whose Ring did he say it was?

Mr. Solas. Captain Douglas said it was sent from a Merchant.

Mr. Filmer. But did Bambridge?

Mr. Solas. Not at that Time.

Mr. Filmer. Did he any Time after say whose Ring it was?

Mr. Solas. Yes, he said it was a Ring of Mrs. Berkley's.

Mr. Sol. Gen. You say you took the Stone out?

Mr. Solas. Yes.

Mr. Sol. Gen. Did you set it in again, after you had taken it out?

Mr. Solas. Yes.

Mr. Sol. Gen. Should you know your own setting, if you should see it?

Mr. Solas. Yes.

Then the Ring being produced, and shewn to him.

Mr. Sol. Gen. Look upon it, is that your own setting?

Mr. Solas. I am positive it is my setting.

Then another Ring was produced, and shewn to him.

Mr. Sol. Gen. Do you take that to be the same Stone you then set?

Mr. Solas. It is one I set for Mr. Bambridge in this Ring, but not the same Stone he then brought, or I suppose it might be new polished.

Mr. Sol. Gen. How many Rings did you set for Mr. Bambridge?

Mr. Solas. Two.

Mr. Sol. Gen. What were the Value of them?

Mr. Solas. I set one for Mr. Bambridge worth fifty Shillings, and another worth twenty Shillings.

Mr. Sol. Gen. What might be the Price of that you set for him, he told you he had from Mrs. Berkley?

Mr. Solas. About twenty Shillings.

Mr. Sol. Gen. Had you no other Ring brought you?

Mr. Solas. I had one brought from Mr. Bambridge by Doctor Coltheart.

Mr. Sol. Gen. What was it?

Mr. Solas. It was a Garnet, with a Brilliant in the Middle.

Mr. Sol. Gen. Who did you say it was brought from?

Mr. Solas. From Bambridge, by Doctor Coltheart.

Mr. Sol. Gen. How do you know that?

Mr. Solas. He sent his Service. Doctor Coltheart and one Will that keeps a Coffee-House came to me, and desired to know the Value of a Ring with a Garnet, and a Brilliant in the Middle. I sent him Word it was worth fourteen Pounds; then Bambridge sent for me to the Coffee-Room, and desired to know the Value of it; I said it was worth fourteen Pounds.

Mr. Sol. Gen. What did he say?

Mr. Solas. He said, he thought I had valued it for more than it was worth.

Mr. Sol. Gen. Did he tell you who he had the Ring of?

Mr. Solas. No.

Mr. Bambridge. My Lord, I am so unhappy, though so much concerned in this Affair, as to be at so great a Distance, that I don't know one Word the Witness has said, so don't know what Questions to ask him.

Mr. Solas. If you have any Questions to ask me, I am ready to answer.

Mr. Kettleby. You need not ask any.

Mr. Bambridge. Do you know the Ring that was brought to you by Doctor Coltheart, when you see it?

Mr. Solas. Yes, I am sure I should know it; I have had it three Times in my Hand; one Time you shewed it me, with Mr. Burgeff, and asked me the Value.

L. C. J. You say that Bambridge had the Ring, what use do you make of inquiring into the Value of the Ring, as to the one of them being worth fourteen Pounds, and the other twenty Shillings?

Mr. Att. Gen. The Statute requires a particular Value; besides, we make use of it to shew that Bambridge was endeavouring to sell them by a private Sale.

Mr. Just. Reynolds. Were these offered on the Behalf of Bambridge to be sold, or to know the Value only?

Mr. Solas. Only to know the Value; he sent to know the Value, afterwards he came to me himself to value them, having sent them before by Coltheart and Will at the Coffee-House.

Mr. Willes. The Use that we make of this is, to shew that the Ring with the Brilliant in the Middle was worth fourteen Pounds, and only valued as a Crystal, and not mentioned in the Inventory at all.

L. C. J. I thought it was give me up the Inventory, (Which was done;) and looking upon the Inventory, there are two Cornelian Seals set in Gold, a Crystal Stone, a Gold Ring with one small Emerald, and another with a small Garnet.

Mr.

Mr. Justice Reynolds. This is the Ring called a Crystal Ring, which Solas says, when brought to him, he thought to be a Garnet.

Turner being set up again.

L. C. J. Was that small Garnet mentioned in the Inventory as a Ring?

Mr. Turn. No, my Lord; it was a loose Stone, otherwise, after mentioning that Crystal Stone Ring, if the Garnet had been a Ring, I should have said Ditto.

Jacob Mendez Solas being set up again.

L. C. J. This Garnet was brought to you, Mr. Solas, set in a Ring, with a Brilliant in the Middle; Was it not?

Mr. Solas. Yes, my Lord.

L. C. J. Was there any other Garnet with a Diamond in the Middle?

Mr. Turn. My Lord, I saw no such Ring.

Mr. Howard was sworn.

Mr. At. Gen. Did Bambridge lodge at your House?

Mr. Howard. Yes.

Mr. At. Gen. Where do you live?

Mr. How. In Bell Savage Yard.

Mr. At. Gen. What do you call the House?

Mr. How. Will's Coffee-House.

Mr. At. Gen. When did Bambridge lodge there?

Mr. How. Twelve Months ago.

Mr. At. Gen. How long before the Seizure was made?

Mr. How. I can't tell.

Mr. At. Gen. How long did he lodge there together?

Mr. How. About Twelve Months.

Mr. At. Gen. Did he lodge there in October 1727? Mr. How. Yes.

Mr. At. Gen. Do you remember the bringing any Goods to your House?

Mr. How. Yes.

Mr. At. Gen. What were they?—Mr. How. I can't tell.

Mr. At. Gen. Were they Household Goods or Wearing-Apparel?

Mr. How. I do not know any Goods that were brought in but his own.

Mr. At. Gen. I ask you if any Goods were brought to the House?

Mr. How. There were.

Mr. At. Gen. Do you know what they were?

Mr. How. I did not see them; they were brought in Trunks.

Mr. At. Gen. Did you know of any Thing sold to one Mr. West?

Mr. How. Yes.

Mr. At. Gen. Recollect what they were.

Mr. How. There was a Gown and Petticoat.

Mr. At. Gen. Was there one or two?—Mr. How. I cannot tell.

Mr. At. Gen. What were they made of?—Mr. How. I cannot tell.

Mr. At. Gen. Did you see them?

Mr. How. I just looked at them.

Mr. At. Gen. Did you know what Sort of Cloaths?

Mr. How. I did not look at them.

Mr. At. Gen. What were they sold for?

Mr. How. I heard Mr. West say, Mr. Bambridge had a Gold Watch for them.

Mr. At. Gen. What were they sold for?

Mr. How. They said they were sold for fourteen or fifteen Pounds.

Mr. At. Gen. How do you know they were sold?

Mr. How. I heard West say so.

Mr. At. Gen. Do you know nothing but what West told you?

Mr. How. No.

Mr. At. Gen. I ask you if you was present when Mr. Bambridge, or any Body for him, made any Bargain as to the selling any Cloaths?

Mr. How. I was not at the making the Bargain.

Mr. At. Gen. Was you present at the Time when the Goods were delivered to Mr. West?

Mr. How. I know nothing further, than that I saw Mr. West have them.

Mr. At. Gen. Have you heard Mr. Bambridge talk of selling the Goods, and what he had for them?

Mr. How. No.

Mr. At. Gen. Do you know of any Gold Lace?

Mr. How. I saw some Gold Lace that Bambridge had.

Mr. At. Gen. At what Time was this?

Mr. How. About October 1727.

Mr. At. Gen. Was it brought into your House?

Mr. How. Yes.

Mr. At. Gen. You saw Bambridge have it?

Mr. How. Yes.

Mr. At. Gen. Who was that sold to?

Mr. How. To one Mr. Harris.

Mr. At. Gen. How much was that sold for?

Mr. How. I don't know.

Mr. At. Gen. How do you know it was sold?

Mr. How. I know Mr. Harris bought it by his bringing Money, and paying it to Mr. Bambridge.

Mr. At. Gen. How much was it?

Mr. How. I don't know the Sum.

Mr. At. Gen. Whereabouts was it?

Mr. How. I don't know.

Mr. At. Gen. Did you see the Money paid?

Mr. How. I saw it lie on the Table.

Mr. At. Gen. Was it Gold or Silver?

Mr. How. It was both.

Mr. At. Gen. Was it ten or twenty Pounds?

Mr. How. I don't think it was so much as Ten or Twenty Pounds.

Mr. At. Gen. You saw the Money paid?

Mr. How. Yes.

Mr. At. Gen. What was the Money paid for?

Mr. How. It was paid for the Lace.

Mr. At. Gen. Why did you say for the Lace?

Mr. How. Because Bambridge told him the Lace.

Mr. At. Gen. Do you know from whom that Lace was brought?

Mr. How. I don't know.

Mr. At. Gen. What Time was it, was it about October or November?

Mr. How. Yes.

Mr. At. Gen. Did you see any Tea Spoons?—Mr. How. Yes.

Mr. At. Gen. Were they Gilt?—Mr. How. Yes.

Mr. At. Gen. Whose Possession did you see them in?

Mr. How. Bambridge's.

Mr. At. Gen. How many were they?—Mr. How. Three or four.

Mr. At. Gen. Were there half a Dozen?

Mr. How. There were not so many.

Mr. At. Gen. Do you remember Mrs. Corbett's buying any Thing?

Mr. How. No.

Mrs. Howard was sworn.

Mr. Sol. Gen. Are you the Wife of the last Witness?

Mrs. Howard. Yes.

Mr. Sol. Gen. When did Mr. Bambridge live at your House?

Mrs. How. I can't tell directly.

Mr. Sol. Gen. Was it in October 1727?

Mrs. How. It was thereabouts.

Mr. Sol. Gen. Do you remember any Women's Cloaths that were brought to your House?

Mrs. How. Yes.

Mr. Sol. Gen. Do you know whose they were?

Mrs. How. No.

Mr. Sol. Gen. Who brought them into your House?

Mrs. How. I don't know.

Mr. Sol. Gen. By whose Order were they brought?

Mrs. How. I don't know.

L. C. J. Who brought the Cloaths in, to whose Use were they delivered?—Mrs. How. To Bambridge's.

L. C. J. Who were they sold to?

Mrs. How. They were sold to one Thomas West, by Mr. Bambridge.

Mr. Sol. Gen. What was paid for them?

Mrs. How. I can't tell exactly the Sum, but a Gold Watch was given for them, which Mr. Bambridge had.

Mr. Sol. Gen. Do you know the Goods, can you describe them?

Mrs. How. Yes, one was a blue and white Sattin Gown, made up; another was a worked Gown, lined with a Cherry-coloured Lining.

Mr. Sol. Gen. What was it worked upon?

Mrs. How. I can't say whether it was Holland or Silk.

Mr. Sol. Gen. Do you remember any other Particulars?

Mrs. How. There were a black Hood and a Scarf, with black Lace round them; there was also a Tippet.

Mr. Sol. Gen. What was the Tippet?—Mrs. How. Sable.

Mr. Justice Reynolds. There is some stitched Embroidery, Part of a Gown, taken Notice of in the Indictment.

Mr. Sol. Gen. They were all sold to West, were they not?

Mrs. How. Yes.

L. C. J. Did you see them sold?—Mrs. How. Yes.

L. C. J. Did West pay for them?

Mrs. How. Yes, he gave a Gold Watch for them.

L. C. J. Was there any Thing else, had Bambridge any Money beside?

Mrs. How. I cannot tell of any thing but the Gold Watch.

Mr. Sol. Gen. Were there no other Things?

Mrs. How. There were Tea Spoons.

L. C. J. Had they any Mark upon them?

Mrs. How. I can't tell.

Mr. Sol. Gen. Were they sold?

Mrs. How. Bambridge offered to sell them to me.

Mr. Sol. Gen. Do you remember any Gold Lace?

Mrs. How. No, but I remember some Silver Lace taken off the blue Sattin.

Mr. Sol. Gen. Was that sold?—Mrs. How. Yes.

Mr. Sol. Gen. For how much?

Mrs. How. For four Pounds, ten Shillings.

Mr. Sol. Gen. Who received the Money?

Mrs. How. Bambridge received the Money of Harris.

Mr. Sol. Gen. At what Time were these Goods sold?

Mrs. How. West bought them all at one Time.

Mr. Sol. Gen. Do you know the Time?

Mrs. How. I cannot justly tell the Time.

Mr. Sol. Gen. Do you remember the Month or Year?

Mrs. How. I do not.

Mr. Willes. Did Bambridge tell you whose the Lace was?

Mrs. How. He told them as his Wife's.

Mr. Sol. Gen. We must submit it to your Lordship here.

L. C. J. The King's Counsel have now done, what have you to say?

Mr. Bam. I did not hear what the last Witness said.

L. C. J. She says, you sold a Gown of blue Sattin, flowered, to one West, as your Wife's; she says, that one Harris bought the Silver Lace; that the Tea Spoons were offered to be sold, but she does not know whose they were. Now they have done, what have you to say?

Mr. Bam. As to my Defence, I shall give your Lordship but little Trouble. After the general Accusation brought against me, and the Clamour it has made in the World, I don't find that there is any Thing answerable to it, or any Thing brought to the Point; the Gentlemen have not proved any felonious Act against me, any Thing fraudulent, or any Misbehaviour whatsoever. If there was any Thing necessary to justify myself in, by giving an Account of my Conduct in my Office, I might do it fully, I have the proper Officer here ready to do it; but as I see no Necessity for it, I will not Trouble your Lordship, but submit it to your Lordship and the Jury.

L. C. J. Then you will rest it here.—Gentlemen of the Jury,—

Mr. Bam. I must desire one Favour of your Lordship, that if any Matter of Law should arise, you will let that be reserved.

L. C. J.

L. C. J. What the King's Counsel say is very right, whether it was a fair Distress, or whether it was only the Colour of a Distress, with any felonious Intent: The Attorney-General has stated that very clearly, that a Man may do a lawful Act feloniously. If this was done with a felonious Intent, then this will be Felony; yet if it was not done with a felonious Intent, this will not be Felony. This was the grand Point laid down by the Gentlemen, that the Jury are to judge with what Design these Things were taken away.

Gentlemen, the first Witness for the King, who was *John Turner*, says, that the Time of taking those Goods was whilst *Bambridge* was Warden, and that *Pindar* was Chamberlain; and that *Bambridge* ordered this *Pindar* to distrain the Goods of *Mrs. Berkley*; and that the Time of distraining these Goods was between the 23d and 27th of *October*, 1727. He says, Gentlemen, that *Bambridge* was not then there present; and that she, *Mrs. Berkley*, was put out of her Room. After this, *Bambridge* came to enquire into this Affair, to see what was done, *Mrs. Berkley* being then on the Common Side; and he sent down Somebody to call her up, she having locked the Door. The Goods, Gentlemen, were as much under her Key as *Bambridge's*: *Bambridge*, I must tell you, put on one Padlock, and she locked the Door, and put on another; and when she refused to open the Door, he caused it to be broke open, and entered the Room. There was, Gentlemen, an Inventory made by one *Turner*, who had formerly inventoried Goods, and was usually sent to for such Purposes: He says, Gentlemen, he had no Orders to undervalue the Goods: *Turner* was sent for by *Pindar*: He valued all the Goods, as the Bed, Bedding, &c. and as to the Boxes, they were not then opened: He did not see what there were in them; but put them in gross in the Inventory. *Bambridge*, Gentlemen, coming to look after this Affair, on the 3d or 4th of *November*, sent for *Mrs. Berkley* to come up; and *Mrs. Berkley* came up accordingly; and he desired to have the use of her Key, which she refused, and said, I think you are going to rob me. Upon that, *Bambridge*, before her, sent *Barnes* for the Hammer, to have it to open the Door; but it would not do; and then he sent down for the Poker, and *Barnes* forced open the Door, and in they went, *Mrs. Berkley* along with them. *Bambridge* asked her for the Keys of her Boxes: She said, he should have no Keys; and asked him, by what Authority he did it: He said, by Authority of Warden; and *Bambridge* then ordered the Boxes to be broke open. When he had opened the Boxes, *Turner* was sent for; he was to perfect the Inventory, that was in part before made. It was opened by the Counsel for the King, that it was a fraudulent Inventory; and they, to make this appear clearly to be fraudulent, told you the Goods were set down otherwise than they really were. There was put down, they said, Dimity or Silk sufficient for a Gown, or what it was: They said, there was a flowered blue and white Satin, that was actually made up, put down only as sufficient: As to the Dimity and Silk, that had been dyed, and *Turner* said, that it was rolled up, for these had been at the Dyer's, and were not put down as a Gown; but that he had set them down properly, as he thought: But when he came to the flowered Gown, which was made up, he made some Difficulty in putting that in the Inventory, and said, that it was not usual to put them in Distresses; for this was Wearing Apparel. And it was proved, Gentlemen, by one of the Witnesses, that *Mrs. Berkley* said, it was Felony: This, Gentlemen, might caution *Turner*; he said it was not usual to put such Things into an Inventory for a Distress. Then *Bambridge* said, if he would not put it in so, he must put it down so many Yards of flowered Silk, sufficient to make a Gown and Petticoat. The Difficulty arose from himself, and not from the Defendant. He should not have mentioned it Silk sufficient for a Gown; he was asked two or three Times, and *Mr. Bambridge* said, it must all be in the Inventory; so accordingly it was put in, in this Manner. This is offered to you as Evidence of the Affair: You will consider whether it is so or not. Then these Things were all looked over; and *Turner* says, they were all put into the Inventory, and the greatest Part put into a Portmanteau; but there were some few Things, as Tea-Spoons, Seals, and Rings, that were put into *Bambridge's* Pocket; but though he put them into his Pocket, they were in the Inventory; and this Inventory, in the Whole, came to 30*l.* and at last were brought down to 27*l.* He says, Gentlemen, that there was a Brush that was discovered; and *Bambridge*, upon seeing it, said, Surely there must be some Diamonds; and so he searched for them, and, in making such Search, he found a Piece of Paper: The Witness says, Gentlemen, it was some Decree, which *Bambridge* took in his Hand. She said to *Bambridge*, You won't take the Papers too? Yes, said he, I will; and if I find any Bonds or Bills, I will make bold with them. He says, Gentlemen, that *Bambridge* took the Bed and Bedding away, and offered her another Bed; but she said, she would not lie on it; then she went down to the Common Side. He says, that she talked very much; that she was disordered in her Mind, and talked of Lord *Harcourt*. This is the Account given of her. He says, Gentlemen, that *Bambridge* sent for her when the Inventory was taken; and he says, that she was there during all the Time: Though he took these little Things, yet she could not be defrauded in that Manner, because they were put in that Inventory. I must give you an Account of the Evidence of the People, as they are examined. *Turner*, Gentlemen, says, that *Bambridge* expostulated with her about the Chamber Rent that was due, which was 56*l.* and said, Why do you not pay it? I am informed that you are very capable: The Woman said, the House was the King's, and the King should find her a House; and *Bambridge* said, he would do her what Service he could. Gentlemen, it was said by *Turner*, that he did appraise these Goods; that he did appraise them fairly; and that he was employed by *Pindar*, who was used to employ him. He said, Gentlemen, that the first Time a real Constable was there; and the second Time the Constable was a real Constable, and he swore him: Now there was, indeed, *Pindar* pressed by *Bambridge* to assist in the Appraisement, who did not at all understand it: He was a Distiller, of a quite different Trade. He says, Gentlemen, that *Bambridge* did desire *Mrs. Berkley* to send to her Friends to pay the Rent. This, Gentlemen, is the Evidence given by this Man. Another Witness, Gentlemen, is one *Wilkinson*: He gives an Account that he knew *Mrs. Berkley*, and where she lodged, and that he was a Prisoner there himself: He spoke of *Pindar* and *Barnes*, who were there the last Time of his coming. He says, that the Door was broke open, and that the Padlock was forced off by *Bam-*

bridge's Order: He says, that *Pindar* fetched the Poker, and *Bambridge* ordered *Barnes* to break open the Door. He says, Gentlemen, he was sent to call *Mrs. Berkley* from the Common Side before this was done: When she came up, she was asked to part with her Keys; but she refused; and then the Door was broken open. He says, Gentlemen, there were two Boxes locked, and one nailed; and *Bambridge* asked her for the Keys of her Boxes; but she refused to deliver them to him; upon which *Bambridge* broke them open; and that *Mrs. Berkley* was all the Time there, and called it a Robbery. He says, that the Things were taken away by *Bambridge's* Directions; and that she, *Mrs. Berkley*, said, that the taking away her Wearing Apparel was Felony. He says, Gentlemen, he was ordered to take the Bed and Bedding, and carry it into the Lumber-Room; that afterwards it was taken from thence, and carried to the Water-side, to be sent to *Wandsworth*. There were several small Things, as an Emerald and Garnet, and some other Rings, one of them a Stone Ring; all these *Mr. Bambridge* put in his Pocket, he said for fear of losing them; and at the same Time he called to *Savage* and *Douglas*, to see that he put them into his Pocket, for fear they should be lost. Now, Gentlemen, he says further, the Wearing Apparel (which was rich), and such Things, the Prisoner put into the Portmanteau, and ordered it to be carried into the Lumber-Room; and other Things were carried to *Will's* Coffee-House; and the Prisoner said, he seized for Rent, and would stand by it. What he says farther, in relation to *Mrs. Berkley*, was, that she was there all the Time, and frequently complained it was Felony, and a Robbery; and says, that the Goods were removed, some at one time, and some at another, in the Day-time, not concealedly. This, Gentlemen, is the Substance of his Evidence: But he says something further, that her Bed being gone, she would not continue in the Room.

Burgess, he says, they had called her up: He spoke to the last Time of their being in the Room, about fourteen Days after the 23d of *October*. He says, he went up soon after the Door was broke open, and gives much the same Account as the former Witnesses have done; and that *Bambridge* put some small Stones in his Pocket: He says, that the putting these Things in his Pocket, was for fear they should be lost, and that he told *Douglas* so.

Savage says, that, hearing a Noise, he went to the Room, and found *Mrs. Berkley* there. He says, that *Bambridge* asked her for the Key; *Mrs. Berkley* said, he should have none, for that he came to rob her; upon which he broke the Boxes open: He says, that there were several good Things in them; there was a Garnet, and a little Stone Ring, two Cornelian Seals, and a loose Stone: These Things *Bambridge* put in his Pocket; but he does not remember that *Bambridge* said, he put them in his Pocket for fear of their being lost; nor did he say, that *Bambridge* bid *Douglas*, or any one else, take notice, he put them there for fear of being lost. He says, that the Bed was sent down to *Wandsworth*. He spoke to the Matter of the Fraud, as to the having the Wearing Apparel set down for so much Silk as would be sufficient for such a Purpose; and he was asked, Gentlemen, by *Mr. Bambridge*, whether any thing clandestine was done in breaking open the Boxes, and he said not. He says, that *Bambridge* pretended he seized the Goods for Rent, and that the Rings were shewn in the Coffee-House.

Solas, he said, the Rings were shewed to him, not to be sold, but to know the Value of them. He spoke as to that Ring that was brought to him by *Coltheart*, with a Diamond in the Middle of it, worth 14*l.* Gentlemen, there does not appear to be any such Ring in the Inventory, or the Lady's Boxes; but let that be as it will, it was only sent for him to value it.

The next Witnesses are *Howard* and his Wife: He says, there were several Things disposed of by *Mr. Bambridge*: It seems he lodged at their House. She says, this flowered Satin Gown was carried to their House, and there disposed of: He swapt it for a Gold Watch. There was some Gold and Silver Lace mentioned in the Inventory, which, she says, was sold to one *Mr. Harris*, who brought the Money, which was not quite Ten Pounds. She says, that he did not say, that it was *Mrs. Berkley's*, but his Wife's. This, Gentlemen, is all the Evidence given by the Witnesses, from the one Side, or the other. If there is any thing else, that I have omitted, I hope you will put me in mind of it. Now, Gentlemen, what you have to consider is, whether *Bambridge* did feloniously steal these Goods.

This, Gentlemen, is an Indictment founded upon the Statute of the 12th of the late Queen, the Words are, If any Person shall feloniously steal any Goods worth Forty Shillings out of a Dwelling-House, he shall suffer Death, without the Benefit of his Clergy. Now the Question is, Gentlemen, whether he did steal, or take them away with a felonious Intent, to make it Felony; or whether he took them as a Distress for Rent? Whether the Distress was regular or not, is not the Matter; if the Distress was irregular, he is liable to an Action; if he took them with any View of committing any Theft or Felony, you will find him guilty of Felony; but if that was his real Intention, to levy Rent by Distress, and that he had no Intention to steal the Goods, then he is not guilty of this Felony; but if he made use of this Intent of distraining, with a View of stealing these Goods, and to make them his own, and this was only a Colour, or mere Pretence of his wicked Intention, and that he had it in his View to steal these Goods, though this is a legal Remedy, yet it will not excuse it; for if a Man make use of a legal Process with a felonious Intent, it will be Felony in him; for if a Man gets a Horse that was not his own by Replevin, it is Theft; if a Man gets another's Property into his Possession with a felonious Intent, it is Felony, but if not with a felonious Intent, it is not Felony; if he makes it only a Pretence to get Goods, and then dispose of them, and does this with a felonious Intention, and an Intention to steal them, then he will be guilty of Felony. Gentlemen, you will consider what was his Intention, and consider the Circumstances that have happened, which are fresh in your Memories. If these Goods were taken with a felonious Intent, then you will find him Guilty; but if he only took them as a Distress for Rent, and with no felonious Intent, then you will Acquit him.

Mr. Matthews. (Speaking to the Officer.) Will the Jury withdraw?

Mr. Kettleby. What have you to do with their withdrawing? Let them give their Verdict in Court, if they will.

K k

Mr. Matthews,

Mr. Matthews. They are at a Distance now, they must either withdraw to consult, or consult together in Court.

Mr. Kettleby. You and the Prosecution are of a Piece; you just now read Part of the Indictment, and left out the other Part.

Mr. Matthews. Officer, clear the Court.

L. C. J. If you please to withdraw, and consider of the Verdict. Then an Officer was sworn to keep the Jury, and they withdrew, and returned in a very short Time.

L. C. J. (The Jury being returned.) Call over the Jury. Answer to your Names. (Which they did.)

Mr. Matthews. (After he had called them over.) Are you all agreed in your Verdict?—Omnes. Yes.

Mr. Matthews. Who shall say for you?

Omnes. Foreman.

Mr. Matthews. Thomas Bambridge, hold up your Hand. (Which he did.) Then, speaking to the Jury, Look upon the Prisoner at the Bar, how say you, Is he Guilty of the Felony whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

It is remarkable, that though the Prosecutions against Mr. Huggins, Mr. Bambridge, &c. were ordered by his Majesty, on an Address from the House of Commons, and conducted by some of the greatest Men at the Bar, yet they got off—all being acquitted.

XX. Minutes of the Proceedings of the Committee, appointed to inquire into the State of the Gaols of this Kingdom, touching a Charge against Sir Robert Eyre, Knight, Lord Chief-Justice of his Majesty's Court of Common Pleas, for personally visiting Thomas Bambridge, late Warden of the Fleet, whilst he was a Prisoner in Newgate, under a Commitment of the House of Commons, &c. &c.

At the Speaker's Chamber at the House of Commons, at the Committee appointed to inquire into the State of the Gaols of this Kingdom.

Edward Hughes, Esq. in the Chair.

Sabbati, 25 die Aprilis, 1730.

THE Committee having received several Letters and Informations relating to the foregoing Charge, proceeded to examine a great Number of Witnesses in the most solemn Manner relating thereto; when the several following Letters (except No. 1. directed to Francis Harbin) were sent under Cover to Edward Hughes, Esq. and being produced by him to the Committee, were read; which Letters, as they seem intended for an Introduction to the Charge, and as they relate to some of the foregoing Trials, are here inserted.

The several following Letters (except that directed to Francis Harbin) were sent under Cover to Edward Hughes, Esq. and produced by him to the Committee.

No. I.

S I R,

My supposed Attachment to the Interest of Mr. Bambridge, cannot, am sensible, but have prejudiced me in the Opinion of all good Men, and therefore, before, Sir, I offer my Service to you, and to my Country, it may not be amiss to say something of the Motives that at first induced me to fall in with his Party, and also of those which have since determined me to quit it.

After the Report of the late Committee, I will not presume to say, I thought Mr. Bambridge innocent; but, I confess, I looked upon him to be far less guilty, than since, by examining his own Side only of the Question, I find he is; the Atrociousness of his Crimes took off to me much of the Probability of his committing them; and it was hard for a Man who had any Virtue himself, to believe there was another so perfectly abandoned.

Mr. Bambridge took all the Opportunities he could, of gaining those he thought might be of use to his Party; amongst the rest, he applied himself to me. I confess, at first, the Art with which he palliated his Offences, deceived me; I went heartily into his Concerns, and did all for him in my Power, as for a Man struggling against the Current of the Times; but as I grew into his Confidence, the Mask was taken off, and I found the Use he intended to make of me, was not to assist an oppressed Man in his Defence, but to screen a guilty Person from his just Punishment. As to the personal Injuries I have received, (and surely Nobody has received more) I forbear to mention them, since my private Pique shall never add an Edge to any Informations I may hereafter give you. I am weary of the Part, Sir, which hitherto I have acted in this Affair; 'tis with Pleasure I quit the Side of Artifice and Dissimulation, and with Joy I enter into the Service of Truth, and of my Country. I heartily beg pardon for any Faults I may already have committed, and assure you, Sir, it shall always be my Study for the future, to testify by my Actions, as well as Words, how much

I am, Sir,

Your faithful and

Devoted Humble Servant.

Oct. 29th, 1729.

No. II.

S I R,

The last Time I did myself the Honour of writing to you, I promised to give you all the Informations in my Power, that might any ways tend towards carrying on, with Effect, that generous Inquiry made by the late Committee of the House of Commons. In pursuance of which Promise, give me Leave, Sir, to lay before you certain Observations, which, though at present little more than Conjecture, yet are such as I despair not, by Time and Application, to produce the strongest Evidence of their Truth.

The late Warden, Mr. Bambridge, notwithstanding all his Vanity and Rashness, could never have been capable of so much Folly, as to have committed so many notorious Offences in his Office, if he had not presumed on the Interest of some superior Power, which (at least as he fancied,) might be able to prevent any Inquiry into his Conduct; or if that by no Arts were to be evaded, would at last screen him from Punishment. That this Presumption of his was but too well founded, I am apt to believe is pretty apparent; the Behaviour of a certain Court, when Complaints were made against him; the Difficulties there were in procuring Rules, on the plainest Proofs of the most flagrant Oppressions; the am-

biguous Terms in which such Rules were generally drawn up; the little Regard he paid those Orders, when served upon him; and his Impunity, notwithstanding such Disrespect, are Arguments which amount almost to a Demonstration of his being in Confederacy with a certain Person, who, no doubt, took care to receive from him an adequate Satisfaction for such Favours.

But as a Correspondence of this Nature was equally criminal in the Receiver and Giver, it cannot but be supposed, that the utmost Caution was used, in order to the carrying it on with impenetrable Secrecy. But when the House of Commons thought fit to imprison Bambridge, a third Hand became absolutely necessary towards that Purpose; and from thence so much Light has been let into that dark Affair, that by degrees I no way doubt, but that a perfect Discovery may be effected. I will only beg Leave to add one thing to this long Letter, and that is, that although Vice be contagious in its Nature, and that I have long conversed in Intimacy with Mr. Bambridge, yet, if I know my own Heart, I will venture, Sir, to assure you, there is nothing I so much hate as Dis- ingenuity; and that for the future, I shall let slip no Opportunity of shewing with how much sincerity

I am, Sir,

Your faithful, and

Devoted Humble Servant.

Nov. 12, 1729.

No. III.

S I R,

Having, in my former, laid before you those Reasons which induced me to believe a Correspondence between Bambridge and a certain great Man, at whom I have already pointed; I now beg Leave to add such Facts, as have at any time come to my Knowledge, and which seem to confirm it. First, Sir, give me Leave to observe, that Bambridge, in regard to his Expences in private Life, has, since his Imprisonment, been very much straitened; but where Counsel, or any thing else that was necessary towards his Defence, was wanting, Money has not only been expended, but lavished. I lay the more Stress on this, because in some respect, it falls within the Circle of your own Observance. When Mr. Bambridge attended last at the House of Commons, his Counsel was pleased to say for him, that the present Narrowness of his Circumstances obliged him to appear with but one Counsel; but since that fruitless Negotiation, in which through his Arts I was so unlucky to become an Agent, we have seen a very different Turn. The Courts of Chancery, King's Bench, Common Pleas, and Old Bailey, have all in their Turns been crowded with Orators in his Favour.

The Lowness of his Fortune at the Time of his coming to his Office at the Fleet, is notorious to the World; and though I believe, as to getting of Money, he can by no means be charged with being idle; yet (if even the most extravagant Calculation should be admitted) the Shortness of his Stay there could not but prevent his acquiring half that Sum of Money, which has been already expended in defence of these Prosecutions; add to this, that his own Creatures have Imprudence enough to mention this, as the strongest Part of what they call a formidable Interest, and that I myself have seen his Clerk deliver a Letter to that great Man, in Westminster-Hall; to which his Lordship said, I thank you, Sir, I am obliged to you, Sir, or Words to that purpose.

But that which has given me the strongest Assurances, and such as I hope, will one Day terminate in the clearest Evidence, is the Conversation I have had with one Mr. B. who is himself perfectly intimate with Bambridge, and whose Wife has given very extraordinary Instances of her Attachment to his Interest. This Gentleman, though he still owns the greatest Friendship to him, yet has confessed to me, that to his own Knowledge, Bambridge had it in his Power to—that great Man, (that was his Expression,) not only in respect to things done as the Office of the Fleet, but in other Respects also; and that he was formerly Bambridge was not to be persuaded to give him up to Justice, which might be a means, not only of saving himself, but would also make some Atonement for his Faults. He promised me also to make so strict an Inquiry into this Affair, as to furnish me with a Clue, by which might be unravelled this whole Work of Darkness. For this purpose I was to have met on Friday, but something having intervened, he has put it off till Tuesday next, till when I should have delayed this Letter, but that

* These Letters, &c. are taken from the Proceedings, &c. in this Affair, as drawn up by Mr. Luke Kenn, to be laid before the House of Commons. The whole Proceedings are long, being about 143 Folio Pages, wrote close, in a small Round Hand; so we have taken only so much, as may give some Light into the Charge relating to the foregoing Trial, &c.

was impatient of giving you some further Proof of that Sincerity with which

which I am, Sir,

Your faithful and

Devoted Humble Servant.

Nov. 13, 1729.

No. IV.

S I R,

Mr. Harbin having acquainted me, that he intended to make you a Visit, I was unwilling he should go without carrying with him this, as a Mark of my Duty and Respect, especially so remarkable an Event (I speak with regard to the Prosecution) as the Acquittal of Mr. Bambridge having happened since your going down into the Country. I do not pretend, Sir, to give you an exact Detail of that extraordinary Affair, the public Prints having doubtless, and probably a Manuscript Copy of his Trial, may long ere now have reached your Hands; all I shall endeavour, will be by a short Observation or two upon it, to give you some Light into the Means by which that unexpected Event was brought about.

It is agreed, on all hands, that a legal Distress for Rent is a very innocent as well as a lawful Action; but if, under colour of such Distress, a Person comes, and, with a felonious Intent, steals and carries away Goods, the Pretence of a Distress will be so far from extenuating, that it will heighten the Offence, since it is done in fraudem legis; and the Law, which is intended to preserve and to protect the Property of the Subject, is thereby made a Means to destroy it.

A felonious Intent is only to be proved from the Actions of him who commits the Fact; and that such an Intention actuated Mr. Bambridge in this extraordinary Seizure, is pretty apparent, from the two following Circumstances which attend it.

Turner, the Person employed by Mr. Bambridge as an Appraiser (though a Prisoner and a Creature of his own), yet thought fit humbly to represent to him, that he had never seen necessary Wearing Apparel distrained before (as indeed by Law it cannot); upon which Mr. Bambridge ordered him, in taking the Inventory, instead of setting down a Gown and Petticoat, as the Thing really was, to set down Silk sufficient for a Gown and Petticoat; and made use, in several Instances, of the same Artifice: A thing in itself so plain and flagrant, that even Mr. Bambridge could not find out an Evasion; but in that he was kindly helped out by the Bench; from whence, in summing up the Evidence, it was declared, that the Appraiser's was only an idle Objection, to which Mr. Bambridge gave way, merely because he would have nothing left out of the Inventory.

The other was this: It was fully proved, that Mr. Bambridge carried away four Rings in his Pocket, though but one is mentioned in the Inventory, and that too is called a Crystal, tho' it was indeed an Amethyst. To us, who were Spectators, this appeared to have a very great Weight; but it seems it appeared in a very different Light to the Gentleman who tried him, since it escaped both his Memory and his Notes.

Having twice mentioned that Gentleman, I cannot help doing him Justice, on this Occasion, by observing, that (however in other Respects his Enemies may asperse his Character) there is one Part of the Judge, in which I believe no Man ever came up to him; I mean, in being Counsel for the Prisoner. I am afraid I have been already too prolix, and will therefore lengthen this Letter no further, than to assure you, Sir, of my being,

With the utmost Deference and Respect,

Your Obedient and Devoted

Humble Servant.

Dec. 20, 1729.

No. V.

Dear Frank,

I find that Mr. Bambridge, however unlikely he is in succeeding, will undoubtedly move the Court of King's-Bench for Judgment and Damages upon the Writ of Appeal; and hopes great Advantages from the Favour of the Gentleman who tried him, on the first Indictment, for the Murder. I do not find, from Codnor, that he has any Affidavits to support this Motion; or, at least, if he has any, he has not trusted him with them: However, am to see Codnor this Evening; and if any Thing material should occur, shall leave a Line, so that you may have it very early in the Morning. I find he and all his Party are very alert at present; and are so far from being apprehensive, from the present Temper of the House of Commons, that they, on all Occasions, treat the late Committee with the utmost Insolence and Contempt. However, as there is little Likelihood that his Assurance will be able to defeat the united Endeavours of those Gentlemen for the Relief of the Unhappy, I please myself with hoping that all will at last go right. I am,

Feb. 2, 1729-30.

To Mr. Harbin.

Yours, &c.

No. VI.

S I R,

Mr. Harbin having informed me, that you have been so good as to enquire after me, I thought it necessary for me to excuse myself for not attending you, by acquainting you with the Reason; which is, that my being seen at the Horse-Guards, as Things stand at present, might be some Hindrance to my entering into the Knowledge of some Things, about which it is at present my Duty to enquire.

There is another Motive which induced me to give you this Trouble; and that is, that you would be so good as to mention it to the Chairman, that as my Time (the only Thing valuable that is left me in my Misfortunes) is almost wholly taken up in endeavouring to do Service to the present Enquiry; and as it has involved me in the Hatred of a Party of the worst of Men, who let slip no Opportunity of making me uneasy; I hope it may not be thought unreasonable to give some Directions for my receiving a moderate Subsistence.

I confess Mr. Harbin has been, in this Respect, very kind; but as I have been hitherto unused to ask any body for every Shilling and Sixpence that is necessary to be laid out, I conceive it would be for both our Advantages to have it put into another Channel.

Before my engaging in this Affair, I confess, I used sometimes to prepare some little Labours for the Press; but as these are the Employments of a Mind at ease, in my present Circumstances, it is no way in my Power to compose them. As this is a Subject on which I should never have prevailed on myself to speak, and on which I write with the greatest Reluctancy, I hope you will forgive this Trouble from

Your obliged and

Obedient Servant.

Thursday Morning.

The Committee thought it their Duty to examine strictly into an Affair of so extraordinary a Nature, when several Persons appeared before them, and endeavoured to make good their several Informations.

Which Persons, having been examined before the Committee in the most solemn manner, relating to the foregoing Charge, grossly prevaricated in their Examinations, contradicted one another in several material Circumstances, and, as to the Facts, were falsified by Persons to whom they referred for the Truth of what they had declared.

It likewise appeared to the Committee, that divers of the said Persons were Prisoners in Newgate, or the Fleet; some of them of vile and infamous Characters; others actuated by a Spirit of Resentment, on account of Causes determined against them before the said Lord Chief Justice; and all of them tampered with, and influenced. It further appeared to the Committee, that several of the said Persons had Meetings and Consultations amongst themselves; and had been guilty of divers evil Practices, in order to set on foot and support the said Charge against the said Lord Chief Justice, and the Matters contained in their said Informations.

After the Committee had spent several Days upon the said Enquiry, and had examined all the Witnesses that appeared before them, the principal Persons concerned in the Conspiracy having Reason to apprehend, that the Evidence given by them to support the said Charge, would not be sufficient to impose upon the Committee, and to obtain Credit to the said Informations, did consult with a Person to fix a new Charge upon the said Lord Chief Justice, not mentioned before in any of their Examinations, by giving Evidence of certain Circumstances, to induce a Belief, that about three Days before the Time appointed for the Trial of the said Thomas Bambridge for Felony, in the last long Vacation, the said Thomas Bambridge did send a Letter to the said Lord Chief Justice for Money; and that, in consequence thereof, he received one hundred Guineas.

Whereupon the Committee thought fit to re-examine the said principal Persons, who before had been examined as to the former Charge, who were not able to give the least Colour of Evidence to support the said new Charge, and were flatly contradicted by the Evidence to whom they referred; and on their Examinations, the Committee being convinced that the said new Charge was only a Continuation of the former Conspiracy, on considering the whole Matter, came to the following Resolutions.

Resolved,

That it appears to the Committee, That there hath been a wicked Conspiracy carried on by certain infamous and profligate Persons, to vilify and asperse the Character of the Right Honourable Sir Robert Eyre, Knight, Lord Chief Justice of his Majesty's Court of Common Pleas;

Resolved,

That it appears to this Committee, That the Informations given to this Committee against the said Lord Chief Justice Eyre, are false, malicious, scandalous, and utterly groundless.

Then Resolved, That Roger Johnson, and a great Number of low, ordinary People (there named), were the Persons concerned in the said Conspiracy.

To which the House agreed.

Thus this great Man had Justice done him, in as honourable a Manner as possibly could be, and cleared of so scandalous and infamous a Charge.

XXI. The Trial of Mr. RICHARD FRANCKLIN *, for printing and publishing *A Letter from the Hague, in the Country-Journal, or Craftsman, of Saturday, the 2d of January, 1730, at the Sittings of the Court of King's-Bench, Westminster, on Friday, December the 3d, 1731, before the Right Honourable the Lord Chief-Justice Raymond.*

The Names of the Jurors.

Tho. Milner, Esq.
Geo. Short, Esq.
Tho. Allen, Esq.
Jacob Harvy, Esq.
Hen. Norris, Esq.
Samuel Tyssen, Esq.

Wm. Tiliard, Esq.
Tho. Moore, Esq.
Philip Baker, Esq.
Joshua Jackson, Esq.
William Turner, Esq.
John Wilson, Esq.

Mr. Parker.

MY Lord, in this Cause, his Majesty is Plaintiff, and Richard Francklin, Defendant. The Information sets forth, That before the Demise of the late King, divers Differences and Controversies arose between his said late Majesty and divers Princes and foreign States, being his Allies, and the King of Spain, concerning the public Safety and Commerce of this Kingdom, and the Peace and Tranquillity of Europe; and that, pending such Differences, to wit, the 30th September, 1725, a certain Treaty, betwixt the said late King, Lewis the French King, and the King of Prussia, was concluded and made at Hanover; and that afterwards, to wit, the 9th of November, 1729, in order to compromise such Differences, and to establish Peace in Europe, a certain Treaty of Peace, Union, Amity, and mutual Defence, was concluded and made, betwixt his Majesty King George the II^d. and the said Lewis the French King, and Philip King of Spain, at the City of Seville, in the said Kingdom of Spain. The Information also sets forth, That Richard Francklin, well-knowing the Premises, but being a malicious, seditious, and ill-disposed Person, and a perpetual and diligent Publisher and Seller of seditious and scandalous Libels, and disaffected to his present Majesty and his Government; and wickedly, maliciously, and seditiously contriving and intending to disturb and disquiet the happy State of the Public Peace and Tranquillity of this Kingdom; and to bring his present Majesty's Treaty of Peace (which, with great Affection towards his Subjects, and for the Advantage of this Kingdom, was concluded) into Contempt and Disgrace among all his liege Subjects of this Kingdom; and also to detract, scandalize, traduce, and vilify the Administration of his present Majesty's Government of this Kingdom, and his principal Officers and Ministers of State; and to represent his said Officers and Ministers of State as Persons of no Integrity and Ability, and as Enemies to the public Good of this Kingdom; and to cause it to be believed, that his said present Majesty, by the Advice of his said principal Officers and Ministers, intended to break and violate the said Treaty last mentioned; and thereby to raise and sow Differences and Disorders betwixt his said present Majesty and the said French King, and King of Spain; and also to spread false News and Rumours concerning the State of the public Affairs of this Kingdom; and to bring his said present Majesty, and his Administration of the Government of this Kingdom, into Suspicion and ill Opinion of his said liege Subjects, on the 2d of January, in the 4th Year of his present Majesty's Reign, at the Parish of St. Paul's, Covent-Garden, in the County of Middlesex, a certain false, scandalous, and seditious Libel, [intituled, No. 235, *The Country-Journal, or, the Craftsman*. By Caleb D'Anvers, of Gray's-Inn, Esq. Saturday, January 2d, 1730,] wickedly and maliciously did print and publish, and caused to be printed and published. In which Libel, of and concerning his said present Majesty King George the II^d. now King of Great-Britain, &c. and his Administration of the Government of this Kingdom, and State of the public Affairs of this Kingdom; and of and concerning his said principal Officers and Ministers of State; and of and concerning the said Treaty, made betwixt his said present Majesty and the said French King, and the said King of Spain; and also of and concerning the said French King, the said King of Spain, and the most Serene Prince Charles, Emperor of Germany, are contained (among other Things) divers false, feigned, scandalous, seditious, and malicious Matters, according to the Tenor following, to wit; [*Extract of a private Letter from the Hague, "A Rumour hath been for some Time privately spread about, and begins to gain Credit here, that a Misunderstanding will soon discover itself between the Allies of Seville;"* (meaning his said present Majesty, the said French King, and the said King of Spain) "and that certain Ministers" (meaning the said principal Officers and Ministers of his said Majesty, employed and intrusted in the difficult Affairs of State) "having at length found out, that too close an Union with France, and a War upon the Foot of the Treaty of Seville, is quite against the Grain of the People, are endeavouring to bring about an Accommodation with the Emperor, and to undo every Thing they have been doing for these five Years past. If this should prove true, it will certainly redound very much to the Honour of those Gentlemen, who have so vigorously opposed the late Measures; and the Ministers, who have not only concerted and pursued these Measures, but loaded all Opposition to them with the foulest Imputations, will be obliged to take a great deal of Shame to themselves; for what can be a stronger Condemnation of their own past Conduct, or the Conduct of those whom they have employed to write in their Cause, than to see them wheel about all on a sudden, and pursue Measures directly opposite, which have been pointed out to them, for several Years together, by their Adversaries; and for which they have represented those Gentlemen, in the most opprobrious Colours, as factious Incendiaries, Germanized Patriots, and Enemies to their Country? What

can be more ridiculous than to see them desert one Ally, whose good Faith, Sincerity, and even Cordiality of Friendship, they have so often extolled, and at last run into the Arms of another, whom they have so industriously set forth as the most dishonourable, ungrateful, and perfidious Prince? They must have altered their Opinion of this Prince very much (if this Report is true), and seem to rely upon his Good-nature, putting themselves thus absolutely in his Power; for if he should refuse to deal with them, after the Usage he hath received, they will be broke with all the Courts of Europe; and he cannot be insensible of their Perfidy to others, at the same Time that he is treating with them. How will they be able to justify those vast Expences which they have already brought upon their Country, by an obstinate Perseverance in other Measures, till the last Extremity, as well as those farther Expences and Hazards, in which such a precipitate Alteration of Counsels, in the present Circumstances of Europe, will certainly involve it? For though the Measure, which is now said to be secretly carrying on, was certainly the most eligible, whilst they remained unembarrassed with Engagements of another Kind; and though it must be confessed to be very desirable at present; yet it seems to be attended with very fatal Consequences, and almost insuperable Difficulties. The People, of whom I am speaking, had their Hands at Liberty five Years ago, and might have entered into what Measures they pleased with the Emperor, without giving Umbrage, or any just Reason of Complaint, to other Courts; but at present they cannot do it, without an Infraction of solemn Treaties, and drawing upon their Country the Resentments which usually attend Violations of Faith. One immediate Effect of this Resentment may be the Interruption of Trade, and the Seizure of that vast Pledge, which Spain hath at this Time in her Hands; so that the only pretended good Effect of their former Conduct, may be absolutely defeated by their present Scheme. Another necessary Effect (for so I think I may call it) of such a Measure, at present, will be a Conjunction of France and Spain; and a certain Court may have the Mortification to see those two Crowns united against them more strongly than ever, by their extraordinary Management, after they have spent so many Millions to prevent it. I am far from designing to insinuate from hence, that an Accommodation with the Emperor is a wrong Measure: On the contrary, I wish it had been thought a right Measure long ago. My only Intention is to shew how difficult, in my Apprehension, the Conduct of some Ministers hath rendered it to their Country, as well as dishonourable to themselves, by carrying along with it the severest Censure of their own Conduct, and the strongest Justification of their Adversaries, against all the Aspersions which have been cast upon them." In Contempt of his said present Majesty, and his Laws; and to the great Disgrace, Scandal, and Infamy of his said present Majesty, and his Administration of the Government of this Kingdom; to the Disturbance of the public Peace and Tranquillity of this Kingdom; to the evil Example of all others, offending in the like Case; and against the Peace of our said Lord the King, his Crown and Dignity.

Sir Philip York, Attorney-General. My Lord, and Gentlemen of the Jury, I am Counsel for the King. This is a Prosecution against the Defendant, Mr. Francklin, for printing and publishing a scandalous and seditious Libel; an Offence (however it hath been treated of late Days) which the Law considers as a very heinous Crime, as it tends to disturb the Peace of the Kingdom, and to bring into Contempt the King's Administration of the Government; and as it tends to create great Jealousy and Dissatisfaction in the Minds of his Majesty's Subjects against his Government; and, indeed, this is the Use you find made of it. The present Libel, for and upon which the Defendant is to be tried, will appear to be a Libel of that Nature, and attended with the most aggravating Circumstances of any ever yet published.

To explain the Nature of this Prosecution and Libel, and to shew the Connection and Tendency thereof, it is necessary to open a little to you the several Parts of it, in order to apply it to the Description of the Persons and Things spoken of. It is described to be a Libel concerning his present Majesty, and his Majesty's Government of the Kingdom, and concerning the public Affairs thereof, and concerning his Ministers; and it is expressed to relate to a Treaty concluded betwixt his present Majesty, and the French King, and the King of Spain, at Seville, in November, 1729. The Liberty that the Defendant, Mr. Francklin, has taken, is from Things done by the Princes in that Treaty, upon a Pretension, that it is an Extract of a private Letter from the Hague. He says, [*"A Rumour hath been for some Time privately spread about, and begins to gain Credit here, that a Misunderstanding will soon discover itself between the Allies of Seville."*] Now the Allies of Seville are well known to be his present Majesty, the King of France, and the King of Spain. Again, the Writer goes on to say, [*"That certain Ministers"* (whom the Information explains to be the Ministers of his present Majesty) "having at length found out, that too close an Union with France, and a War upon the Foot of the Treaty of Seville, is quite against the Grain of the People, are endeavouring to bring about an Accommodation with the Emperor, and to undo every Thing they have been doing for these five Years past,"] which will carry the Calculation back to the 30th Sept. 1725, when the Treaty of Hanover was made. And then afterwards he says, [*"If this should prove true, it will certainly redound very much to the Honour of those Gentlemen, who have so vigorously opposed the late Measures; and the Ministers*

* Taken down in Short-Hand, and transcribed into Long-Hand, by Mr. J. Weston.

who have not only concerted and pursued these Measures, but loaded all Opposition to them with the foulest Imputations, will be obliged to take a great deal of Shame to themselves." And then he asks the Question, ["For what can be a stronger Condemnation of their own past Conduct, than to see them wheel about all on a sudden, and pursue Measures directly opposite? And what can be more ridiculous than to see them desert one Ally, whose good Faith, Sincerity, and even Cordiality of Friendship, they have so often extolled?"] Here is a plain Charge of Perfidy, or breaking of Faith. Again, the Ministers are represented as running into the Arms of another Ally, whom those Ministers have set forth as the most dishonourable, ungrateful, and perfidious Prince. Next, these Ministers are represented as putting themselves in the Power of that Prince; and says, ["If this Prince should refuse to deal with them, after the Usage he hath received, they will be broke with all the Courts of Europe; and he cannot be insensible of their Perfidy to others," (that is to say, the former Allies) "at the same time that he is treating with them.""] Gentlemen, you may plainly observe here, that this is a positive Charge of Perfidy and Breach of Faith on these Ministers. Again, the Libel, or pretended Letter, charges them with bringing on their Country vast Expences, not to be justified, and a further Expence and Hazard, which their precipitate Alteration of Counsels will certainly involve it in. And then he proceeds to represent, that they cannot, at present, treat with the Emperor, without Infraction of solemn Treaties, and Violation of Faith. Gentlemen, this is a direct Charge of Perfidy, in the strongest Terms. In the next place, he represents the Effects of the Resentment that they will draw on their Country by their Violation of Faith: One immediate Effect, he says ["may be the Interruption of Trade, and the Seizure of that vast Pledge which Spain hath at this time in her Hands.""] Another necessary Effect (for so he thinks he may call it) will be a Conjunction of France and Spain; and a certain Court (these are his Words) may have the Mortification to see those two Crowns united against them more strongly than ever, by their extraordinary Management, after they have spent so many Millions to prevent it. Gentlemen, this the Nature and Import of the Libel; and whoever it is that is charged with these Things, it is plain, that there cannot be a more evident Charge of Perfidiousness, and pursuing Measures destructive to their Country. The Reason of my opening thus, is to shew and make way for the Application of the Libel to the Persons and Things mentioned in it. And in order to shew that the Libel is applied to his present Majesty and his Ministers, and the Administration of the Government of this Kingdom, and cannot be applied to any other, it will be necessary for you, Gentlemen, to consider who are the Ministers thus charged. The Description is, that a Misunderstanding will soon discover itself between the Allies of Seville; and that certain Ministers having at length found out, that too close an Union with France, and so on. Gentlemen, who are the Allies of Seville? They are the King of Great Britain, the French King, and the King of Spain. Now, the Ministers here spoken of are charged with Perfidiousness in breaking that Treaty, who, to be sure, must be meant of those Ministers that were empowered to make that Treaty; for no other could be guilty of breaking it: And, indeed, the Author himself hath, in this very pretended Hague Letter, fully explained his Meaning; and that it is not France or Spain, or their Ministers, that he thus charges with Perfidy; for he tells us, that one necessary Effect of such Violation of Faith, will be the Conjunction of France and Spain; and that a certain Court would have the Mortification to see those two Crowns united against them more strongly than ever. This amounts to a Demonstration, that neither France nor Spain, nor their Ministers are charged with breaking this Treaty; for they are plainly excluded: If so, then there is but one Party left, to wit, the King of Great Britain and his Ministers; and it is plain, as if the Ministers of Great Britain had been in express Words. I am almost ashamed to explain what is so plain; though I thought it proper to set forth thus at first. And, Gentlemen, if more Circumstances are wanting to confirm this further, they may be added afterwards; such as these, to wit, the Persons who opposed them were stiled Germanized Patriots: Another Expression is, the Seizure of that vast Pledge, which Spain hath at this time in her Hands. Besides, it is incumbent on them to shew what other Court or Ministers these Things can be applied to. There is another Observation, which I hinted at before, which is, that these Ministers are endeavouring to undo every Thing they have been doing for these five Years past; which carries it back to the Time of completing the Treaty of Hanover, which was in September, 1725. Gentlemen, it is far from our Desire, that a forced Construction should be made or drawn from this Paper; but such a one only, as every understanding Person, that takes it up and reads it, would put upon it: But I would not be thought to mean, that every Reader understands it as a Libel, or a scandalous Libel, as Courts and Juries do: No, the Law is not so absurd to suppose such a thing. Besides, it is very well known, that there have been several Cases of this Nature, that have been understood by the Court and Jury as such, I mean as a Libel, before this Time; and it is necessary to mention to you, that a Picture may be drawn very lively, and construed so; and that a Libel may be written under feigned Names, and yet plainly understood; as in the Case of Mr. Mif's Journal in 1728, wherein the fictitious Names of Esreffe and Sophy of Persia were inserted; yet, notwithstanding these assumed Names, when it came to be tried by a Jury, they understood it, as every honest Man would, to be a scandalous Libel. I shall not take up now any more Time upon this Head. The next Thing is, whether the Defendant, Mr. Franchlin, is guilty or not of the Facts charged in the Information? And now, Gentlemen, we shall give you the strongest and clearest Proof in the world: We shall prove, by a Witness who bought six of these Journals, wherein the pretended Hague Letter is inserted, of the Defendant himself, at his Shop; and that the Defendant ordered his Servant to give him them; and it will appear to you, that the Person who bought them, sold them also himself; and, if that wants further Confirmation, we can prove, that the Defendant publishes seditious Papers or Journals every Week. These Things being laid before you, we expect you will do Justice betwixt the King and the Defendant; and that is all which is desired of you.

Charles Talbot, Esq. Solicitor General. My Lord and Gentlemen, I am on the same Side; and as the Case is so plain, I would not take up much of your Time. The Libel is against his Majesty, and his principal Officers and Ministers of State, under the Colour of *An Extract of a private Letter from the Hague*; and though it is said so, yet whoever considers it, and attends to the Frame and Style of it, and Tendency of the Whole, will plainly be convinced, that it is of an English Breed: But let it be real or fictitious, it is the same thing, if it is a Libel, and the Subject-Matter thereof is against the Government; nor is it material, whether the Matters or Things published therein are either true or false, if the Publication thereof is detrimental to the Government, and of a malicious, injurious, and seditious Design, to create a Misunderstanding and Discord between his Majesty and his Allies; and to raise Jealousies in the Minds of his Subjects: And, indeed, for what other Purposes can it be supposed to have been published, but for these very Things, of sowing Sedition and Jealousy, and disturbing the publick Peace? Again, the Libel is not only against his present Majesty, but also against his Ministers; that they were about to make a Treaty with the Emperor, which would be undoing every Thing that they had been doing for these five Years past, which would occasion them to take a great deal of Shame to themselves. The next Thing he charges the Ministers with is the deserting of one Ally, and, in consequence of that, the flying into the Arms of another; and that, if he thought fit not to deal with them, then they would be broke with all the Courts of Europe; and that he could not be insensible of their Perfidy to others, at the same time that he was treating with them. In the next Part of the Libel, he accuses them of having brought a vast Expence on their Country by their former Measures; and that their present Measures will certainly involve it in a further Expence and Hazard. In the next place, he points out to the People the Consequences and Difficulties attending these Measures; the first of which, he says, in his Apprehension, are very fatal; and the second, almost insuperable: He says, that one of the Consequences will be the Infraction of solemn Treaties, and drawing on their Country the Resentments which usually attend Violation of Faith: Another Consequence, he says, will be the Interruption of Trade; and that another Consequence will be the Seizure of that vast Pledge which Spain hath in her Hands; and the last Consequence, which he mentions, of such Measures, (and which he thinks he may call a necessary Consequence) is the Conjunction of France and Spain; and that a certain Court (which, as hath been already mentioned, can only be applied to Great Britain) may have the Mortification to see these two Crowns united against them more strongly than ever, after they have spent so many Millions to prevent it. Gentlemen, I hope it now plainly appears to you, that this pretended Hague Letter is a Libel, and, I may say, a very malicious and seditious one too. If any thing may be called a Libel, surely Ministers of State undoing what they have been doing for five Years past, and deserting Allies, perfidiously exposing their Country to Hazards and vast Expences, seizing their Effects, and occasioning other Courts to be united against their own Country, may well be called a Libel; especially when the Libel also carries in it the highest Charge against his Majesty's Government, and tending to sow Sedition, and Jealousy, and Discords, between his Majesty and his Allies, as well as between his own Subjects, and thereby disturbing the publick Peace. That which remains is, of whom are these defamatory Things said, and what Court and Ministers are meant, or to whom these Expressions are applicable? The Expressions are, ["certain Ministers are endeavouring, and a certain Court may have the Mortification to see," &c.] I think every common Reader will presently understand them to be the Court and Ministers of Great Britain: And I believe I may venture to say, that the Gentlemen on the other Side cannot point out what Court and Ministers are meant by these Expressions, if it is not the Court and Ministers of Great Britain. Gentlemen, the whole Connection of the pretended Hague Letter, taking it all together, plainly points out to be meant of his present Majesty and his Ministers; and there is no Part thereof that can be applied, with any Propriety, to any other Court or Person whatsoever. In the Beginning of the Libel, we are told, that a Misunderstanding will soon discover itself between the Allies of Seville; and then immediately follows the Charge on certain Ministers, that they were undoing every Thing that they had been doing five Years past. These Words ["Certain Ministers,"] must have a Reference either to the Ministers of Spain, France, or Great-Britain. With regard to Spain, you have been already told, that it cannot have any Reference to them, because one Effect of this Alteration of Affairs or Measures, is, that Spain would seize that vast Pledge which she hath at this time in her Hands: Is this a Libel on the Ministers of Spain, and can this give an Occasion to Spain to lay hold on their own Effects, and seize their own Treasure? No, it is Nonsense; so that the Ministers of Spain cannot be meant; besides, it is notorious to every body that knows any thing of the South-Sea Company, that that Company always have, and will have, while it is a Company, Effects and Treasures in their Hands liable to be laid hold on and seized; so that as the Ministers of Spain are not the Ministers here meant, so likewise it shews that it cannot be meant of the Ministers of France; for they are plainly excluded as well as the Ministers of Spain: The Words are, ["That certain Ministers having at length found out, that too close an Union with France, and a War upon the foot of the Treaty of Seville, is quite against the Grain of the People.""] Is this applicable to Ministers of France? No; It is not Sense to apply it to the Ministers of any other Court than Great-Britain; but applying it so, it is good Sense, and very proper: So that as the Ministers of Spain and France are both excluded, it is plain to a Demonstration, that it must be meant of the Ministers of Great-Britain: And seeing every Part of the Libel is applicable thereto, and cannot agree with any other Court than the Court of Great-Britain, I apprehend, it will appear plain to you to be a Libel, and that the Expressions are meant of his Majesty and his Ministers; and if so, then there remains only one thing, and that is, to fix it on the Defendant; and this we will make appear beyond all Contradiction, not only as being the Printer of that Weekly Paper, but as having sold them himself. And, Gentlemen, when this appears plain to you, after the Attorney General hath done his Duty, by laying a full Proof before you, it is hoped you will do yours.

Mr. Attorney General. I do not know whether they will deny the Defendant to be the Author or Publisher of the Paper; if they do, I shall prove it.

Mr. Fazakerley. We do deny it.

Mr. Att. Gen. Call Mr. Jenkins.

Mr. Jenkins appeared.

Mr. Att. Gen. Mr. Jenkins, look out the Copies of his Majesty's Speech the 20th of January, 1725.

(Here it was produced.)

Mr. Att. Gen. Did you examine it?—Mr. Jenkins. Yes.

Mr. Att. Gen. Where?—Mr. Jenkins. At the Parliament Office.

(Mr. Jenkins cross-examined.)

Mr. Fazak. Hath it been in your Custody ever since?

Mr. Jenkins. No.

Mr. Fazak. How know you that to be the very same that you examin'd?

Mr. Jenkins. Because I marked it.

Mr. Fazak. When, before or after you first parted with it?

Mr. Jenkins. Before.

Mr. Fazak. What Mark? Did you put your Name to it?

Mr. Jenkins. I put the two Initial Letters of my Name, which I will shew you.

Mr. Fazak. Are you sure that it hath not been altered since?

Mr. Jenkins. Yes, I am very sure.

Here his Majesty's Speech to the House of Lords was read, beginning thus: ["My Lords and Gentlemen, I have had such frequent Experience, &c."] Also his Majesty's Speech to the House of Commons.

Mr. Att. Gen. This Speech of the King is general; but I shall be more particular, and shall shew you a Copy of the Address of the House of Lords, when the Treaty of Hanover was laid before them, wherein they express their Satisfaction, and mention the King of Spain particularly.

Mr. Fazak. Though I have all the Honour imaginable for the House of Lords, yet I question whether their Addresses are to be taken as Evidence.

Mr. Att. Gen. We shall read a Copy of the Journal of the House of Lords.

Mr. Fazak. Originals are the best Evidence of Fact; and whatever Addresses or Proceedings might have been made in the House of Lords, I think they cannot be proper Evidence here.

Mr. Att. Gen. What I produce is a Copy of the Lords Journal concerning the Treaty of Vienna, that the Secretaries of State laid before them.

Mr. Fazak. I own it is a Journal of the House of Lords, but it is not a proper Evidence of the Facts therein mentioned.

Mr. Boodle. My Lord, I apprehend, that the Evidence Mr. Attorney General is now pursuing, in the Course of Evidence is irregular, and on that the Objection doth arise. He says, he will prove the Facts by the Journal of the House of Lords: Suppose the Secretaries of State have failed in the Copy laid before them: I offer this to your Lordship's Consideration.

Lord Chief Justice. I find, Mr. Boodle, that all Manner of Objections will be raised to serve your Client; but I shall not pass away the Time, because you have Redress another Way; you shall have my Opinion about it.

Mr. Strange. Will you produce that Copy?

Mr. Att. Gen. We will do it. Mr. Jenkins, produce the Orders of the House of Lords, the 10th of February, 1725. (Here it was produced.)

Mr. Strange. Is it a true Copy?—Mr. Jenkins. Yes.

Mr. Strange. Have you had it ever since it was given in?

Mr. Jenkins. Yes.

(Here the Copy of the Journal was read; the Purport was a Copy of the Treaty of Peace made at Vienna, 3d April, 1725, a Copy of the Treaty of Commerce made at Vienna, 1st of May, 1725, and a Copy of the Treaty of Hanover, 30th September, 1725.)

Mr. Att. Gen. It is proper to see these Copies.

Mr. Strange. Mr. Jenkins, What is this?

Mr. Jenkins. The Treaty of Peace.

Mr. Strange. Where had you it?

Mr. Jenkins. From the Parliament Office.

Mr. Strange. Have you the Treaty of Commerce made at Vienna?

Mr. Jenkins. Yes, (Here the Title of it was read thus: Treaty between Charles Emperor of Germany, &c. and Philip the Vth, &c. dated 1st May, 1725.)

Mr. Att. Gen. Read the 2d and 3d Articles thereof. (Here they were read.)

Read the 36th Article. (Here it was read.)

Read the 47th Article. (Here it was read.)

The Purport of these Articles was, (as I thought) that they were of great Prejudice to his Majesty's Subjects, and consequently was an Occasion of Difference.

I beg that the Address of the House of Lords to his Majesty may be read, and his Majesty's Answer on the 17th of February, 1725.

Mr. Fazak. For what Purpose would you read them?

Mr. Att. Gen. You will understand that immediately.

[Here the Address was first read, and then his Majesty's Answer;] the Purport was to shew, that there were Differences between his late Majesty and the King of Spain, &c.

Mr. Fazak. Mr. Jenkins, by what did you examine these?

Mr. Jenkins. By the original Journal.

Mr. Att. Gen. I shall prove in the next Place, that the King of Spain, 13th July, 1725, (which was about two Months before the Treaty of Hanover) made an express Demand of Gibraltar.

Mr. Fazak. I do not rightly see through, or understand this Evidence; I suppose it is to make up some Defects.

Mr. Att. Gen. Call Mr. Tilson. Mr. Tilson, have you any Papers with you?—Mr. Tilson. Yes, a Letter.

Mr. Att. Gen. Be pleased to give my Lord and Jury an Account how you received that Letter.

Mr. Tilson. My Lord, this is a Letter from the Marquis of Gramelée, Secretary to the King of Spain.

Lord Chief Justice. Where received you this Letter?

Mr. Tilson. I received it at Hanover.

Lord Chief Justice. When received you it?

Mr. Tilson. On the 1st of August New Style, 1725.

Mr. Attorney General. From whom received you it, and in what Manner?

Mr. Tilson. By a Messenger that came from Syow from Mr. Stanhope.

Mr. Att. Gen. What was the Messenger's Name?

Mr. Tilson. One Wagon, the King's Messenger.

Mr. Att. Gen. How received you it?

Mr. Tilson. In a Packet made up with his Dispatches.

Mr. Att. Gen. Where hath the Letter been kept ever since?

Mr. Tilson. In the Secretary of State's Office of the Lord Townshend.

Mr. Att. Gen. Where took you it from?

Mr. Tilson. From the Book.

Mr. Att. Gen. What was you?

Mr. Tilson. Under-Secretary to my Lord Townshend.

Mr. Att. Gen. Can you interpret it immediately?

[No Answer was given.]

Mr. Taylor. I object against this Evidence, by reason it is not the best Evidence, because my Lord Harrington is here in England himself.

Mr. Att. Gen. I apprehend it is sufficient, and it is impossible to prove it otherwise; the Lord Harrington transmits it to his Master.

Mr. Taylor. If my Lord Harrington were here, he could give Evidence himself.

Mr. Att. Gen. My Lord, we have found an Interpreter, and he will interpret the Spanish. Call Mr. Bocking.

Lord Chief Justice. What read you it for?

Mr. Att. Gen. For a Proof of the Demand of Gibraltar, by Virtue of the Treaty at Vienna. [Here Mr. Bocking was called.]

Mr. Att. Gen. Mr. Bocking, Do you understand the Spanish Tongue?

Mr. Bocking. Yes.

Mr. Att. Gen. Have you compared it with the original Letter?

Mr. Bocking. Yes.

Mr. Att. Gen. Is it truly translated?—Mr. Bocking. Yes.

[Here the Letter was read subscribed Grameldo.] The Purport of it was demanding up Gibraltar.

Mr. Att. Gen. The next Thing is the Treaty of Hanover, which we have upon Record.

Mr. Fazakerley. I do not think this Evidence full; for the Allegation is, that there were certain Differences and Controversies between his late Majesty and divers Princes and Foreign States, being his Allies, and the King of Spain. I do not find that this Evidence shews any thing of it; the Difference that the Evidence shews, is only between the late King and the King of Spain. I apprehend they ought to make the Evidence agree with the Information; if it varies from that, it is as no Evidence at all.

Mr. Att. Gen. I apprehend this is no Objection at all.

Mr. Fazakerley. The Information is, that before the Demise of the late King, divers Differences and Controversies arose between his said late Majesty and divers Princes and Foreign States, being his Allies, and the King of Spain. Now, the Objection is, that the Evidence they have produced, shews that there were only Differences between Spain and Great-Britain.

Mr. Att. Gen. There is no Weight in that Objection; for if it were so, as they suppose, I apprehend this is not material to the Information; for it is well known, that there is a Distinction between an Action and an Indictment. Every Thing in an Action, in Case of Contradiction, ought to be proved; but if there be an Allegation in an Indictment, and that the Crime may remain without it, it is well known that that Allegation is not necessary to be proved; and it is sufficient enough to prove him guilty of the Crime that he is indicted for. But what I have proved, shews the Difference and Disputes between his late Majesty and his Allies, and the King of Spain, for the Supplication relating to the *Offend Company*; particularly, by the 36th Article, is, that all the Subjects of the Emperor shall enjoy the same Privileges as the *United Provinces*, &c. so likewise by the 47th Article, which expressly refers to Spain and Great-Britain; and that is the express Declaration made to the House of Lords, and was the Foundation of the Troubles in Europe, which obliged the late King, without Loss of Time, to enter into the Treaty of Hanover; namely, with the Consideration to the Trade and Commerce of Vienna. And now, all these taken together, I submit it to your Lordship, whether there is not a sufficient Proof, that there were Differences subsisting between his Majesty and his Allies, and the King of Spain.

Mr. Solicitor General. This Allegation is not material; for whether there were Differences or not subsisting, we shall fix it by Evidence that Mr. Franklin is equally guilty, and that it will not alter the Nature of the Offence: Besides, it is admitted by the Gentleman that made the Objection, that the Evidence amounted so far as to prove that there were Differences between the late King and the King of Spain; and we have pointed out two Things which shews there were Differences; the one relating to the *Offend Company*, and the other to the Demand of Gibraltar. I agree with that Gentleman, that Great-Britain was concerned in it; but to say that they were alone concerned in it, and that by the Address of the House of Lords the Dutch were not concerned, is a plain Mistake, for they claimed a Right to Trade also; yea, they were more immediately concerned than Great-Britain; and therefore it is rightly stated by the House of Lords Address; though, as I said before, it is not material whether there were Differences subsisting or not.

Mr. Fazakerley. I thought, while the Thing was fresh in Memory, it would have been explained; but since they have gone so far, it will be better to make an End. I shall only say, that as to what they say is immaterial, if they are willing to have that Matter immaterial, I am willing it should be struck out; and if there is a Crime described in the indictment or Information, I agree it is not necessary to prove every Allegation, if the Crime remains without it; so that, if they will wave it, I am satisfied: Let me get rid of one Thing at a Time. I say, if there is enough left, properly charged on the Defendant, then, my Lord, it ought to be dropt; for they have produced nothing that proves the Allegation: And whatever Differences there might be between the late King and Spain, or any Powers whatsoever, not properly described in this Information, I apprehend, they are not to be taken

a Part of the Charge in this Information. Now the main thing is, whether they have laid it so, and made out these Differences. They say, that the Differences were between the late King, and several Princes and Foreign States, being his Allies, and the King of Spain. I think the Letter produced from the Marquis of Grameldo, or take what Way you please, it only refers to Differences between the King of Great Britain and Spain. I own there were Grants of Commerce to the Emperor, which might be of Injury to other States; but though they think that there is a Foundation for Differences, yet, if there is none, there is no Reason to say that there was an actual Difference: They have laid it so, my Lord; and as for that other Part of the Evidence of the Abuse of Lords, that is not sufficient, for it is mentioned there as an Infraction of their Treaty; but whatever Infraction it is, yet, I humbly apprehend, that is not a Reason that there were Differences on that Account, for if other States think otherwise, or acquiesce to it, then it cannot be called a Difference; besides, that Address of the House of Lords was only the Sentiments of that great Body; and though a Regard ought to be had to them, yet it is not any Evidence of the Fact, unless transacted in a judicial Way. They made a Collection or Construction from it; but think, in my Opinion, it is possible they might make a Mistake: We are now upon Evidence, and it ought to be established by a proper legal Evidence; for that (as I said before) is only an Evidence that thereby their Treaty was broken, but no Evidence that there was a Difference arising from it.

Mr. Botle. Mr. Attorney is pleased to make that a criminal Information, of which a Part may be evidenced, and a Part overlooked.

Lord Chief Justice. Is this essential or not?

Mr. Attorney General. No.

Lord Chief Justice. Why hath there been then almost two Hours spent about it?

Mr. Att. Gen. This is not between Great Britain and Spain, but other States; and it is to shew, that by the Articles of the Treaty of Vienna, there were some of them inconsistent with those relating to the foreign Powers.

Mr. Noel. As they cannot prove this Allegation an Offence, or Part of the Crime, it is proper to strike it out.

Mr. Botle. Our Objection is on what is alledged; we are not entering into the Consideration of the Fact, or how far it is capable of being proved: No; but sure I am they have not proved the Allegation.

Lord Chief Justice. This is not indeed a positive Proof, I think.

Mr. Att. Gen. The next Thing is the Treaty of Hanover, I have a Copy of it translated.

Mr. Botle. It is admitted that there were Differences.

Mr. Att. Gen. Call Mr. Snow. [Who appears.] What Officer are you?

Mr. Snow. Prothonotary of the Chancery.

Mr. Att. Gen. What have you in your Hand?

Mr. Snow. The Treaty of Hanover, dated the 30th of September, 1725.

Mr. Att. Gen. Read it.

Mr. Snow. It is in French.

Mr. Att. Gen. Have you a Translation of it?—Mr. Snow. Yes.

Mr. Att. Gen. Let it be read. Mr. Buck [or Bocking] what is that Paper?

Mr. Snow. It is the Translation of the Treaty of Hanover.

[Here the Treaty was read.] It is between the late King of Great Britain, the King of France, and the King of Prussia.

Mr. Att. Gen. The next Thing is the Treaty of Seville. Mr. Snow, what is that?

Mr. Snow. The Treaty of Seville.

Mr. Att. Gen. In what Language?

Mr. Snow. In the Spanish. I have a Translation of it.

Mr. Att. Gen. Mr. Buck, Did you translate it?—Mr. Buck. Yes.

[Here they read a Part of it.] It is between the present King of Great Britain, the French King, and the King of Spain, dated at Seville, 9th of November, 1729.

Mr. Att. Gen. I shall now go on to prove that Part of the Libel which relates to Mr. Franklin's publishing the Craftsman, the 2d of January last.

Call John Smith. [Who appears.] Look on that Paper, is that your Hand-writing?

[Here was shown one of the Craftsman, 2d of January marked by Smith.]

Mr. Smith. Yes.

Mr. Att. Gen. Where had you it?

Mr. Smith. In Mr. Franklin's own House.

Mr. Att. Gen. In what Part of it?

Mr. Smith. In his Shop.

Mr. Att. Gen. Do you remember the Time?

Mr. Smith. Yes, it was on Saturday the 2d of January last.

Mr. Att. Gen. How came you to have that Paper?

Mr. Smith. On the 9th of January, I went into his Shop, where Mr. Franklin himself was standing by the Counter, and I asked him for half a Dozen of his Journals of that Day, and two of the Saturday before; he led me whom they were for; I told him for myself; then he asked me I sold them; I said, Yes; then he pointed to his Man to look them out.

Mr. Att. Gen. Who delivered them to you?

Mr. Smith. His Man.

Mr. Att. Gen. Whom paid you for them?

Mr. Smith. His Man.

Mr. Att. Gen. Was he present himself then?

Mr. Smith. No.

Mr. Att. Gen. But did not he order his Servant to give you them?

Mr. Smith. Yes.

Mr. Smith cross-examined.

Mr. Fazakerley. What asked you for?

Mr. Smith. I asked for half a Dozen of his Journals of that Day, and two of the Saturday before.

Mr. Fazakerley. Do you sell them?—Mr. Smith. Yes.

Mr. Fazakerley. How came you by this when you had sold it?

Mr. Smith. I sold it to a Person that desired me to get it for him.

Mr. Fazakerley. To whom sold you it?—Mr. Smith. To Mr. Ibbot.

Mr. Fazakerley. How soon after you bought it did you sell it him?

Mr. Smith. As soon as I could drink two Quarts of Beer, at the Six Gun Alehouse in Holbourn.

Mr. Fazakerley. Are you sure that this is one of the 2d of January, that you had at Mr. Franklin's?

Mr. Smith. Yes, because I mark'd it.

Mr. Fazak. Are you sure that he had it not in his Custody before you mark'd it?—Mr. Smith. He had it not.

Lord Chief Justice. Who gave you them?—Mr. Smith. His Man.

Lord Ch. J. What said he to his Man?

Mr. Smith. Look out these Journals.

Lord Ch. J. You asked for two of the Saturday before?

Mr. Smith. Yes.

Lord Ch. J. What was Mr. Franklin doing?

Mr. Smith. There was a Man with him, who was paying him ten or a dozen Guineas; while I was speaking he had told Part of them: When I came and asked for the Journals, he asked me what I wanted; I said, Six of his Journals of that Day, and two of the Week before.

Lord Ch. J. To whom paid you the Money?

Mr. Smith. To his Man; I gave him Half-a-Crown, and he return'd me what was over, as my Change.

[Here the Title of it was read, "No. 235; The Country Journal; or, the Craftsman, by Caleb Danvers, of Gray's Inn, Esq; Saturday, January 2d, 1730;" then the Hague Letter was read thus, "Extract of a private Letter from the Hague: A Rumour hath been for some Time privately, &c." as in the Information.]

Mr. Att. Gen. I shall call a Witness or two to support his Evidence, to shew that a great many of them came from the Defendant's Shop. Call John Ibbot. [John Ibbot appears.]

Mr. Att. Gen. Look on that Paper, where bought you that?

Mr. Ibbot. I bought it at Mrs. Dodd's.

Mr. Att. Gen. Where lives she?

Mr. Ibbot. At the Sign of the Peacock, without Temple-bar.

Mr. Att. Gen. When bought you it?

Mr. Ibbot. On the 2d of January last.

Mr. Att. Gen. Did you buy it of her, or her Servant?

Mr. Ibbot. Of her Servant.

Mr. Att. Gen. What is the Servant's Name?

Mr. Ibbot. Mary Dewy.

Mr. Att. Gen. Call Mrs. Ann Dodd. [Who appears.] Had you at any Time, from Mr. Franklin's, the Paper called the Craftsman, or Country Journal?—Mrs. Dodd. I never had any myself.

Mr. Att. Gen. Have you ever disposed of any of them?

Mrs. Dodd. Yes.

Mr. Att. Gen. Who had them for you?—Mrs. Dodd. My Man.

Mr. Att. Gen. What is his Name?

Mrs. Dodd. Henry Goram (or Boram).

Mr. Att. Gen. Had you any more of them in your Shop, beside what Henry Goram fetched for you?

Mrs. Dodd. None, that I know of.

Mr. Att. Gen. Had you any of the Craftsman the 2d of January last?

Mrs. Dodd. Yes.

Mr. Att. Gen. Whom sent you for them?

Mrs. Dodd. Henry Goram.

Mr. Att. Gen. Had you any other Craftsman besides these?

Mrs. Dodd. No.

Mr. Att. Gen. Whom paid you for them?

Mrs. Dodd. I did not pay him myself; but they were paid for by another of my Servants, Mary Dewy.

Mr. Att. Gen. Did not you order it to be paid to Mr. Franklin?

Mrs. Dodd. Yes.

Mrs. Dodd cross-examined.

Mr. Fazak. Can you take upon you to swear, that all the Country Journals you had came from Mr. Franklin's?

Mrs. Dodd. No: They might fetch them from other Places.

Mr. Fazak. Where sent you for them?

Mrs. Dodd. To Covent-Garden, to Mr. Franklin's House.

Mr. Fazak. Will you venture to say, on your Oath, that you sent your Servant to Mr. Franklin's for the Craftsman of the 2d of January last?

Mrs. Dodd. I think so.

Mr. Fazak. Can you be positive, or not, that you sent for this particular Journal of Saturday the 2d of January last?

Mrs. Dodd. I cannot be positive as to that; but I used to give Orders to fetch in these Journals every Week.

Mr. Fazak. What were the Orders you gave them; were they general Orders every Week? Do not they sometimes fetch them without Orders?

Mrs. Dodd. Yes.

Mr. Fazak. You do not know from whence they fetch those without Orders?—Mrs. Dodd. No.

Mr. Fazak. Did you ever send for any of them to any other Place than to Mr. Franklin's?

Mrs. Dodd. No.

Mr. Att. Gen. Call Henry Goram. [Who appears.] Whom live you with?—Mr. Goram. With Mrs. Dodd.

Mr. Att. Gen. Do you fetch News-papers for her?

Mr. Goram. I have lately fetched for her the Country Journal, or Craftsman.

Mr. Att. Gen. Where?

Mr. Goram. From Russell-street, in Covent-Garden, from Mr. Franklin's.

Mr. Att. Gen. How long have you continued to do it?

Mr. Goram. Above a Year and a half.

Mr. Att. Gen. How often in the Week?

Mr. Goram. Once every Friday Evening, when it is late.

Mr. Att. Gen. Have you gone every Friday Evening to fetch them, all that Time?

Mr. Goram. No, I cannot say, for I have sometimes missed.

Mr. Att. Gen. Do you remember going the first Day of January, being New Year's Day, for the Craftsman, the 2d of January last?

Mr. Goram. Yes.

Mr. Att. Gen. From what Place?

Mr.

Mr. Goram. From Mr. Francklin's in Covent-Garden.
 Mr. At. Gen. What Day did you fetch them on?
 Mr. Gor. I told you on the Friday Night before, which was New Year's Day.
 Mr. At. Gen. To what Place did you bring them?
 Mr. Gor. To Mrs. Dodd's.
 Mr. At. Gen. Were they put into her Shop?—Mr. Gor. Yes.
 Mr. At. Gen. Did you fetch any Country Journals of that Day, from any other Place?—Mr. Gor. No.
 Mr. At. Gen. What Quantity, think you, you had at Mr. Francklin's?
 Mr. Gor. About threescore Quires a-Week.

[Cross-examined.]

Mr. Fazakerley. You said, you cannot say that you fetched every Week the Craftsman from Mr. Francklin's; how comes it that you can be particular as to this Craftsman of the 2d of January last? Have you any thing particular to make you remember that Day?

Mr. Gor. Yes; for a Day or two after I heard that Paper had given Offence, my Mistress desired me to recollect when I had them; which I did.

Mr. Faz. Here your Mistress knows nothing about that of the 2d of January; probably it might have been something else that your Mistress desired you to recollect; Do you know of never another Paper that gave Offence, besides that? Therefore, I say, can you be positive that you fetched all the Craftsman of that Day on Friday Evening?

Mr. Gor. Yes.

Mr. Faz. Did you know of any other Craftsman besides Mr. Francklin's? Or did you ever know that your Mistress bought any Craftsman, but from Mr. Francklin?—Mr. Gor. No.

Mr. Faz. Is Mary Dewy Servant to Mrs. Dodd?—Mr. Gor. Yes.

Mr. Faz. Did not she send her for the Craftsman?—Mr. Gor. No.

Mr. At. Gen. Call John Smith (aforesaid) who appears. Look on that Paper. [Here another of the Craftsman, of the 2d of January, was produced.] Where bought you that Paper?

Mr. Smith. At Mrs. Smith's under the Piazza's, at the Royal Exchange.

Mr. At. Gen. Do you remember when?

Mr. Smith. The 9th of January, the same Morning that I bought at Mr. Francklin's.

Mr. At. Gen. Of whom bought you it?—Mr. Smith. Of her Servant.

Mr. At. Gen. What is her Name?—Mr. Smith. I know not.

Mr. At. Gen. Are you sure that is the same Paper?—Mr. Smith. Yes.

Mr. At. Gen. Did you mark it?—Mr. Smith. Yes.

Mr. At. Gen. Call Mrs. Ann Pierce. (Who appears.) Did you keep a Shop formerly?

Mrs. Pierce. Yes, though not now.

Mr. At. Gen. How long ago is it since you kept it?

Mrs. Pierce. About three or four Months.

Mr. At. Gen. During the Time of your keeping a Shop, did you sell the Country Journal?—Mrs. Pierce. Yes.

Mr. At. Gen. Where bought you them?

Mrs. Pierce. I never went myself.

Mr. At. Gen. Whom sent you?—Mrs. Pierce. One David Davies.

Mr. At. Gen. To whom sent you for them?

Mrs. Pierce. To Mr. Francklin.

Mr. At. Gen. Can you remember you had any Craftsman of the 2d of January last?

Mrs. Pierce. To be sure I had.

Mr. At. Gen. Who went for them?—Mrs. Pierce. My Man.

Mr. At. Gen. Did you ever send any body else?

Mrs. Pierce. I cannot tell.

Mr. At. Gen. I would desire you to recollect who fetched those of the 2d of January.—Mrs. Pierce. He always fetched them.

Mr. At. Gen. What Number had you the 2d of January?

Mrs. Pierce. I cannot tell exactly the Number; but I have generally about 7l. a Week to pay for the Craftsman.

Mr. At. Gen. Did you pay for them of the 2d of January?

Mrs. Pierce. He had always about 7l. a Week, or upwards.

Mr. At. Gen. But do you remember that you paid for them of the 2d of January?

Mrs. Pierce. I do not remember that in particular; for it was about that Time I was married.

Mr. At. Gen. Did you pay for them yourself?

Mrs. Pierce. No; but my Servant, David Davies, did.

[Cross-examined.]

Mr. Bottle. You said, you did not always send your Man, David Davies, for them?

Mrs. Pierce. You are mistaken; for I said I did.

Mr. Bottle. Can you say, on your Oath, Mistress, that you paid for these Craftsman the second of January in particular?

Mrs. Pierce. I shall not answer you.

Mr. Bottle. Who bid you not to answer me? You shall do it.

Mrs. Pierce. I don't know you. [Here the Judge reprimanded her, and desired her to give an Answer, which she did thus.] I believe I paid him the Money for the Craftsman of that Day, as well as for those of other Days.

Mr. Bottle. Don't these Papers pay Duty?

Mrs. Pierce. I do not know.

Mr. Willes. Call David Davies. (Who appears.) Was you employed by Mrs. Pierce, before January the 2d, to fetch in her Journals?

Mr. Davies. Yes.

Mr. Willes. Did you fetch in the Craftsman among the rest?

Mr. Dav. Yes.

Mr. Willes. Where did you go for these Craftsman?

Mr. Dav. To Mr. Francklin's.

Mr. Willes. Did you go any where else for them?

Mr. Dav. No.

Mr. Willes. Can you remember that you fetched the Craftsman the 2d of January last?

Mr. Dav. Yes.

Mr. Willes. You did buy all the Craftsman of that Month at Mr. Francklin's—I mean, all that you bought?

Mr. Davies. Yes.

Mr. Willes. When you carried the Money for them, to whom paid you it?

Mr. Dav. Sometimes to Mr. Francklin, and sometimes to his Servants.

Mr. Willes. Can you say, particularly for the Month of January last, that you paid the Money to his Servants?

Mr. Dav. Yes.

Mr. Willes. Did you continue to pay weekly, all the Month of January last, for what you bought of these Papers?

Mr. Dav. Yes.

Mr. Willes. Had you any of these Craftsman any where else that Month?

Mr. Dav. No.

Mr. Willes. Can you remember how many you bought of the 2d of January last?

Mr. Dav. No.

Mr. Willes. How much paid you a Week?

Mr. Dav. About 7l. a Week; because I fetched between 40 and 50 Quires weekly.

[Cross-examined.]

Mr. Strange. Can you recollect so exactly, as to tell that you fetched and paid for the Craftsman the 2d of January, and for all that Month?

Mr. Dav. Yes.

Mr. Strange. How can you be so particular as to that Month?

Mr. Dav. Because I did it weekly before that Time.

Mr. At. Gen. There is another Thing, which I shall name, which will likewise prove, that the Defendant published the Craftsman of that Day; and that is the Stamp-Duty, which is one Shilling, paid for every Advertisement; and here I shall shew to your Lordship, that he paid for the Duties of that Day, and for 38 Advertisements of the same Day, which is exactly the Number contained in that Day's Craftsman. Call Mr. Lunnis. (Who appears.) What Officer are you?

Mr. Lun. An Assistant to the Register of the Stamp-Office.

Mr. At. Gen. Do you know any Thing of the Account of the Stamp-Duties at the Office?—Mr. Lun. Yes.

Mr. At. Gen. Have you the Book?—Mr. Lun. Yes.

Mr. At. Gen. Produce it. [Here it was produced.] What is that Book?

Mr. Lun. An Account of the Advertisements in every Paper.

Mr. At. Gen. Is that the Original of the Stamp-Office Book?

Mr. Lun. Yes.

Mr. At. Gen. You know what Entries there are in it concerning Mr. Francklin?

Mr. Lun. Yes.

Mr. At. Gen. What are these Entries?

Mr. Lun. They are from about 13th of May, 1727, to this Time, weekly and monthly.

Mr. At. Gen. Who paid for them?

Mr. Lun. Sometimes Mr. Francklin, and sometimes his Servants.

Mr. At. Gen. Was the Payment made in his own Name always?

Mr. Lun. Yes, in his own Name.

Mr. At. Gen. Are there any Advertisements that relate to the 2d of January last?

Mr. Lun. Yes, 38.

Mr. At. Gen. Were they paid for?

Mr. Lun. Yes, in Mr. Francklin's Name.

Mr. At. Gen. Read the Entry. [Here it was read. The Purport was Received the 29th of July, for the Duty of 38 Advertisements, &c. for the 2d of January last.]

Mr. At. Gen. That is the exact Number in the Craftsman of that Day.

[Cross-examined.]

Mr. Strange. Do you receive the Money?—Mr. Lun. No.

Mr. Strange. How can you tell that he pays it then?

Mr. Lun. Because I make it up to his Account.

Mr. Strange. Do you know it yourself?

Mr. Lun. No.

Mr. Strange. Are the Papers brought to the Office, and are you the Person that receives them?

Mr. Lun. I am the Person that takes in and registers the Number of the Advertisements, and gives a Note, or an Account thereof, to himself, or the Person that brings the Papers.

Mr. Strange. What Time does the Act relate to the Advertisement being paid?

Mr. Lun. I don't know.

Mr. Strange. As you make out the Warrants, and keep Account of the Advertisements, explain it; what is its Nature? Does your Warrant express the Number of the Advertisements, and the Sum to be paid for them?—Mr. Lun. Yes.

Mr. Strange. For what Purpose do you make it out?

Mr. Lun. After I have made it out, I give it into the Receiver's Office, and then into the Comptroller's, which is a Check on the Receiver's Office; and then Mr. Francklin hath a Receipt for it.

Mr. Strange. Who receives the Money for these Advertisements, while you make out the Warrant for?

Mr. Lun. They at the Receiver's Office.

Mr. At. Gen. Call Mr. Webb. (Who appears.) What Place are you in in the Stamp-Office?

Mr. Webb. A Clerk in the Receiver's Office.

Mr. At. Gen. Are you a sworn Clerk?

Mr. Webb. Yes.

Mr. At. Gen. Can you give an Account of any Receipts had of Mr. Francklin, on Account of his Advertisements the 2d of January last?

Mr. Webb. He had one in July last.

Mr. At. Gen. Do you know if the Advertisements of the 2d of January was included in the Money?

Mr. Webb. I cannot tell.

Mr. At. Gen. In whose Name received you it?

Mr. Webb. In the Name of Mr. Francklin.

Mr. At. Gen. Whether or not did you receive any Money, on the account of his Advertisements, before that Time?

Mr. Webb. Yes, I received something on that Account.

Mr. Att. Gen. Was it a long time before July?

Mr. Webb. I cannot justly remember.

Mr. Att. Gen. How much was it you received the 29th July?

Mr. Webb. About 10*l.* 18*s.*

Mr. Att. Gen. Whence goes that Receipt?

Mr. Webb. To the Comptroller's Office.

Mr. Att. Gen. Call Mr. Scot. (*Who appears.*) What is your Office?

Mr. Scot. I am in the Comptroller's Office.

Mr. Att. Gen. Have you an Account of any Money paid on account of

Advertisements in the *Craftsman* the 2d January last?

Mr. Scot. I have them for the whole Month; but not the Day.

Mr. Att. Gen. What come they to?

Mr. Scot. Ten Pounds eighteen Shillings.

Mr. Att. Gen. In whose Name was it paid?

Mr. Scot. In the Name of Mr. *Franklin*.

Mr. Att. Gen. Were there any more Payments before?—Mr. Scot. Yes.

Mr. Att. Gen. Who paid them?—Mr. Scot. I cannot tell.

Mr. Att. Gen. On whose Account were they paid?

Mr. Scot. On Mr. *Franklin*'s.

Mr. Att. Gen. Have you got any Warrants?—Mr. Scot. Yes.

Mr. Att. Gen. Have you got a particular Warrant for every Month?

Mr. Scot. Yes.

Mr. Att. Gen. Look out the Warrant for the Month of January.

[*Here it was read. The Purport was, That there was received 10*l.* 18*s.* on Mr. *Franklin*'s Account.*]

L. C. J. What is the Nature of that Warrant?

Mr. Scot. It is a Warrant given from one Office to another, containing the Number of the Advertisements, and Sum for the Duty.

Mr. Att. Gen. My Lord, the other Side have owned, that there were Differences between his late Majesty and the King of *Spain*, because we have fully proved it; but they say we have shewn no Evidence of any Difference between his late Majesty and his Allies, and the King of *Spain*, which I apprehend we have; though, as I said before, it is not material: But, if they please, I shall call other Witnesses to prove it further; particularly Differences relating to the *Dutch*, who claimed the sole Trade to the *East Indies*, exclusive of all the Subjects of the Emperor, &c. and yet, my Lord, by the 36th Article, *Spain* stipulates to let all the Subjects of the Emperor enjoy the same Privileges as the *United Provinces*; which is an Infraction of the Treaty of *Munster*, 1648. (Call Mr. *Payant*.)

[*Mr. Payant appears.*]

Mr. Att. Gen. Mr. *Payant*, give an Account of these Papers.

Mr. *Payant*. I brought them from my Lord *Harrington*'s Office.

Mr. Att. Gen. What is their Import?

Mr. *Payant*. They contain the Accession of the States General to the Treaty of *Hanover*.

Mr. Att. Gen. Are they kept there?—Mr. *Payant*. Yes.

Mr. Att. Gen. Is the Act of Accession enrolled?

Mr. *Payant*. Yes; but this is the original one.

Mr. *Fazakerley*. My Lord, I apprehend the Enrolment is a proper Evidence.

[*Here that Part of it was read and interpreted, (it being in French) which complained of the Infraction of the Treaty of Munster, made in 1648.*]

Mr. Att. Gen. By this Act of Accession, which was about a few Months after the Treaty, the *Dutch* insist, that it is wholly their Right to enjoy the sole Privileges of trading to the *East Indies*, exclusive of all the Subjects of the Emperor, &c. and accordingly they enter into, or accede to the Treaty of *Hanover*; which, I think, is a sufficient Evidence of Differences subsisting between his late Majesty and his Allies, and the King of *Spain*. We shall not take up any more Time in examining other Witnesses, for a further Proof of the Information against the Defendant; having, as we apprehend, sufficiently proved it already.

Mr. *Fazakerley*. My Lord, and Gentlemen of the Jury, I am Counsel for the Defendant. As the King's Counsel have been very long, and thought nothing unnecessary; and, indeed, I cannot help saying, that I think a great deal of Labour and Pains have been made use of, to shew that the Defendant is guilty of the Fact of Publication; and I believe it was only to give a reasonable Suspicion thereof, because it was not sufficiently proved by the first Witness, and they have spent about one Hour and a half since, to support that: So, Gentlemen, I hope that you will not think that they have sufficiently proved the Information; and that you will not rest on what the first Witness says as a full Proof, who is as liable to a Prosecution as the Defendant. But I apprehend, that of a Printer is different from a Publisher; and that a Printer's Business relates to all the Subjects of the Kingdom, and he may easily be imposed upon. As to their Evidence, you will find that they intirely seem to rely on the first Witness, who says, he went to Mr. *Franklin*'s Shop, and that he was busy, and that he interrupted him by asking him for some of the Journals of that Day, and that he did not deliver them himself. Now, as he asked for Journals in general, and did not tell whose; and that he was busy, and did not deliver any to that Witness, nor receive any Money from him; and how he came by these Journals, it is not known; he might have some in his Pocket that he got elsewhere, and by Mistake put his Mark to them: Besides, there were only two of these Journals produced. As to the rest of the Witnesses, they are only brought in, in order to endeavour to support this first Witness's Evidence, and to prove that they received Journals from the Defendant's Servants only, and paid the Money to them. As to the Stamp-Office Accounts or Books, I suppose they only shew what Money is raised to the Crown: So, Gentlemen, I believe it will depend chiefly on the Evidence of this Witness; and the Defendant is punishable for none but these two Journals produced (if he is guilty of that); for if he had sold a Thousand more, it signifies nothing to this Information. I shall not trouble you with other Observations on it; but only take notice of the great Convenience of publishing Letters of this Kind, and other News. Gentlemen, it is well known that News-Papers are allowed not only in this, but in other Nations; and, indeed, it is reasonable that private People should know these News

as well as others: And therefore, when we are under a Case of this Kind, we ought not to be strict in scanning Things that come from foreign Parts; for to do so, may put many under great Difficulties; and, indeed, if Men were to be punished therefore, it would be a great Means to have no News at all published; for it is an easy thing to scan them amiss: And therefore, Gentlemen, when you are in a Case of this Kind, consider how many Witnesses they have produced against the Defendant, and that none of them proves any thing but the first, on whom (as I said before) they seem intirely to rely: I hope they are Persons of Veracity, or else they would not have produced them. Next, do you think that the Defendant did it out of a criminal Design? And I think it is pretty hard, unless this seem extremely plain, and unless he was offending in his Mind, as the Counsel on the other Side have alledged, and endeavoured to make out (though, I think, they have not proved it). Next, I would have you take notice of this Information in the general: He is indicted of two Offences; the one is only to support the other: The second he is not guilty of, because they have produced no Evidence. Again, the next Thing they have proved is only, that he is guilty of the Publication (let me get free of as much as I can), though I think he is innocent. Gentlemen, you cannot but consider the Evidence that hath been given you; and therefore I hope you will not think that he is guilty of any thing further, I mean the Act of Publication. Next, take notice, that there are a great many Aggravations in the Information; so that if you find the Verdict general; then these Aggravations must be published on Record, and he punished for them. For, first, in the Information it is laid, "That there were several Differences and Controversies between his late Majesty and divers Princes and foreign States, being his Allies, and the King of *Spain*." I shall not trouble you with any thing concerning this; but only name the last, to wit, the Accession of the *Dutch*, which leaves it where we found it; for the Time laid in the Information was, that the Differences were antecedent to the Treaty of *Hanover*, which was made the 30th of September, 1725. But the Evidence they have produced is about a Year after that, to wit, about August 1726; and probably there might have been no Difference at all then. I shall go on to make a few Observations on the rest of the Matter charged; to wit, "That he intirely tended to disturb and disquiet the happy State of the publick Peace and Tranquillity of this Kingdom, and likewise to traduce and vilify the Administration, and his present Majesty's principal Officers and Ministers of State; and to represent them as Persons of no Integrity and Ability, and as Enemies to the publick Good of this Kingdom; and likewise to reflect on the King:" Far be it from me to think that his Majesty ought, in any wise, to be reflected on; and I think my Client is of the same Opinion, and that he would abhor any thing to the contrary; and therefore I apprehend, that there is nothing in this Paper (take it in the strongest Sense) that shews any Design of reflecting on his Majesty; and suppose it does on his Ministers, yet not one of his Ministers have been yet mentioned, on whom the Reflection is said to be made. Sometimes it is said, that a Reflection against the Ministers is one against the King: But, with Submission, I think it is not; for Princes may sometimes have the Misfortune of bad Ministers, as well as private Persons have the Misfortune of bad Servants; but I believe that Nobody can imagine, that his Majesty hath any such Ministers. And then observe, What have the King's Counsel opened, with respect to the present Ministers of his Majesty? What Evidence have they given of the Defendant's reflecting on these Ministers in the *Hague* Letter? I apprehend, there hath none at all been given, but what intirely depends upon the Construction of that Paper itself; and therefore, in Cases of this Kind, the Question is, How you are to construe that Paper, especially when there is an Information thereon against any Person supposed to be the Publisher thereof? The Gentlemen of the other Side have told you, that you are to understand it in the same Sense as any other Person does; but I apprehend you are not to judge so, because here is a Prosecution against a Person, wherein Facts are undertaken to be proved, which, if done, will subject the Person to Punishment; and that you are to find a Verdict according to the Evidence laid before you; for there is a great Difference between one Person's reading, understanding, and judging of it, for his own Information, and another's doing it, on a Prosecution, in order to convict or acquit the Person charged: So that the Question here is, Whether you think that the Defendant is guilty of reflecting upon the present Ministers of Great Britain, or not, upon the Construction of that Paper, and upon due Consideration of what follows? though I think he is not: For you have heard mentioned to you, from the several Treaties opened, as well as from the *Hague* Letter itself, that there are several Courts mentioned as well as Great Britain; to wit, Prussia, France, Spain, and Germany; and that the Words [certain Ministers] may have a Reference to the Ministers of one of those Courts, and not to the Court of Great Britain: And I hope you have a better Opinion of his Majesty's present Ministers of State, than to think that the Expressions are applicable to them; and, indeed, when you are to make a Construction on that Paper, you must consider, and judge for yourselves, Whether these Ministers deserve such Things to be said of them, or not? And I hope you will be of the same Opinion as I am of; which is, that they deserve them not. In the Beginning of that *Hague* Letter the Words are, ["A Rumour hath been for some time privately spread about, that a Misunderstanding will soon discover itself between the Allies of *Seville*; and that certain Ministers are endeavouring, &c."] The Gentlemen on the other Side are pleased to say, that these Words [certain Ministers] must be understood of the Ministers either of Great Britain, or France, or Spain; but I beg Leave to say, that no such Inference can be naturally drawn, or that no other Ministers of any other Court can be intended but one of these three. Then the Letter goes on, and says, ["that certain Ministers have at length found out, that too close an Union with France, and a War upon the Foot of the Treaty of *Seville*, is quite against the Grain of the People, are endeavouring to bring about an Accommodation with the Emperor."] The Gentlemen say, that this must be applied to the Ministers of Great Britain only. Gentlemen, I believe any Minister of any Court whatsoever must be of that Opinion, and that it is not fitting that there should be a War on the Foot of any Treaty; and I hope

that all the Ministers of these three Courts are of the same Opinion; though the Gentlemen would fix it only upon the Ministers of *Great-Britain*: Nor can I see how it can be said or applied to our Ministers, when the following Words are mentioned, to wit, ["that certain Ministers having at length found out, that too close an Union with *France*."] Why should this be mentioned as a Reason of its being applicable to the Ministers of *Great-Britain*? Have not we had all this time an Alliance, a close Alliance, with *France*? And can it be strengthened by a further or closer Alliance? So that, I think, it is more applicable to the Ministers of other Courts. Gentlemen, I will take a little Notice of what the King's Counsel said, with respect to these Words [certain Ministers]. They told you, that they could not be understood to refer to the Ministers of *France*, because that these Words ["certain Ministers having at length found out, that too close an Union with *France*, and a War, &c."] excluded the Ministers of *France*; tho' I apprehend, as I have said already, that, from thence, they are more applicable to the Ministers of other Courts than our's. Then they told you, that these Words [certain Ministers] could not refer to the Ministers of *Spain*, because of the ill Effects which, the Letter mentions, would follow, on endeavouring to bring about an Accommodation with the Emperor, one of which is called a necessary Effect: ["Another necessary Effect (for so I think I may call it) of such a Measure, at present, will be a Conjunction of *France* and *Spain*; and a certain Court may have the Mortification to see those two Courts united against them more strongly than ever, by their extraordinary Management, &c."] Gentlemen, how is it possible to apply this to the Court of *Great-Britain*, or its Ministers, when we were, at the same time, in Amity and Alliance with *France*; and likewise when there was an Alliance or Treaty entered into between *Great-Britain*, *France*, and *Spain*? Was there any Likelihood for us to see such a Conjunction? Again, the King's Counsel said, that it would be hard for us to tell what Ministers were meant by these Expressions: To this I must answer, that I think it will be very hard, indeed, to make a Publisher liable to be punished, because he cannot explain or make out a Piece of foreign News sent him; especially when the other Side hath got all the Treaties of the publick Affairs in their own Custody: For my Part, I know nothing about them, and I am sure that my Client knows as little; and therefore I don't think that this Piece of News is any Reflection on our present Ministers, especially if you compare it with their Actions and Merits; and consequently you would not, I hope, make a Person guilty of that, when you cannot say, that that Charge is the least applicable to them; and I hope that you, and every Person here, have a better Opinion of our present Ministers; and therefore hope, that you will put such a Construction on it, as that it is not a Reflection on them, and consequently that you will not find the Defendant guilty of publishing any Libel against them, though he cannot explain that Piece of foreign News. The Gentlemen of the other Side say, that there are other Parts or Expressions in the Paper that give a Light to it, such as *Germanized Patriots*: I don't pretend to understand the Meaning thereof, and I hope you will as little pretend thereto: They said, they who were Enemies to the Ministry were called so; but as they have given no Evidence thereof, you are not to take notice of it. Again, they say, that these Words ["one immediate Effect may be the Seizure of that vast Pledge which *Spain* hath at this time in her Hands"] serve to explain and refer to the Court of *Great-Britain*, though they have given no Evidence thereof; nor do I see why this should be applied to *Great-Britain* only, because there are other Courts or States that have considerable Stocks and Effects, that may be applicable thereto. And then they mentioned another Thing, which they wanted to make the Expression refer to *Great-Britain*, [which is, "that the Ministers had been undoing what they had been doing for five Years past;"] which they say carries it back to the Treaty of *Hanover*, entered into in September, 1725: But I think it proper to remark to you, that the Gentlemen themselves have acquainted you, that, about that time, the *Dutch* were as much dissatisfied as we were; and therefore I think it is hard to conjecture whose Ministers are meant by that Expression. Gentlemen, I shall not trouble you with further Observations on that Paper; but leave it to your own Consideration: Only observe, though the King's Counsel were pleased to say, that the *Hague* Letter was of an *English* Growth, yet they have not proved it to be so, nor have they told you who is the Author of it; though I think, from the Import of it, it plainly appears to be of a foreign Growth, and is placed under the Article of foreign News: And we can prove, that (if we had not been deprived of the Means of doing it) the Letter came from abroad as a Piece of foreign News: for you are to consider, that when the Defendant was seized upon that Account, the Persons employed therein broke open his Scrutore, and searched his Pockets, and took away, in a most unwarrantable Manner, his Papers and Letters, and other Things, which they still retain; and, amongst the rest, this *Hague* Letter, which has deprived him of some Part of his Defence, by disabling him to produce that Letter, though he is expected to produce that original Letter still, which is impossible to be done now; therefore we expect, when you consider these Circumstances, that you will, in point of Evidence, expect less from us, and more from them. I shall not trouble you, at present, any further. My Lord, I apprehend they have failed in the Description of their pretended Libel: They have stiled it a certain false, scandalous, and seditious Libel, (intituled, N^o. 235, *The Country Journal*; or, *the Craftsmen*, by *Caleb D'Anvers*, &c.) I apprehend that this Number 235, being at the End of the Paper, cannot be the Title, or any Part of it; I believe there have been some Precedents to the contrary.

Lord Chief Justice. I don't know how you, or any other Person, can distinguish one Journal from another after a better Manner: I shall not go contrary to my own Conscience, nor overturn the Opinion of those before me: If you think otherwise, you know where to apply to.

Mr. Boodle. My Lord, and Gentlemen, I am also Counsel for the Defendant: And though he is the Person that is now more immediately standing before you, and concerned in this Prosecution; yet I think it is not confined to him only, but will extend to Things of a more publick Nature, and consequently to the Publick in general; I mean the Suppression of the Liberty of the Press, which Liberty hath been always esteemed as a great Privilege, and of great Advantage to this Nation: That this Prosecution is of such Extent, will appear from the Paper itself complained

of, and the Evidence relating thereto. The Case hath been fully opened by the Gentlemen on the other Side, with many Aggravations pretended to be attending it; and these Aggravations are not confined to this Paper only, but extend to all the other News-papers in general: And should I have the Liberty to mention the common Opinion of Mankind, with relation to this Weekly Journal, I believe that Assertion of its being a false, scandalous, and seditious Paper, would be thought groundless; but that it hath tended very much to their Satisfaction, in foreign and home Affairs. But we are now confined to this Paper, which is dated the 2d of January, 1730. Gentlemen, this Paper contains a Paragraph of foreign News, or Intelligence; for such are oftentimes of Use to those who deal in foreign Trade: Now, this foreign Intelligence complained of, and for which the Defendant is prosecuted, is not positively asserted as a Truth, but only as a Saying; ["A Rumour hath been for some time spread about privately, &c."] Besides, it is added in the Conclusion thereof, ["I cannot take upon me to justify the Truth of this Report; but, as it hath been pretty confidently buzzed about, I thought proper to let you know what is said upon it; and if it should appear to have any Foundation, you may expect to hear further from me on the Subject."] Gentlemen, the Information contains two Charges, with regard to this Paper: The first is, for spreading false News; and the second is, for publishing a false, scandalous, and seditious Libel against his Majesty's Administration of the Government, and against his principal Officers and Ministers of State, and also against the Treaty of *Seville*. Gentlemen, as these Things are only asserted and averred in the Information, by Innuendoes, it is incumbent on them to prove them: And, in order to this, they have produced this News-paper, which is published for the Entertainment and Use of the Publick, containing foreign and home News, or Affairs; among which there is a Paragraph which says, (as from the *Hague*) ["A Rumour hath been for some time privately spread about, and begins to gain Credit here, that a Misunderstanding will soon discover itself between the Allies of *Seville*; and that certain Ministers are endeavouring to bring about an Accommodation with the Emperor."] This is all that is asserted; for all the rest of the Letter are only as an Induction, or Inference drawn from the Supposition that such a Piece of Intelligence is true; and if so, then it says, that the Conduct of these certain Ministers hath been wrong before, and hath occasioned unnecessary Expences to be laid out, and will occasion further Expences to be laid out; and adds, ["I am far from designing to insinuate from hence, that an Accommodation with the Emperor is a wrong Measure; on the contrary, I wish it had been thought a right Measure long ago."] And in another Part of it he says, ["and though it must be confessed to be very desirable at present; yet it seems to be attended with very fatal Consequences, and almost insuperable Difficulties."] And then he mentions the Consequences; as the Interruption of Trade, and the Conjunction of *France* and *Spain* against a certain Court, in general, without naming it; and adds some other Effects or Consequences; but then these Effects or Consequences are all upon this Supposition, that these certain Ministers do bring about an Accommodation with the Emperor; though he adds, at the Conclusion of the Letter (as I said before) ["that I cannot take upon me to justify the Truth of this Report; but as it hath been pretty confidently buzzed about, I thought proper to let you know what is said upon it; and if it should appear to have any Foundation, you may expect to hear further from me on the Subject."] Now, Gentlemen, the Question is, Who is meant by these Words [certain Ministers]? And by the way, though it is said in the Information, that this Piece of foreign News was a high Reflection on his present Majesty, yet I cannot see any Thing therein that hath the least Tendency to such a Reflection; nor is there indeed so much as the Word [Majesty], or [King of *Great-Britain*], or even the Word [*Britain*] itself, in any Part of that Letter; nor hath there been the least Evidence offered to you, that it does any ways reflect on his Majesty; so that this does not fall under your Consideration: And this being laid aside, the next Thing to be known is, what Ministers these are that are meant by these Words, ["and that certain Ministers having at length found out, that too close an Union with *France*, and a War upon the Foot of the Treaty of *Seville*, is quite against the Grain of the People, are endeavouring to bring about an Accommodation with the Emperor."]? The Information hath averred, that by these Words [certain Ministers] are implied and meant the principal Officers and Ministers employed and intrusted by his present Majesty; but who are they then? To be sure it will not be said, that the Paper does in the least mention them to be our present Ministers; or that any of you, I hope, hath such Thoughts concerning them, as to believe that they are guilty of that which is charged on them by the Information: Nor do I think that they are meant by other Parts of the Paper; because you have heard already, that these Things may be applied to the Ministers of other Courts and Countries, as well as *England* or *Great-Britain*. The Paper hath left the Meaning very much in the Dark, and to a Conjecture only; for it may refer to one Set of Ministers as well as another. I say, Gentlemen, that the pretending to ascertain or determine whose Ministers are meant by these general and indefinite Words, is at the best only a Conjecture. And with Submission to my Lord's Directions and Judgment, I must tell you, that with relation to Scandal or Slander, the Law lays it down as a Rule to be observed, that there are two Things necessary: The first is, that the Person, of whom the Slander is used or spoken, ought to be certain, and ought not to be left to People's Imagination or Conjecture: And the next Thing is, that the Slander shall be evident and plain from the Words themselves, and not supported by any Innuendo; I say they must be plain, positive, and direct. You have been told, that you are to understand this Paper, as every common Reader in a Coffee-house; I beg Leave to say that you are not; for when you are in a Coffee-house, you have the Liberty to conjecture and guess at the Meaning of a Piece of News, as well as any other Person there; and Nobody can be subjected to any Punishment, if you are mistaken therein: But when you are here, in a Court of Judicature, you must consider that you are upon your Oath, and that you are not to take that Liberty to conjecture or guess at the Meaning of Things; because, if you happen to be mistaken in your Conjecture, you will make him guilty of the criminal Charge which he is accused of, and subject him to the Punishment inflicted thereon; and you are like

wife to consider, as I hinted before, that, in Scandal, the Law requires that both the Person slandered, and the scandalous Words themselves, ought to be certain, and not want Innuendos to make them out; and that an Innuendo ought neither to alter, enlarge, or supply the Sense of the Words, when doubtful or defective, because it would be unjust: And, indeed, whenever an Innuendo is allowed, in other Cases, to explain a doubtful Matter, it should be rather in Favour of the Person accused than against him, especially where the Words spoken may be applied and referred more Ways than one: So here, in fixing a Meaning on the Words [certain Ministers], which the Information, by an Innuendo, explains to be the principal Officers and Ministers employed by his present Majesty, you are to consider whether these Words may not be applied to the Ministers of other Courts and Countries; and likewise to consider, whether these Words [certain Ministers] (so understood by the Information to be his Majesty's) are to be understood or meant by those Officers or Ministers employed by his Majesty at Sea or Land? Or are they his Ministers at Home or Abroad; or whether they are his Officers civil or military? Now, I say, suppose you should find this Paragraph of foreign News to be a Libel, or a Scandal thrown upon his Majesty's Officers and Ministers (as I hope you will not), can you say or declare on Oath, who are the particular Persons thus slandered or defamed? Have you any certain Rule, by this Paper, to guide your Judgments? Can you say, on your Oath, with any Certainty, whether these Officers or Ministers, so defamed, are those at Home or Abroad, or civil or military? Again, I suppose, for Argument's Sake, that though you should be of Opinion, that this Piece of foreign News is a Libel or Scandal upon his Majesty's Officers or Ministers; yet I submit it to you, whether you can say, on your Oaths, that that Piece of News, contained in this Journal, does amount to a false, scandalous, and seditious Libel, as it is asserted and averred, by an Innuendo, in the Information? And I submit it to you, with all Deference to my Lord's Judgment and Directions, whether it is not incumbent on them to prove, that that Piece of foreign News is false, scandalous, and seditious, before you can find it, by your Verdict, to be so? And, indeed, the chief Thing in this Paper, or Letter, that the Defendant is charged with in the Information, is, ["That a Rumour hath been for some Time privately spread about, that certain Ministers are endeavouring to bring about an Accommodation with the Emperor."] I say, this is the chief Thing that is mentioned in the *Hague* Letter; though, in the Conclusion of it, it is said, ["I cannot take upon me to justify the Truth of this Report."] For all the rest of that Letter (as I said before) are mentioned, or set down, only by way of Conclusion or Inference, that such and such Things will be the Effect or Consequence, if these [certain Ministers] can bring about that Accommodation with the Emperor. Now, let us take it either Way; suppose that, at the Time of the Publication of this *Hague* Letter, that this Accommodation or Treaty with the Emperor had not been brought about; how can it be said to be false, and so on, when the Letter does not affirm it for a Truth; but only says, that ["a Rumour hath been for some Time privately spread about, that certain Ministers are endeavouring to bring about an Accommodation with the Emperor;"] and adds, in the Conclusion of it, ["that he cannot take upon him to justify the Truth of this Report."] And then let us suppose, that they were endeavouring to bring about that Accommodation or Treaty with the Emperor; and that it was actually brought about and concluded about the Time of the Publication of that Letter, which was in the Year 1730; then, to be sure, the Allegation was true, and therefore could not be false and scandalous, or seditious. As to that Accommodation or Treaty with the Emperor's being true, I hope we shall give you full Satisfaction, notwithstanding the great Difficulties that the Defendant at present labours under: We shall give you the best Evidence that the Nature of Things will admit of, and which is always allowed to be sufficient; for there are some Things which are self-evident, and there are some Things that carry in them what every body knows.

Lord Chief-Justice. I don't altogether know what you aim at: I should be glad to know how you would really understand these Expressions. And as for your saying, that you can prove what is charged on the Defendant to be true, it is my Opinion, that it is not material whether the Facts charged in a Libel be true or false, if the Prosecution is by Indictment or Information; and that Writing or Printing may be libellous, though the Scandal is not charged in direct Terms, but only ironically; or although there be only the initial Letters of the Name, or even a fictitious Name, if the Jury plainly perceives it to point at a particular Person; and that not only the Contriver and Procurer, but even the Publisher of a Libel, are punishable; and that even a private Man's Character is not to be scandalized, either directly or indirectly; because there are Remedies appointed by the Law, in case he has injured any Person, without maliciously scandalizing him in his Character: And much less is a Magistrate's, Minister of State, or other public Person's Character to be stained, either directly or indirectly; because the Law hath pointed out another Remedy than publishing Libels, if they have injured any Person, either in a public or private Capacity; and the Law always punishes Libels, even among private Persons, because they flow from Malice, and tend to create Disturbance, Quarrels, and Revenge between them, their Families and Kindred, and disturb the public Peace: And the Law reckons it a greater Offence when the Libel is pointed at Persons in a public Capacity, as it is a Reproach to the Government to have corrupt Magistrates, &c. substituted by his Majesty, and tends to sow Sedition, and disturb the Peace of the Kingdom: Therefore, I shall not here allow of any Evidence to prove that the Matters charged in the Libel are true; for I am only abiding by what have been formerly done, in other Cases of the like Nature. If you think it wrong, apply to the Court, and they will do you Justice.

Mr. Botle. My Lord, then I must submit it to your Lordship, whether this will not tend to the utter Suppression of the Liberty of the Press, which hath been so beneficial to the Nation in general: And, my Lord, I humbly apprehend, tho' a Publisher of News happens to be mistaken in what he publishes, it cannot be called malicious nor seditious, especially when no particular Person is mentioned; but only an Error, committed thro' Ignorance, or Misrepresentation of his Correspondents. Again, my Lord, if the Defendant is not allowed to bring in his Evidence that some Parts of his News are true; then, if he is found guilty, he is found guilty

of all that is charged on him in the Information, though he is only guilty of Part thereof. I think this Evidence will be allowed between particular Persons, with relation to their private Affairs; for they will not be found guilty of the Whole, when they are only guilty of a Part; and why should not the same be allowed with respect to public Affairs? As the Star-Chamber is now abolished, I don't know how far that Doctrine may be adhered to. I should be glad to have one Instance or Authority of this, and of there being no need to prove News to be true; and also where a Publisher of News is not allowed to say that this Piece of News is true, because it relates to the public Affairs of the Nation. Is there no Distinction to be made between false News and true News; and cannot we now animadvert, or take notice of public Affairs, and insert them in the Papers, as well as formerly? If this is the Case, it will be of dangerous and fatal Consequence indeed, if Matters of State, or public Affairs, are not to be meddled with, or inserted in the News-papers, notwithstanding they are true, but at the Peril of him that does it? They may as well, at once, take away the Liberty of the Press; and then we shall all live in Darkness and Ignorance, which may occasion Disorders enough in the Nation. Therefore, I submit it to your Lordship, whether this will not be of dangerous Consequence, to punish a Person for publishing true News as well as false; and whether it can be justly said in the Information, that the Defendant intended to publish false News?

Mr. Strange. My Lord, I beg Leave to call a Witness or two. It was insinuated, by the Gentlemen on the other Side, that the Extract of the *Hague* Letter was of the Growth of our own Country; and put it upon us to prove that it came from the *Hague*, by producing the Letter itself. My Lord, in order to take off that Imputation, it will be necessary to shew, that they have put it out of our Power to do so; therefore our Evidence will be, in the first Place, to shew, that when the Defendant, Mr. *Francklin*, was taken into Custody by the Messengers, they broke open the Defendant's Scrutoire: and, I think, they also searched his Pockets, and took away his Papers, and among which were Letters, and this amongst the rest. The next Part of our Evidence shall be to prove, as have been opened, that we have published true News, and not false, as is charged in the Information; and, indeed, the Information ought rather to have been for forestalling true News, and not for publishing false News; for the endeavouring to bring about that Accommodation with the Emperor took Effect: For, my Lord, we will shew, that we applied in a public Manner, that the Defendant might be at Liberty to take Copies of the Treaties of *Hanover*, *Seville*, and *Vienna*, in order to make use of them at his Trial; and when we had taken all proper Methods to have Copies of them, we were told, that the Treaty of *Vienna* was a secret one, and not yet made public, and consequently not inrolled in any of the public Offices; and that no Copy could be given of it, to produce in Court: When we have proved this, we hope it will be sufficient to shew, that we have not published false News, as charged in the Information; especially as we have done all that can be done, in order to produce a Copy thereof.

Call *William Ayers*. (*Who appears.*)

Mr. Strange. Do you know the Defendant, Mr. *Francklin*?

Mr. Ayers. Yes.

Mr. Strange. Was you present when he was taken into Custody, for publishing the *Craftsman* the 2d of January, 1730?

Mr. Ayers. Yes.

Mr. Strange. Will you give an Account of what happened?

Mr. Ayers. The Messengers came to my House, for I was a Constable, and desired my Assistance, to go with them to Mr. *Francklin's*, which I did; and they searched for Papers in his House and Shop, and they broke open his Scrutoire, and took away what Papers they could find; and Mr. *Francklin* desired them to leave some of the Papers, because they would be of Service to him, but not to them; but they would not, but took them away.

Mr. Strange. Did he endeavour to save his Papers as much as he could?

Mr. Ayers. He did not; but his Wife endeavoured to do it, by snatching at them, though to no Purpose.

Mr. Strange. Did they search his Pockets?

Mr. Ayers. I did not observe them do that.

Mr. Strange. Did they suffer him to take an Account of these Papers, in order to know what they were?—**Mr. Ayers.** No.

Mr. Strange. Do you know what they did with these Papers?

Mr. Ayers. No.

Mr. Strange. Did you go along with them?—**Mr. Ayers.** Yes.

Mr. Strange. Did you know they were Messengers?

Mr. Ayers. Yes; he shewed me his Authority, and told me that he was the King's Messenger.

Mr. Strange. Hath Mr. *Francklin* had them again?

Mr. Ayers. I believe not.

Mr. Strange. Hath he asked for them?—**Mr. Ayers.** I know not.

Mr. Strange. Were they sealed up or not?

Mr. Ayers. I cannot remember that.

Mr. Strange. Was Mr. *Francklin* desired to set his Seal to them?

Mr. Ayers. I cannot be sure; but I believe he was not desired to do so.

Mr. Strange. Where were these Papers found?

Mr. Ayers. I think they were in the one End of the Shop; they were wrapped up in a Bundle.

Mr. Strange. Was the Inside of them printed?—**Mr. Ayers.** I know not.

Mr. Strange. Call *Thomas Rawlins*. (*Who appears.*)

Mr. Att. Gen. My Lord, I find that they are to call this Witness to prove that they desired Copies of the Treaties; which is to no Purpose, and cannot be allowed.

Lord Chief Justice. I am very well satisfied, that I cannot admit it.

Mr. Strange. My Lord, it is only to shew, that the *Hague* Letter was not a Piece of false News.

Mr. Attorney General. My Lord, did ever any Man think it necessary to prove every Part of the Libel, when it is not material whether the Matter, or scandalous Words, or News in the Libel, be true or false, or charged in direct Terms or not; or whether the Persons be named, or only pointed at, as have been already hinted; though Mr. *Botle* has called on me to shew some Authority or Precedent for some of these Things?

Things? I do say, that on the Cases mentioned in the 5th of *Coke's Reports*, p. 125. and also in *Hobart's Reports*, p. 215. and 5th of *Madox's Reports*, p. 167. and 9th of *Coke's Reports*, p. 59. The first says, That every Libel is made either against a private Man, or against a Magistrate or publick Person: If it be made against a private Person, it deserves a severe Punishment; and if it be made against a Magistrate, or other publick Person, that is still a greater Offence, and deserves a greater Punishment; because this concerns not only the Breach of the Peace, but is a Scandal to the Government. The other Reports take Notice of the other Points which I have mentioned: And I must say, that it would be the most absurd Thing in the World to imagine, that the Law had taken a better Care of the Character of a private Person, than of a Magistrate, or publick Person, employed and intrusted by his Majesty in the Affairs of State. Therefore, I submit it to your Lordship, whether such an Evidence, to prove that the News published is true, ought to be admitted.

Lord Chief Justice. I have given Mr. *Boyle* my Opinion already about it; and if it is not according to their Liking, they know where to apply to have it rectified.

Mr. Boyle. My Lord, in effect, it hath been called an Absurdity to think, that speaking the Truth of any Magistrate, or other publick Person, in the News, can go unpunished; because if that Magistrate or publick Person have done any Injury, then it was said; that there is a Remedy provided another Way than by publicly exposing him, and defaming his Character; as well as there is a Remedy provided for having Satisfaction of a private Person, for any Injury done by him, without scandalizing him, directly or indirectly, in any publick Paper. But I should be glad to know how it must be gone about: For Example, here is a principal Minister of State, that hath injured a Person that is a Publisher of a Paper; where can he have Redress, supposing the Parliament not sitting?

Lord Chief Justice. I am of the same Opinion as before.

Mr. Solicitor General. I thought, that really such a Thing as that would not have been taken Notice of; because it is plain to every Person, that we have a Remedy against a Minister of State, as well as against any other Man, without defaming him publicly; and likewise any Author, Printer, or Publisher, or other Person, may apply to a proper Place for a Remedy against him, if they think that any Court, or Jury, have not done them Justice.

Mr. Noel. My Lord, I beg Leave to say a few Words on the Defendant's Behalf. It is well known, that the Design of this Paper of the *Craftsman*, which is published weekly, is to entertain and benefit the Publick, and I believe it has answered these Ends: And I hope the Jury will consider the Intention thereof, with the Circumstances and Inconveniences that the Printer or Publisher of News-papers lie under; and I hope you will consider the Defendant only as a Collector of News from all Parts of the Country, and likewise from foreign Parts, for the Advantage of those People here that trade to and from those Parts; and that it is possible for the Defendant's Correspondents, after all the Care they have taken, sometimes to be a little mistaken in their Intelligence, or not so correct in wording them as they ought or might be, without any Intention or malicious Design of Injury to any Person; and therefore, if such Things were to be always punctually and precisely scanned, and the Printers and Publishers thereof prosecuted, and subjected to Punishment, it will be of very dangerous Consequence; because we should not have any Intelligence or News-papers at all, and consequently be ignorant of what happens daily at home or abroad, and thereby occasion an Interruption in Trade, so beneficial to this Nation. Besides, it is hoped that you will consider, that this Piece of News, in the *Hague* Letter, is not laid down as a Truth to be depended upon, but only as a Rumour that had been spread about in that Place: And the Writer of the Letter adds, in the Conclusion thereof, that he does not take upon him to justify this Report; and that if it should appear to have any Foundation, he should hear further from him. Again you will consider, as have been already mentioned to you, that the Parts of the same are applicable to other Courts, and that it cannot be applicable to *Great-Britain*, or its Ministers, without Innuendos, which are not to be used in Prosecutions for Slander or scandalous Words. Also consider, that they could not draw an Innuendo in the Information to include his present Majesty; nor have his Counsel pretended to shew any Evidence, that the *Hague* Letter had any Tendency to reflect that Way; and, indeed, the Innuendo to include his Ministers is very far fetched, and very much forced. Besides, the Writer of that Letter does seem to approve of these certain Ministers Measures of endeavouring to bring about an Accommodation with the Emperor, by sayings, ["That it must be confessed, that these Measures are very desirable at present."] So that, upon the whole, I cannot see that the Letter is applicable to our Ministers, or that it contains a Libel upon them, or that it in any ways answers their Character; and I hope, Gentlemen, that you will be of the same Opinion in your Verdict.

Mr. Taylor. My Lord, I hope your Lordship will likewise indulge me with a very few Words on the Behalf of the Defendant: As the Government is concerned in this Cause, so the Liberty of the Subject is also greatly concerned therein. The Facts which you, Gentlemen, are to try, are, whether the Defendant, Mr. *Francklin*, printed and published this Paper; and whether you can, upon your Oath, say, that it is a false, scandalous, and seditious Libel; and, for that End, it will be necessary that you take the Paper into your serious Consideration, not as it is inserted in the Information, with a great Number of Innuendos, but as it was originally; and see if it contains any scandalous Reflections on our present Ministers particularly. Gentlemen, it is not sufficient to say, that the Information is a Libel; but you are to judge of its being one by the Words themselves, and as they stand in the Paper abstracted from the Innuendos; and I do say, that it will be impossible to find it a Libel on our present Ministers, if you judge of it so; for there are no such Words therein as the Ministers of *Great-Britain*; I believe there are no less than thirty-seven Innuendos in this Information, and you cannot find it a Libel when stuffed with these Innuendos. Gentlemen, in the former Part of it, you will be pleased to observe, that they say, that the Defendant is a constant Publisher of these Libels; and yet they have not proved that so much as one of them was ever told by the Defendant himself. And, Gentlemen, with respect to the Innuendos, it is to be observed, that there was a famous Cause in

in King *Charles the Second's* Time. In

the 14th May, 1669, there was a Writ of Error, and the Judgment or Sentence reversed; and their Lordships declared, that Innuendos ought not to be allowed. Nor are you to understand it here, on Oath, as you may do in a Coffee-house by Conjectures; therefore I hope, upon Consideration of these Things, that you will not find this Piece of News a Libel.

Mr. Attorney General. My Lord, I beg Leave to make a short Reply not for what they have said, nor for our want of Proof; but I think some Things very strange which they have insisted on. One of them is, that there is not sufficient Proof of the Publication of this Paper. As to that, I beg Leave to say, that I never saw the Publication of a Paper more clearly proved; and I believe they never saw it themselves in any Instance whatsoever; for your Lordship may remember, that Mr. *Smith*, the first Witness, swears, that he applied to the Defendant, Mr. *Francklin* himself, when he was in his Shop, and asked for six Journals of that Day, the 9th of January, 1730, and two of the *Saturday* before; and that the Defendant ordered his Servant, then in the Shop, to deliver them to Mr. *Smith*, which he did; and the Servant received the Money for them; and therefore his ordering his Servant to deliver them, is the same as if he had delivered them himself; there cannot be a clearer Proof. They make a Scruple, because he did not ask particularly by Name for such a Journal, though I think he asked to the same Effect, by asking for six of his Journals of that Day; for the Word [his] may take in the Words [Country Journal, or Craftsman] because that is the Journal which he prints and sells; besides, have they done any thing on their Part to prove that other Persons sold other Journals of that Name or otherwise? or have they offered any thing to contradict or weaken his Evidence? Therefore I think that our Witness is the strongest for the King that can be. It was said that great Inconveniences and Dangers might happen to Publishers, if News were so scanned or sifted. As to that, I think every Publisher ought to be careful of what he publishes; for it is no Part of the Printer or Publisher's Trade to scandalize whom they please, for that would be turning Printing and Book-selling into libelling; nor is the Liberty of the Press, which they so much cry up, and say is in Danger of being utterly suppressed, to be turned into a licentious and disorderly Abuse of the Press. Again, it hath appeared before your Lordship, with respect to the Proof of the Defendant's being the Publisher, that there is not only this Witness's Evidence thereof, (against the Credit of which no Evidence hath been offered) but there are other Witnesses who confirm his Evidence, such as Mrs. *Dod* and her Servants, and Mrs. *Pierce* and her's, who had great Numbers at his Shop weekly, and paid for them; and that Mrs. *Pierce* used to have about 7 l. worth weekly; it is likewise confirmed by the Collectors and Servants at the Stamp-Office. After all this, can it be doubted that the Defendant is guilty of the Publication of this Paper, especially when the Defendant's Counsel have not contradicted them, or offered any thing to invalidate or weaken their Evidence? I take the Publication to be undeniably proved; and it would be but mispending of Time to say any more on that Head. The next Thing is, whether we have sufficiently proved that the pretended *Hague* Letter inserted in that Paper, is a Libel as charged in the Information; as to that, I may say that there hath not been so much as one single Objection offered against the Construction we put upon it, I mean of its being all applicable to his present Majesty, and his principal Officers and Ministers of State; I mean not one of any Weight, or which has the least Colour of being applicable to any other Court, Country, or Person whatsoever. The Words are [certain Ministers.] These are the Persons that the pretended *Hague* Letter charges with Perfidy, ruining their Country, &c. and want to have a Meaning put upon them; that is to say, to what Court or Country are they applicable. Now, consider what is said of these certain Ministers: The Letter says, ["A Rumour hath been for some time spread abroad, that a Misunderstanding will soon discover itself between the Allies of *Seville*; and that certain Ministers having at Length found out, that too close an Union with *France*, and a War upon the Foot of the Treaty of *Seville*, is quite against the Grain of the People, are endeavouring to bring about an Accommodation with the Emperor."] Now, Gentlemen, you know that the Allies of *Seville* are the King of *Great-Britain* and the *French* King, and the King of *Spain*. And then consider, that these certain Ministers are charged with Perfidy in breaking that Treaty, who, to be sure, must be one of these three Courts, *Great-Britain*, *France*, or *Spain*, who were empowered to make it; for no other could be guilty of breaking it, but one of these three who made it: Now the Letter-writer tells us plainly, that it is neither the Ministers of *France*, nor the Ministers of *Spain*, that he thus charged with Perfidy in breaking that Treaty; for he tells us, that one necessary Effect of such Perfidy will be the Conjunction of *France* and *Spain*; and that a certain Court would have the Mortification to see these two Crowns united against them more strongly than ever: This, as I said before, amounts to a Demonstration, that neither the Ministers of *France* nor *Spain* are charged with that Perfidy, in breaking that Treaty: If so, then there is but the Ministers of one Party left, to wit, of *Great-Britain*; and I must say, that it is as plain as if the Ministers of *Great Britain* had been in express Words. Gentlemen, this is no forced nor strained Innuendo; but an Innuendo that naturally and necessarily flows of itself, and which you all cannot but presently draw. Gentlemen, there are other Parts of the Letter, which serve to support and confirm this Construction, which I mentioned in the Opening; such as these, to wit, that another Effect of that Perfidy would be the Seizure of that vast Pledge, which *Spain* hath at this Time in her Hands; and that these Ministers were undoing every Thing they had been doing for five Years past; which carries it back to September, 1725, when the Treaty of *Hanover* was concluded. It was said, that you must not understand it as you would do in a Coffee-house, because of its dangerous Consequences. To which I answer, That there is no more Danger in understanding Things here than there, if they are plain (as this is), and do but exercise their Sense and Reason in both Places. Gentlemen, if you acquit the Defendant, you must say on your Oath, that the Letter-writer did not mean the Ministers of *Great-Britain*; and can you say that he did not, and that it is not applicable to them? I told you in the Opening, to this or the like Effect: That Writing or Printing may be a Libel, though the Persons are not particularly named therein; and that it is no hard Matter to scandalize any Person

* This of *Mirecourt* was so termed in On Feb. or printing present To suppress said Journal where it published by Mr. and *Eyre* Defendant nor could the Jury Robert as he was which the being exact as there which The Defendant Joseph May 19 ment as John Crofts to Robert Bridewell Joseph C his Head. Vol.

by Circumlocution, fictitious Names, &c. as plainly to be understood as if their Names were particularly mentioned; and that the Law construes them accordingly, by Innuendos, because they cannot be otherwise construed; and this hath been the Practice of the Law for some Hundreds of Years; and therefore the Defendant's Counsel telling you that it is doing People Harm to bring Things in by Innuendos, is only amusing you with Words; for it is a plain and a just Law, and the Law would be defective, if it were otherwise, and People would be always defaming one another by the like Methods. I told you of the Case of Mr. *Mist's* Journal, in 1728: it was a scandalous Libel, under the fictitious Names of *Esseff* and *Sepbi*; which the Jury understood plainly to be so, and brought in their Verdict accordingly against the Printer and Publisher thereof*. I shall mention another Case, of Mr. *Matthews* the Printer, for High-Treason: This was a very notorious and publick Case, relating to a certain Person called the *Chevalier de St. George*: There are a thousand Chevaliers in the World, and yet the Meaning was plainly understood to be the Pretender; no less a Crime than High-Treason. There were eleven Judges, I think, that sat on the Bench, and the present Lord Chancellor (*King*) presided; and they understood the Queries published as every common Reader would; and the Jury, being convinced in their own Conscience, understood it in the same Manner; I mean, no less a Crime than High-Treason, and he was executed for the same. And, indeed, any Man may write Treason at his Pleasure, after that Manner, if there was not this Way of construing it. Again, it is said, that this cannot be a Libel, though the Words were understood to be applicable to the Persons mentioned in the Information; because what is affirmed in the Letter, about the Accommodation or Treaty with the Emperor, can be proved to be true: As to that, I must say, that it is no matter whether the Words be true or false, if it is published as a Libel, and the Prosecution be by Indictment or Information. Then it hath been said, that the Defendant is a Publisher of News, and that this Letter was sent to him from the *Hague*, and that he inserted it as such in his Journal: As to that, I do say, that if this Letter had been really sent to him from the *Hague*, it would be still a Libel; because it is not in his Power to publish what he pleases, or what may be construed defamatory, let it come from what Quarter it will, whether from abroad or at home; for, as I said before, it is no Part of his Trade to scandalize whom he pleases. But they have not even proved, that that Letter was sent to him from the *Hague*: All that they have done it, that they have called a Constable, who says, that the Messengers searched for Papers, and took away some; but does not say that they were written Papers, or that this *Hague* Letter was among them; no, the Papers he means were only some criminal *Craftsman*. Besides, if any other Thing had been seized, such as that pretended *Hague* Letter, upon Application made to his Majesty, or the Secretaries, he might have had them returned; but the Gentlemen do not pretend that they made any such Application. Then they say, if this Piece of News is deemed as a Libel, it will have a bad Consequence; for no Person will print any News at all, and then the People will not know how Things or Affairs go: This is very extraordinary, indeed; for the Defendant is not charged in the Information for publishing the Piece of pretended News, to wit, "That a Rumour hath for some Time privately been spread about, &c." No; but he is charged for making an Application, and saying, that the Ministers are guilty of Perfidy, and ruining their Country, &c. Next, Gentlemen, I would have you to observe, that it is no Part of your Office to consider or determine, whether this *Hague* Letter is a Libel or not (though the Defendant's Counsel insinuated that it was a Part thereof): You are only to consider, whether the Expressions therein are meant to refer to the present King and his Ministers, and are properly applicable to them. But whether this amounts to a Libel or Crime, is only the Office of the Court to determine: For, suppose a Man was accused of Felony, the Court will determine whether it amounts to it, or not. It is so in High-Treason, and all Misdemeanours, in which the Jury is to determine the Facts, and the Judges are to determine the Crime and Punishment, as being Matters of Law: And it is confounding the Office of the Court, and of the Jury, to pretend to do otherwise; and it is likewise a perverting of the Law: This I say, with great Submission to your Lordship. Then it was said, that there was nothing in that *Hague* Letter, that did relate to or imply any Reflection upon his present Majesty: But, Gentlemen, that you may not be led into any Error by such an Assertion, and Distinction between the King and his Ministers, I would have you to consider, that here is a Charge on the King's Ministers for Mal-administration, and for carrying on a Treaty, which occasions Perfidy, &c. Now, I would ask you, can Treaties be carried on without his Majesty's Direction? And therefore I say, that such a Charge as that is a Libel on the King himself, as well as on his Ministers, who are impowered and di-

rected by him. The same may be said with respect to Magistrates and Judges; for they are originally of his Appointment, and the Courts are the King's, and he makes them, and is at the Head of them, and without him they cannot subsist: So that I say, that a Reflection on the King's Ministers, Officers, Magistrates, &c. is a high Reflection on the King himself. There have been several other Things mentioned, which I shall not touch at, because I think they are not material. There was another thing mentioned, which was, that if this *Hague* Letter was construed a Libel, it would tend to the utter Destruction of the Liberty of the Press. My Lord, I am really at a Loss to know what Sort of Liberty they mean by it; I hope they don't mean a licentious and an unbounded Liberty, to libel and scandalize his Majesty, or his principal Officers and Ministers of State, or his Magistrates, or even any of the meanest of his Subjects, whenever they think fit; for that would be a dangerous Liberty indeed, and be of a very pernicious Consequence. Gentlemen, I would have you to consider, that even the Prerogatives of the King are founded on the Law and limited by it, and so are all other Things relating to his Subjects; and it cannot be supposed, that a Printer only is exempted, and at Liberty to use his Press for what Purposes he pleases; if he is, I desire now, that the Defendant's Counsel would point out that Law: No, the Law is not so absurd as to allow such a Liberty of the Press. The Liberty meant, is to be understood of a legal one: He may lawfully print and publish what belongs to his own Trade; but he is not to publish any Thing reflecting on the Character, and Reputation, and Administration of his Majesty, or his Ministers; nor yet to stain the Character or Reputation of any of his Subjects; for, as I said before, that to scandalize and libel People is no Part of his Trade, so I say, that it is only that Liberty of the Press, which he is to use, that is regulated by Law and subjected to it; and if he breaks that Law, or exceeds that Liberty of the Press, he is to be punished for it, as well as for breaking other Laws or Liberties. And, Gentlemen, though it has been insinuated to you, by the other Side, that the making of such Things a Libel came from the Star-Chamber; yet I must tell you, that printing such defamatory Expressions, or slanderous News, was deemed a Libel, and punished accordingly, long before the Star-Chamber. It is a Law made in 1275, in the third of King *Edward I.* intitled, *An Act that none shall report slanderous News, whereby Discord may arise*. The Words of that Law are, "[Forasmuch as there have been oftentimes found, in the Country, Devisors of Tales, whereby Discord, or Occasion of Discord, hath many Times arisen between the King and his People, or great Men of this Realm; for the Damage that hath and may thereof ensue, it is commanded, that from henceforth none be so hardy to tell or publish any false News or Tales, whereby Discord, or Occasion of Discord, or Slander, may grow between the King and his People, or the great Men of the Realm; and he that do so, shall be taken and kept in Prison," &c.] So, Gentlemen, you see that this of Libels is not a new Law, or one that came from the Star-Chamber; but one that has been almost of 500 Years standing; therefore I hope you will not suffer yourselves to be amused by such Things. That Court of the Star-Chamber punished without Juries; but though Juries were taken away, yet the Law remained the same as to Libels and Crimes: So I hope it appears to you to be very plain, that the Liberty of the Press is limited and governed by Law; and that the Law sets Limits both to the King and his Subjects. Lastly, I think it was said to this Effect, that it would be making Mr. *Francklin* a great Politician in the World, to suppose that he knew any Thing of the Meaning of that pretended *Hague* Letter which he printed and published: As to that, I think I may venture to say, that he could not nor cannot be ignorant of the Meaning thereof, because it is plain to any common Reader, that by the Words [certain Ministers], are and must be meant the Ministers of *Great-Britain*: And I believe that the Treaties of *Hanover* and *Seville* have been heard of, and known by you all; and that you likewise have heard, and know, that there have been Differences between *Great-Britain* and *Spain*. So, Gentlemen, I submit it to you, whether you are not convinced in your Consciences, that Mr. *Francklin*, the Defendant, is the Publisher of that *Craftsman*, the 2d of *January* last, wherein the pretended *Hague* Letter is inserted; and secondly, Whether you are not likewise convinced, that these Expressions in that Letter, to wit, [certain Court], and [certain Ministers], and what is spoken against them, are to be understood of the Court and Ministers of *Great Britain*? These are the two Things now under your Consideration; for as to the Question, Whether these Words amount to a Libel or not, you have nothing to do with that, it being the Office of the Court to determine whether they do, or do not. So we doubt not but you will give

* This Letter, dated August 24, 1728, signed *Amos Dodge*, was supposed to be written by the late *Philip Duke of Wharton*; wherein were contained, under the Characters of *Mirreveis*, *Esseff*, and *Sepbi*, many scandalous Reflections, and odious Comparisons between his late Majesty King *George II.* of glorious Memory, and the Pretender. It was so virulent a Letter, that it was presented by the Grand Juries of *Middlesex*, *Westminster*, and the City of *Bristol*; and the Printers, Publishers, Press-men, &c. concerned in printing it were all taken into Custody by Messengers.

On Feb. 25, 1729, at the Sittings of the Court of King's Bench at *Guildhall*, *John Clarke*, the Pressman, was tried upon an Information filed against him by the Attorney-General, for printing and publishing a Libel, intitled, *Mist's Weekly Journal*, No. 175, dated August 24, 1728, "containing false, scandalous, and seditious Reflections on his late and present Majesty, by drawing odious Parallels, and thereby maliciously and falsely insinuating our Government to be tyrannical, and our Ministry corrupt and abominable." To support the Charge, there were called *James Ford* and *Thomas Randal*, two Boys concerned in the Printing-Office, who proved that the said *Clarke* worked upon the said Journal, and assisted in printing 9000 at Mr. *Wolfe's* in *Carter-Lane*; that from thence (for fear of Messengers) the Forms were carried to Mr. *Burton's*, a Printer, where the said *Clarke* assisted in working off 1750 more; and that the said *Clarke* ordered, that Nobody should see or have any of them, till all were printed off, and published together. It appeared also, that *Clarke* owned, in his Examination before Mr. *Delafay*, that he assisted in working off the said Journal. His publishing it was proved by Mr. *Makrall*, who bought half a Quire, which was delivered out to him by *Clarke* himself. The Counsel for the Defendant alledged, that the Characters of *Mirreveis* and *Esseff* did not in the least correspond with his late or present Majesty: Upon which the Court said, the Crime was the greater in making the Parallel. The Defendant's Counsel further alledged, that *Clarke* being a poor ignorant Workman, he could not be supposed to understand the Comparisons, or to know the Characters; nor could he have any malicious Intention against the Government: To which the Court answered, it was the Facts of Printing and Publishing only that lay in Issue; which the Jury considering, they brought him in Guilty of both.

Robert Knell was also tried upon an Information filed against him, for printing and publishing the same Libel. It was proved, that he assisted in composing it; and said, as he was about it, Mr. *Wolfe* and I, and the rest of us, will all be taken up for this Journal. The Defendant's Counsel insisted, that composing was not printing; to which the Attorney-General answered, that though, abstractly considered, it was not the very Act, yet it was an Act preparatory to it; and Mr. *Roberts*, a Printer, being examined, declared, it was not only Part, but the principal Part of printing; upon which the Objection was over-ruled. Another Point was also objected to; that as there were two Compositors, each having a separate Form allotted to compose, one of them could not be charged with the whole Libel, as laid in the Information: To which the Court answered, that when a Crime is perpetrated by more than one, and by joint Consent, any one of them, being guilty of Part, is guilty of the Whole. The Defendant was therefore found Guilty of printing the said Libel; but not of publishing it.

Joseph Carter (*Wolfe's* Apprentice) was also tried on the said Information; and the Evidence against him being the same as before, he was found guilty of printing only.

May 19 following, being the last Day of the Term, the following Persons, for being concerned in printing and publishing *Mist's Journal* of August 24, received Judgment as follows:

John Clarke, the Pressman, for printing and publishing the said Libel, to stand thrice in the Pillory; once at the *Royal Exchange*, once at *Temple-Bar*, and once at *Charing-Cross*; to be committed to Bridewell for six Months, and there kept to hard Labour.

Robert Knell, the Compositor, for printing the said Libel, to stand twice in the Pillory, once at the *Royal Exchange*, and once at *Charing-Cross*; and to be committed to Bridewell for six Months, and there to be kept to hard Labour.

Joseph Carter, the Apprentice, for printing the said Libel, to go round the four Courts in *Westminster-Hall*, on the first Day of next Term, with a Paper fixed upon his Head, denoting his Offence; to be sent to Bridewell for one Month, and kept to hard Labour." *Monthly Chronicle* for 1728, 1729.

your Verdict according to your Conscience; and do Justice between the King and the Defendant, which is all that is required of you. My Lord, the Importance of the Cause hath occasioned me to take up much of your Time, which I hope your Lordship will excuse.

Lord Chief Justice. Gentlemen of the Jury, This is an Information, wherein the King is Plaintiff, and Mr. *Francklin* Defendant, for printing and publishing the *Country Journal* or *Craftsman*, the 2d of *January* 1730, wherein is inserted an Extract of a private Letter from the *Hague*, reflecting on his Majesty and his principal Officers and Ministers of State. In this Information or Libel, there are three Things to be considered, whereof two by you the Jury, and one by the Court. The first Thing under your Consideration is, whether the Defendant, Mr. *Francklin*, is guilty of the Publication of this *Craftsman* or not? The second is, Whether the Expressions in that Letter refer to his present Majesty and his principal Officers and Ministers of State, and are applicable to them or not? This is the chief Thing in the Information; for if you think that these defamatory Expressions are not applicable to them, then the Defendant is not guilty of what is charged upon him; but if you think that they are applicable to them, then the Defendant is guilty thereof; upon this Supposition, that you find him to be the Publisher of that Paper. These are the two Matters of Fact that come under your Consideration; and of which you are proper Judges. But then there is a third Thing, to wit, Whether these defamatory Expressions amount to a Libel or not? This does not belong to the Office of the Jury, but to the Office of the Court; because it is a Matter of Law, and not of Fact; and of which the Court are the only proper Judges; and there is Redress to be had at another Place, if either of the Parties are not satisfied; for we are not to invade one another's Province, as is now of late a Notion among some People who ought to know better; for Matters of Law and Matters of Fact are never to be confounded. As to the first Thing, whether the Defendant is guilty of the Publication of that *Craftsman* which is under your Consideration. And here in this and the second Head I shall not be long, because Things have been so often repeated, and all Sorts of Observations made on both Sides that is possible to be made on this Occasion; and my Endeavours shall be to hinder you from running away with Notions which are not right. As to the Evidence offered to prove the Defendant the Publisher of that *Craftsman*, the Plaintiff's Counsel called one Mr. *Smith*, against whom the Defendant's Counsel could not say any Thing material. This Mr. *Smith* gives an Account, that on the 9th of *January* last, he went to Mr. *Francklin*'s Shop to buy some *Craftsman* or *Journals*; he said he wanted half a Dozen of that Day, and two of the Week before; he says, when he came he found Mr. *Francklin* in his Shop, and asked him for half a Dozen of his *Journals* of that Day, and two of the *Saturday* before; and that Mr. *Francklin* asked him whom they were for; who answered that they were for himself; and that Mr. *Francklin* asked him if he sold them again; who answered, Yes; and that afterwards Mr. *Francklin* pointed to his Servant, and told him to look out these *Journals* for him; which he accordingly did; and that he sold one of the *Journals* of the 2d of *January* again to another Person; but before he sold it he marked it; and that Mr. *Smith* paid his Servant for these 8 *Journals*. I think he said, that the two *Journals* were those of the second of *January*. This Evidence is very positive and full; for he bought them in the Defendant's Shop; and the Defendant's Servant delivered them to him by his Master's Direction, and paid the Servant for them; which is an undeniable Proof of the Defendant's being the Publisher thereof; and unless Mr. *Smith* is wilfully forsworn, his Evidence alone is sufficient. Then the King's Counsel went on, and called other Witnesses to prove the Defendant the Publisher, though I thought there was no Occasion for more; but they produced other Witnesses (I shall not be long, or name every one). They produced Mrs. *Dodd*, who says, that she used to send her Servant, *Goram*, to Mr. *Francklin*'s weekly for his *Craftsman*, or *Country Journal*; and he brought them from thence; and these of the 2d of *January* among the rest; and gave the Money to another Servant, in order to pay Mr. *Francklin* for them. *Goram* tells you, that he went about a Year and a half together, weekly, to Mr. *Francklin*'s, for these *Craftsman* or *Country Journals*, and brought them into his Mistress's Shop; and that he brought some of the 2d of *January*, and brought no *Country Journals* of that Day from any other Place; and that he had great Quantities of these *Country Journals* weekly. Mrs. *Pierce* says, that she sent her Man, *David Davies*, to Mr. *Francklin*'s weekly, for some Time, for his *Country Journals*, and for that of the 2d of *January* among the rest; and had such a Quantity of them as came to about £7. weekly. *David Davies* says, that he was employed by Mrs. *Pierce* to fetch her *Journals*, the *Craftsman*, from Mr. *Francklin*'s; and that of the 2d of *January* among the rest; and

paid the Money for them to the Amount of about £7. weekly. Then they called an Officer of the Stamp-Office, who says, that he registered thirty-eight Advertisements that were in the *Craftsman* of the 2d of *January* last; and that the Account of the Advertisements for that Month of *January* came to 10 £ 18 s. So, Gentlemen, you are to consider whether or not you are satisfied with the Evidence produced to prove the Defendant to be the Publisher of that *Craftsman* of the 2d of *January* last. The next Thing which you are to consider is, whether the Expressions in that *Hague* Letter, refer to his present Majesty and his principal Officers and Ministers of State; and are applicable to them as in the Information or not; for when People's Names are not set down at length, but pointed at by Circumlocution, or Pieces of Words, or by initial Letters, &c. the Law always allows Innuendos in Informations, which explain and tell what the Defendant meant by them; and the Law likewise allows Juries to give their Verdict on Oath, whether they think that these dark, defamatory Speeches have the same Meaning as mentioned in the Information or not. The Counsel for the King have gone on and explained and applied these defamatory Expressions exactly as in the Information; and they have given their Arguments and Reasons for so doing; drawn from the several Parts of that Letter, which I shall not trouble you with, because they have been so often repeated in your hearing; I say, they have explained them as mentioned in the Information; that is to say, that by these defamatory Expressions, are meant his present Majesty and his principal Officers and Ministers of State; and indeed they must be applicable, and refer to them or to somebody else; and if they do mean them, then I must say that they are very scandalous and reflecting Expressions; because they charge them with Perfidy in breaking of Treaties, ruining in a manner their Country, &c. as you may see at large in the Letter; and it is very evident that these Treaties could not be made without the Knowledge and Direction of his Majesty. The Counsel for the Defendant said, that these scandalous Expressions could not be understood to refer to his Majesty or his Ministers; but they did not tell to whom they referred; I should have been glad to have heard them do so; so that you are to consider of whom these defamatory Expressions are meant, or to whom they are applicable; and as to the Rule and Manner of understanding them, you are to do it, on Oath, after the same Manner and Way as you do privately by yourselves, taking all the Parts of the Letter together. I shall not repeat the several Parts of it now which the King's Counsel did use, to shew that they were meant of his Majesty and his Ministers, because you are to have the Letter along with you; for it is plain, that the Construction of it depends on the Words themselves and their Connection. Gentlemen, I have been very short in summing up the Evidence; and laid aside the Points of the Law; I mean, whether these defamatory Expressions amount to a Libel or not; because the Court can only determine that: And if not satisfactory to either of the Parties, there is a proper Redress to be had at another Place, as I said before. There was one Thing more mentioned by the Defendant's Counsel, which was, that there is no Room to think that Letter libellous; because there could be no Malice supposed by inserting it in the *Craftsman*, being only designed as a Piece of foreign News; and that the latter Part of the Letter qualifies it, by saying that the Letter-Writer does not take upon him to justify the Truth of that Report; but that will not do; for the Injury is the same to the Persons scandalized, whether the Letter was inserted out of Malice or not; besides, there is no knowing or proving particular Malice, otherwise than from the Act itself; and therefore if the Act imports as much, it is sufficient; nor is he to take the Liberty to print what he pleases; for the Liberty of the Press is only a legal Liberty, such as the Law allows; and not a licentious Liberty. Gentlemen, I tell you again, that I have designedly shortened Things, because it hath been so fully again and again laid before you. But if there is any Thing afterwards that you want to know, after you have considered these Things, I desire you would acquaint me. So, Gentlemen, if you are sensible, and convinced that the Defendant published that *Craftsman* of the 2d of *January* last; and that the defamatory Expressions in the Letter * refer to the Ministers of Great Britain; then you ought to find the Defendant guilty; but if you think otherwise, then you ought not to find him guilty.

The Jury found the Defendant guilty of publishing the said Libel.

The Term following, Mr. *Richard Francklin* received Sentence to pay a Fine of One Hundred Pounds, to be imprisoned for one Year, and to find Security for his good Behaviour for seven Years; himself in One Thousand Pounds Penalty, and his two Sureties in Five Hundred Pounds each.

* This *Hague* Letter was said to be written by the late Henry Lord Viscount *Bolingbroke*. Ex Infor. Mr. *R. Francklin*.

XXII. The Trial of Mr. JOHN PETER ZENGER, of *New-York*, Printer, for printing and publishing a Libel against the Government; before the Honourable *James de Lancey*, Esq; Chief Justice of the Province of *New-York*; and the Honourable *Frederick Phillipse*, Esq; second Judge; at *New-York*, on *August* 4th, 1735 †.

AS there was but one Printer in the Province of *New-York*, that printed a public News-Paper, I was in hopes, if I undertook to publish another, I might make it worth my while; and I soon found my Hopes were not groundless. My first Paper was printed, Nov. 5th, 1733, and I continued printing and publishing of them, I thought to the Satisfaction of every Body, 'till the *January* following; when the Chief Justice was pleased to animadvert upon the Doctrine of Libels, in a long Charge given in that Term to the Grand Jury, and afterwards on the third *Tuesday* of *October*, 1734, was again pleased to charge the Grand Jury in the following Words:

Gentlemen, I shall conclude with reading a Paragraph or two out of the same Book, concerning Libels; they are arrived to that Height that they call loudly for your Animadversion; it is high Time to put a Stop to them; for at the rate Things are now carried on, when all Order and Government is endeavoured to be trampled on, Reflections are cast upon Persons of all Degrees. Must not these Things end in Sedition, if not timely prevented? Lenity, you have seen, will not avail; it becomes you then to enquire after the Offenders, that we may, in due Course of Law, be enabled to punish them. If you, Gentlemen, do not interpose, consider whether the ill Consequences that may

† This Trial (or rather Part of a Trial) published by Mr. *Zenger* himself, having made a great Noise in the World, is here inserted; though the Doctrines advanced by Mr. *Hamilton* in his Speeches, are not allowed in the Courts here to be Law.—See Lord *Raymond*'s Opinion in the foregoing Trial, p. 275.—To which we have here joined some Remarks on this Trial, published soon after it made its first Appearance.

from any Disturbances of the publick Peace, may not in part lie at your Door!"

Hawkins, in his Chapter of Libels, considers three Points: 1st. What shall be said to be a Libel. 2^{dly}. Who are liable to be punished for it. 3^{dly}. In what Manner they are to be punished. Under the 1st, he says, §. 7. "Nor can there be any Doubt, but that a Writing, which defames a private Person only, is as much a Libel as that which defames Persons intrusted in a publick Capacity, in as much as it manifestly tends to create ill Blood, and to cause a Disturbance of the publick Peace; however it is certain, that it is a very high Aggravation of a Libel, that it tends to scandalize the Government, by reflecting on those who are entrusted with the Administration of publick Affairs, which does not only endanger the publick Peace, as all other Libels do, by stirring up the Parties immediately concerned in it, to Acts of Revenge, but also has a direct Tendency to breed in the People a Dislike of their Governors, and incline them to Faction and Sedition." As to the 2^d Point he says, §. 10. "It is certain, not only he who composes or procures another to compose it, but also that he who publishes, or procures another to publish it, are in Danger of being punished for it; and it is said not to be material, whether he who disperses a Libel, knew any Thing of the Contents or Effects of it or not; for nothing could be more easy than to publish the most virulent Papers with the greatest Security, if the concealing the Purport of them from an illiterate Publisher would make him safe in the Dispersing them. Also, it has been said, that if he who hath either read a Libel himself, or hath heard it read by another, do afterwards maliciously read or report any Part of it in the Presence of others, or lend or shew it to another, he is guilty of an unlawful Publication of it. Also, it hath been holden, that the copying of a Libel shall be a conclusive Evidence of the Publication of it, unless the Party can prove, that he delivered it to a Magistrate to examine it, in which Case the Act subsequent is said to explain the Intention precedent. But it seems to be the better Opinion, that he who first writes a Libel, dictated by another, is thereby guilty of making of it, and consequently punishable for the bare Writing; for it was no Libel till it was reduced to Writing."

These, Gentlemen, are some of the Offences which are to make Part of your Enquiries; and if any other should arise in the Course of your Proceedings, in which you are at a Loss, or conceive any Doubts, upon your Application here, We will assist and direct you.

The Grand Jury not indicting me as was expected, the Gentlemen of the Council proceeded to take my Journals into Consideration, and sent the following Message to the General Assembly.

Die Jovis, 3^{ho}. P. M. 17th of October, 1734.

A Message from the Council by *Philip Cortlandt*, in these Words, to wit,

That Board having had several of *Zenger's New-York Weekly Journals* laid before them, and other scurrilous Papers, tending to alienate the Affections of the People of this Province from his Majesty's Government, to raise Seditions and Tumults among the People of this Province, and to fill their Minds with a Contempt of his Majesty's Government: And considering the pernicious Consequences that may attend such growing Evils, if not speedily and effectually put a Stop to: And conceiving that the most likely Method to put a Stop to such bold and seditious Practices, to maintain the Dignity of his Majesty's Government, and to preserve the Peace thereof, would be by a Conference between a Committee of this Board, and a Committee of the Assembly; It is therefore ordered, That the Gentlemen of this Board, now assembled, or any seven of them, be a Committee, to join a Committee of the House of Representatives, in order to confer together, and to examine and enquire into the said Papers, and the Authors and Writers thereof.

Which Message being read,

Ordered, That the Members of this House, or any fourteen of them, do meet a Committee of the Council, at the Time and Place therein mentioned.

Die Veneris, 9^{ho}. A. M. 18 October, 1734.

Mr. *Garretson*, from the Committee of this House, reported, That they last Night met the Committee of the Council, on the subject Matter of their Message of Yesterday to this House; and that after several Preliminaries between the said Committees, the Gentlemen of the Council reduced to Writing, what they requested of this House, and delivered the same to the Chairman, who delivered it in at the Table, and being read, is in the Words following:

At a Committee of the Council held the 17th of October, 1734.

P R E S E N T,

Mr. *Clarke*. Mr. *Harrison*. Dr. *Colden*.
Mr. *Livingston*. Mr. *Kennedy*. Mr. *Chief-Justice*.
Mr. *Cortlandt*. Mr. *Lane*. Mr. *Horsmanden*.

Gentlemen,

The Matters we request your Concurrence in are, That *Zenger's* Papers, No. 7. 47, 48, 49. which were read, and which we now deliver, be burnt by the Hands of the Common Hangman, as containing in them many Things derogatory of the Dignity of his Majesty's Government, reflecting upon the Legislature, upon the most considerable Persons in the most distinguished Stations in the Province, and tending to raise Seditions and Tumults among the People thereof.

That you concur with us in the addressing the Governor, to issue his Proclamation, with a Promise of Reward for the Discovery of the Authors or Writers of these seditious Libels.

That you concur with us in an Order for prosecuting the Printer thereof.

That you concur with us in an Order to the Magistrates, to exert themselves in the Execution of their Offices, in order to preserve the publick Peace of the Province.

By Order of the Committee,

FRED. MORRIS, Cl. Con.

Mr. *Garretson* delivered likewise to the House the several Papers referred to in the said Request.

Ordered, That the said Papers be lodged with the Clerk of this House; and that the Consideration thereof, and the said Request, be referred till Tuesday next.

Die Martis, 9^{ho}. A. M. 22 October, 1734.

The House according to Order proceeded to take into Consideration the Request of a Committee of Council, delivered to a Committee of this House, on the 16th Instant, as likewise of the several Papers therein referred to. And after several Debates upon the subject Matters, it was ORDERED, That the said Papers and Requests lie on the Table.

The Council finding the General Assembly would not do any Thing about it, they sent the following Message to the House.

Die Sabbati, 9^{ho}. A. M. 2 November, 1734.

A Message from the Council by Mr. *Livingston*, desiring this House to return by him to that Board the several seditious Journals of *Zenger's*, No. 7. 47, 48, 49. which were delivered by a Committee of that Board to a Committee of this House the 17th of October last, together with the Proposals of the Committee of that Board, delivered therewith to a Committee of this House; and then withdrew.

On Tuesday the 5th of November, 1734, the Quarter-Sessions for the City of New-York began, when the Sheriff delivered to the Court an Order, which was read in these Words:

At a Council held at Fort George, in New-York, the 2^d of November, 1734.

P R E S E N T,

His Excellency *William Cosby*, Captain General and Governor in Chief, &c.

Mr. *Clarke*. Mr. *Harrison*. * Dr. *Colden*.
Mr. *Livingston*. Mr. *Kennedy*. Mr. *Chief-Justice*.
Mr. *Cortlandt*. Mr. *Lane*. Mr. *Horsmanden*.

Whereas by an Order of this Board, of this Day, some of *John Peter Zenger's* Journals, entitled, *The New-York Weekly Journal*, containing the freshest Advices, foreign and domestic, No. 7. 47, 48, 49. were ordered to be burnt by the Hands of the Common Hangman, or Whiper, near the Pillory in this City, on Wednesday the 6th Instant, between the Hours of Eleven and Twelve in the Forenoon, as containing in them many Things tending to Sedition and Faction, to bring his Majesty's Government into Contempt, and to disturb the Peace thereof, and containing in them likewise not only Reflections upon his Excellency the Governor in particular, the Legislature in general, but also upon the most considerable Persons in the most distinguished Stations in this Province: It is therefore ordered, That the Mayor and Magistrates of this City do attend at the Burning of the several Papers or Journals aforesaid, numbered as above mentioned.

FRED. MORRIS, D. Cl. Con.

To *Robert Lutting*, Esq. Mayor of the City of New-York, and the rest of the Magistrates for the said City and County.

Upon reading of which Order, the Court forbade the Entering thereof in their Books at that Time; and many of them declared, that if it should be entered, they would have their Protest entered against it.

On Wednesday the 6th of November, the Sheriff of New-York moved the Court of Quarter-Sessions to comply with the said Order; upon which one of the Aldermen offered a Protest, which was read by the Clerk, and approved of by all the Aldermen, either expressly, or by not objecting to it, and is as followeth:

Whereas an Order has been served on this Court, in these Words.

[The Order as above inserted.]

And whereas this Court conceives, they are only to be commanded by the King's mandatory Writs, authorized by Law, to which they conceive they have the Right of shewing Cause why they don't obey them, if they believe them improper to be obeyed; or by Orders, which have some known Laws to authorize them; and whereas this Court conceives this Order to be no mandatory Writ warranted by Law, nor knows of no Law that authorizes the making the Order aforesaid; so they think themselves under no Obligation to obey it: Which Obedience, they think would be in them, an opening a Door for arbitrary Commands, which, when once opened, they know not what dangerous Consequences may attend it. Wherefore this Court conceives itself bound in Duty (for the Preservation of the Rights of this Corporation, and, as much as they can, the Liberty of the Press, and the People of the Province, since an Assembly of the Province, and several Grand Juries, have refused to meddle with the Papers, when applied to by the Council) to protest against the Order aforesaid, and to forbid all the Members of this Corporation to pay any Obedience to it, until it be shewn to this Court, that the same is authorized by some known Law, which they neither know, nor believe that it is.

Upon reading of which, it was required of the Honourable *Francis Harrison*, Recorder of this Corporation, and one of the Members of the Council, (present at making the said Order) to shew by what Law or Authority the said Order was made; upon which he spoke in Support of it, and cited the Case of *Doctor Sacheverel's* Sermon, which was by the House of Lords ordered to be burnt by the Hands of the Hangman, and that the Mayor and Aldermen of London should attend the doing of it. To which one of the Aldermen answered to this Purpose: That he conceived the Case was no ways parallel, because Dr. *Sacheverel* and his Sermon were impeached by the House of Commons of England, which is the Grand Jury of the Nation, and Representative of the whole People of England: That this their Impeachment they prosecuted before the House of Lords, the greatest Court of Justice of Britain, and which, beyond Memory of Man,

* N. B. Dr. *Colden* was that Day at *Esopus*, 90 Miles from New-York, though mentioned as present in Council.

has had Cognizance of Things of that Nature: That there *Sacheverel* had a fair Hearing in Defence of himself and of his Sermon; and after that fair Hearing, he and his Sermon were justly, fairly, and legally condemned: That he had read the Case of *Dr. Sacheverel*, and thought he could charge his Memory, that the Judgment of the House of Lords in that Case was, That the Mayor and Sheriffs of London and Middlesex only should attend the Burning of the Sermon, and not the Aldermen; and farther he remembered, that the Order upon that Judgment was only directed to the Sheriffs of London, and not even to the Mayor, who did not attend the doing it: And farther said, that would *Mr. Recorder* shew, that the Governor and Council had such Authority as the House of Lords, and that the Papers ordered to be burnt were in like manner legally prosecuted and condemned, there the Case of *Dr. Sacheverel* might be to the Purpose; but without shewing that, it rather proved that a Censure ought not to be pronounced, till a fair Trial by a competent and legal Authority were first had. *Mr. Recorder* was desired to produce the Books from whence he cited his Authorities, that the Court might judge of them themselves, and was told, that if he could produce sufficient Authorities to warrant this Order, they would readily obey it, but otherwise not. Upon which he said, he did not carry his Books about with him. To which it was answered, he might send for them, or order a Constable to fetch them. Upon which he arose, and at the lower End of the Table he mentioned, that Bishop *Burnet's* Pastoral Letter was ordered, by the House of Lords, to be burnt by the High Bailiff of *Westminster*; upon which he abruptly went away, without waiting for an Answer, or promising to bring his Books, and did not return sitting the Court.

After *Mr. Recorder's* Departure, it was moved, that the *Protest* should be entered; to which it was answered, that the *Protest* could not be entered, without entering also the Order, that it was not fit to take any Notice of it; and therefore it was proposed that no Notice should be taken in their Books of either, which was unanimously agreed to by the Court.

The Sheriff then moved, that the Court would direct their Whipper to perform the said Order; to which it was answered, That as he was the Officer of the Corporation, they would give no such Order. Soon after which the Court adjourned, and did not attend the Burning of the Papers. Afterwards about Noon, the Sheriff, after reading the Numbers of the several Papers which were ordered to be burnt, delivered them unto the Hands of his own Negroe, and ordered him to put them into the Fire, which he did; at which *Mr. Recorder*, *Jeremiah Dunbar*, Esq. and several of the Officers of the Garrison, attended.]

On the Lord's Day, the 17th of November, 1734, I was taken and imprisoned by virtue of a Warrant in these Words.

At a Council held at Fort George in New York, the 2d Day of November, 1734.

P R E S E N T,

His Excellency *William Cosby*, Capt. General and Governor in Chief, &c.

Mr. Clarke. *Mr. Harrison.* *Mr. Livingston.*
Mr. Kennedy. Chief-Justice. *Mr. Cortlandt.*
Mr. Lane. *Mr. Herfmanden.*

It is ordered, that the Sheriff for the City of New York do forthwith take and apprehend *John Peter Zenger*, for printing and publishing several seditious Libels, dispersed throughout his Journals or News-papers, intituled, *The New York Weekly Journal, containing the freshest Advices, foreign and domestick*; as having in them many Things tending to raise Factions and Tumults among the People of this Province, inflaming their Minds with Contempt of his Majesty's Government, and greatly disturbing the Peace thereof; and upon his taking the said *John Peter Zenger*, to commit him to the Prison or common Jail of the said City and County.

FRED. MORRIS, D. Cl. Con.

And being, by virtue of that Warrant, so imprisoned in the Jail, I was for several Days denied the Use of Pen, Ink, and Paper, and the Liberty of Speech with any Persons.—Upon my Commitment, some Friends soon got a *Habeas Corpus* to bring me before the Chief-Justice, in order to my Discharge, or being bailed; on the Return whereof, on Wednesday the 20th of November, my Counsel delivered Exceptions to the Return, and the Chief-Justice ordered them to be argued publicly at the City Hall, on the Saturday following.

On Saturday the 23d of November, the said Exceptions came to be argued; by *James Alexander* and *William Smith*, of Counsel for me, and by *Mr. Attorney General* and *Mr. Warrel*, of Counsel against me, in Presence of some Hundreds of the Inhabitants; where my Counsel (saving the Benefit of Exception to the Illegality of the Warrant) insisted that I might be admitted to reasonable Bail. And to shew that it was my Right to be so, they offered *Magna Charta*, the *Petition of Right*, 3 Car. the *Habeas Corpus Act* of 31 Car. II. which directs the Sum, in which Bail is to be taken, to be, according to the Quality of the Prisoner, and Nature of the Offence. *Allo 2. Hawkins*, cap. 15. §. 5. in these Words, 'But Justices must take care, that, under Pretence of demanding sufficient Security, they do not make so excessive a Demand as, in effect, amounts to a Denial of Bail; for this is looked on as a great Grievance, and is complained of as such, by 1 W. & M. Sess. 2. by which it is declared, That excessive Bail ought not to be required.' It was also shewn, that the seven Bishops, who, in King *James the 1st's* Time, were charged with the like Crime that I stood charged with, were admitted to Bail on their own Recognizances, the Archbishop in 200*l.* and each of the other six in 100*l.* a-piece only. Sundry other Authorities and Arguments were produced and insisted on by my Counsel, to prove my Right to be admitted to moderate Bail, and to such Bail as was in my Power to give; and sundry Parts of History they produced, to shew how much the requiring excessive Bail had been resented by Parliament. And, in order to enable the Court to judge what Surety was in my Power to give, I made Affidavit, That (my Debts paid) I was not worth forty Pounds, (the Tools of my Trade, and Weaving-Apparel excepted.)

Some warm Expressions (to say no worse of them) were dropt on this

Bp. Kennet says, that this Letter seemed to be sacrificed to a poor Jest on the Author's Name [*Burnet*]. *Complete Hist. of Eng. Vol. III. P. 387. 2 Ed. in Lond. 1719.*

Occasion, sufficiently known and resented by the Auditory; which, on my part, I desire may be buried in Oblivion: Upon the Whole, it was ordered, that I might be admitted to Bail, myself in 400*l.* with two Sureties, and in 200*l.* and that I should be remanded till I gave it. And as this was times more than was in my Power to counter-secure any Person in giving Bail for me, I conceived I could not ask any to become my Bail on these Terms; and therefore I returned to Jail, where I lay until Tuesday the 28th of January, 1734-5, being the last Day of that Term; and the Grand Jury having found nothing against me, I expected to have been discharged from my Imprisonment: But my Hopes proved vain; for the Attorney General then charged me, by Information, for printing and publishing Parts of my Journals N^o. 13 and 23, as being false, scandalous, malicious, and seditious.

To this Information my Counsel appeared, and offered Exceptions, leaving a Blank for inserting the Judges Commissions, which the Court were of Opinion not to receive till those Blanks were filled up. In the succeeding Vacation the Judges gave Copies of their Commissions; and on Tuesday the 15th of April last, the first Day of the succeeding Term, my Counsel offered these Exceptions; which were as follow.

The Attorney General,

John Peter Zenger.

On Information for a Misdemeanour.

Exceptions humbly offered by *John Peter Zenger*, to the Honourable *James De Lancey*, Esq. to judge in this Cause.

The Defendant comes and prays Hearing of the Commission, by virtue of which the Honourable *James De Lancey*, Esq. claims the Power and Authority to judge in this Cause, and it is read to him in these Words:

George the Second, by the Grace of God, King of Great Britain, France and Ireland, King, Defender of the Faith, &c. To our trusty and well beloved *James De Lancey*, Esq. We, reposing special Trust and Confidence in your Integrity, Ability and Learning, have assigned, constituted and appointed, and We do by these Presents assign, constitute, and appoint you, the said *James De Lancey*, to be Chief-Justice in and over our Province of New York, in America, in the room of *Levon Morris*, Esq. giving and by these Presents granting unto you full Power and lawful Authority to hear, try, and determine all Pleas whatsoever, civil, criminal, and mixt, according to the Laws, Statutes, and Customs of our Kingdom of England, and the Laws and Usages of our said Province of New York, not being repugnant thereto, and Executions of all Judgments of the said Court to award, and to make such Rules and Orders in the said Court, as may be found convenient and useful, and, as near as may be, agreeable to the Rules and Orders of our Courts of King's Bench, Common Pleas, and Exchequer in England. To have, hold, and enjoy the said Office or Place of Chief-Justice in and over our said Province, with all and singular the Rights, Privileges, Profits and Advantages, Salaries, Fees and Perquisites unto the said Place belonging, or in any ways appertaining, in as full and ample Manner as any Person heretofore Chief-Justice of our said Province hath held and enjoyed, or of Right ought to have held and enjoyed the same, To you the said *James De Lancey*, Esq. for and during our Will and Pleasure. In Testimony whereof We have caused these our Letters to be made Patent, and the Great Seal of our Province of New York to be hereunto affixed. Witness our trusty and well-beloved *William Cosby*, Esq. our Captain-General and Governor in Chief of our Provinces of New York, New Jersey, and the Territories thereon depending in America, Vice-Admiral of the same, and Colonel in our Army, at Fort George in New York, the twenty-first Day of August, in the twentieth Year of our Reign, Annoq; Domini, 1733.

Which being read and heard, the said *John Peter Zenger*, by Protestation not confessing nor submitting to the Power of any other Person to judge in this Cause, doth except to the Power of the Honourable *James De Lancey*, Esq. aforesaid, to judge in this Cause, by virtue of the Commission aforesaid, for these Reasons, viz.

1st. For that the Authority of a Judge of the King's Bench, in that Part of Great Britain called England, by which the Cognizance of this Cause is claimed, is by the said Commission granted to the Honourable *James De Lancey*, Esq. aforesaid, only during Pleasure; whereas that Authority (by a Statute in that Case made and provided) ought to be granted during good Behaviour.

2d. For that, by the said Commission, the Jurisdiction and Authority of a Justice of the Court of Common Pleas at Westminster, in that Part of Great Britain called England, is granted to the said *James De Lancey*, Esq. which Jurisdiction and Authority cannot be granted to, and exercised by, any one of the Justices of the King's Bench.

3d. For that the Form of the said Commission is not founded on, nor warranted by the Common Law, nor any Statute of England, nor of Great Britain, nor any Act of Assembly of this Colony.

4th. For that it appears, by the Commission aforesaid, that the same is granted under the Seal of this Colony by his Excellency *William Cosby*, Esq. Governor thereof; and it appears not, that the same was granted, neither was the same granted, by and with the Advice and Consent of his Majesty's Council of this Colony; without which Advice and Consent, his Excellency could not grant the same.

Wherefore, and for many other Defects in the said Commission, this Defendant humbly hopes, that the Honourable *James De Lancey*, Esq. will not take Cognizance of this Cause, by virtue of the Commission aforesaid.

Was signed, *James Alexander*,
William Smith.

The Exceptions to the Commission of the Honourable *Frederick Philipse*, Esq. were the same with the foregoing, including therein his Commission, which is in these Words.

George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To our trusty and well-beloved *Frederick Philipse*, Esq. Greeting: Whereas it is our Care, that Justice be duly administered to our Subjects within our Province

of New York, and Territories thereon depending in America; and We, having assigned, constituted and appointed, and We do by these Presents assign, constitute and appoint you, the said Frederick Phillips, to be second Justice of our Supreme Court of Judicature for our Province of New York, in the room of James De Lancey, Esq. giving and granting to you, the said Frederick Phillips, full Power and Authority, with our other Justices of our said Supreme Court, to hear, try, and determine all Pleas whatsoever, civil, criminal, and mixed, according to the Laws, Statutes, and Customs of our Kingdom of England, and the Laws and Usages of our said Province of New York, not being repugnant thereto; and Executions of all Judgments of the said Court to award, and to act and do all Things, which any of our Justices of either Bench, or Barons of the Exchequer, in our said Kingdom of England, may or ought to do; and also to assist in the making such Rules and Orders in our said Court, as shall be for the Good and Benefit of our said Province; and, as near as conveniently may be, to the Rules and Orders of our said Courts in our said Kingdom of England: To have, hold, and enjoy the said Office or Place of second Justice of our said Province of New York, together with all and singular the Rights, Privileges, Salaries, Fees, Perquisites, Profits and Advantages thereto, now or at any Time heretofore belonging, or in any wise of Right appertaining, unto you, the said Frederick Phillips, for and during our Pleasure. In Testimony whereof, We have caused these our Letters to be made Patent, and the Great Seal of our said Province of New York to be hereunto affixed. Witness our trusty and well-beloved William Cosby, Esq. our Captain General and Governor in Chief of our Provinces of New York, New Jersey, and Territories thereon depending in America, Vice-Admiral of the same, and Colonel in our Army, &c. at Fort George in New York, the twenty-first Day of August, in the seventh Year of our Reign, Anno; Domini, 1735.

FRED. MORRIS, D. Secy.

Tuesday the 15th of April, 1735.

Mr. Alexander offered the above Exceptions to the Court, and prayed that they might be filed. Upon this the Chief Justice said to Mr. Alexander and Mr. Smith, That they ought well to consider the Consequences of what they offered. To which both answered, That they had well considered what they offered, and all the Consequences. And Mr. Smith added, That he was so well satisfied of the Right of the Subject to take an Exception to the Commission of a Judge, if he thought such Commission illegal, that he durst venture his Life upon that Point. As to the Validity of the Exceptions then offered, he said, he took that to be a second Point; but was ready to argue them both, if their Honours were pleased to hear him. To which the Chief Justice replied, That he would consider the Exceptions in the Morning; and ordered the Clerk to bring them to him.

Wednesday the 16th of April, 1735.

The Chief Justice delivered one of the Exceptions to the Clerk, and Justice Phillips the other; upon which Mr. Smith arose, and asked the Judges, whether their Honours would hear him upon these two Points. 1st. That the Subject has a Right to take such Exceptions, if they judged the Commission illegal. 2dly. That the Exceptions tendered were legal and valid. To which the Chief Justice said, That they would neither hear nor allow the Exceptions; for (said he) you thought to have gained a great deal of Applause and Popularity by opposing this Court, as you did the Court of Exchequer; but you have brought it to that Point, That either we must go from the Bench, or you from the Bar: Therefore we exclude you and Mr. Alexander from the Bar; and delivered a Paper to the Clerk, and ordered it to be entered; which the Clerk entered accordingly, and returned the Paper to the Chief Justice; after which the Chief Justice ordered the Clerk to read publicly what he had written; an attested Copy whereof follows.

At a Supreme Court of Judicature held for the Province of New York, at the City-Hall of the City of New York, on Wednesday the 16th Day of April, 1735.

PRESENT,

The Hon. James De Lancey, Esq. Chief Justice.

The Hon. Frederick Phillips, Esq. Second Justice.

James Alexander, Esq. and William Smith, Attornies of this Court, having presumed, (notwithstanding they were forewarned by the Court of their Displeasure, if they should do it) to sign, and having actually signed, and put into Court, Exceptions, in the Name of John Peter Zenger; thereby denying the Legality of the Judges their Commissions; though in the usual Form, and the Being of this Supreme Court. It is therefore ordered, That, for the said Contempt, the said James Alexander, and William Smith, be excluded from any farther Practice in this Court; and that their Names be struck out of the Roll of Attornies of this Court.

per Cur'.

JAMES LYNE, Cl.

After the Order of the Court was read, Mr. Alexander asked, whether it was the Order of Mr. Justice Phillips as well as of the Chief-Justice? To which both answered, that it was their Order; upon which Mr. Alexander added, That it was proper to ask that Question, that they might know how to have their Relief: He farther observed to the Court, upon reading of the Order, That they were mistaken in their wording of it, because the Exceptions were only to their Commissions, and not to the Being of the Court, as is therein alledged; and prayed that the Order might be altered accordingly. The Chief-Justice said, they conceived the Exceptions were against the Being of the Court. Both Mr. Alexander and Mr. Smith denied that they were, and prayed the Chief-Justice to point to the Place that contained such Exceptions; and further added, That the Court might well exist, though the Commissions of all the Judges were void; which the Chief-Justice confessed to be true: And therefore they prayed again, that the Order in that Point might be altered; but it was denied.

Then Mr. Alexander desired to know, whether they over-ruled or rejected the Exceptions? The Chief-Justice said, He did not understand the Dis-

ference; to which said Alexander replied, that if he rejected the Exceptions, then they could not appear upon the Proceedings, and in that Case the Defendant was intitled to have them made Part of the Proceedings by Bills of Exceptions: But if they over-ruled them; then, by so doing, they only declared them not sufficient, to hinder them from proceeding by virtue of those Commissions; and the Exceptions would remain as Records of the Court, and ought to be entered on the Record of the Cause, as Part of the Proceedings. The Chief-Justice said, they must remain upon the File, to warrant what we have done: As to being Part of the Record of the Proceedings in that Cause, he said, you may speak to that Point To-morrow.

Friday, April 18th, 1735.

Mr. Alexander signified to the Court, That on Wednesday last their Honours had said, That the Counsel for Mr. Zenger might speak to the Point, concerning the rejecting or over-ruling of Mr. Zenger's Exceptions, on the Morrow: To which the Chief-Justice answered, That he said, You may get some Person to speak to that Point on the Morrow, not meaning that the said Alexander should speak to it, that being contrary to the Order: Both Mr. Alexander and Mr. Smith said, they understood it otherwise.

They both also mentioned, that it was a Doubt, whether, by the Words of the Order, they were debarred of their Practice as Counsel, as well as Attornies, whereas they practised in both Capacities. To which the Chief Justice answered, That the Order was plain, That James Alexander, Esq. and William Smith, were debarred and excluded from their whole Practice at this Bar; and that the Order was intended to bar their acting both as Counsel and as Attornies, and that it could not be construed otherwise. And it being asked Mr. Phillips, whether he understood the Order so? He answered, That he did.

Upon this Exclusion of my Counsel, I petitioned the Court to order Counsel for my Defence; who thereon appointed John Chambers, Esq. who pleaded Not Guilty for me to the Information. But as to the Point, whether my Exceptions should be Part of the Record, as was moved by my former Counsel, Mr. Chambers thought not proper to speak to it. Mr. Chambers also moved, that a certain Day in the next Term might be appointed for my Trial, and for a Struck Jury; whereupon my Trial was ordered to be on Monday the 4th of August, and the Court would consider till the first Day of next Term, whether I should have a Struck Jury or not; and ordered, that the Sheriff should, in the mean Time, at my Charge, return the Freeholders Book.

At a Supreme Court of Judicature held for the Province of New York, before the Honourable James De Lancey, Esq. Chief-Justice of the said Province; and the Honourable Frederick Phillips, Esq. Second Justice of the said Province.

On Tuesday the 29th of July, 1735, the Court opened; and on Motion of Mr. Chambers for a Struck Jury, pursuant to the Rule of the preceding Term, the Court were of Opinion, that I was intitled to have a Struck Jury; and that Evening, at five of the Clock, some of my Friends attended the Clerk, for striking the Jury; when, to their Surprize, the Clerk, instead of producing the Freeholders Book, to strike the Jury out of it in their Presence, as usual, he produced a List of 48 Persons, who, he said, he had taken out of the Freeholders Book: My Friends told him, that a great Number of these Persons were not Freeholders; that others were Persons holding Commissions and Offices at the Governor's Pleasure; that others were of the late displaced Magistrates of this City, who must be supposed to have Resentment against me, for what I had printed concerning them; that others were the Governor's Baker, Taylor, Shoe-maker, Candle-maker, Joiner, &c. that as to the few indifferent Men that were upon that List, they had Reason to believe (as they had heard) that Mr. Attorney had a List of them, to strike them out; and therefore requested, that he would either bring the Freeholders Book, and chuse out of it 48 unexceptionable Men in their Presence, as usual; or else, that he would hear their Objections, particularly to the List he offered; and that he would put impartial Men in the Place of those against whom they could shew just Objections. Notwithstanding this, the Clerk refused to strike the Jury out of the Freeholders Book, and refused to hear any Objections to the Persons on his List; but told my Friends, if any Objections they had to any Persons, they might strike those Persons out; to which they answered, There would not remain a Jury, if they struck out all the exceptionable Men; and, according to the Custom, they had only a Right to strike out 12.

But finding no Arguments could prevail with the Clerk to hear their Objections to his List, nor to strike the Jury as usual, Mr. Chambers told him, he must apply to the Court, which the next Morning he did; and the Court, upon his Motion, ordered, That the 48 should be struck out of the Freeholders Book, as usual, in the Presence of the Parties; and that the Clerk should hear Objections to Persons proposed to be of the 48, and allow of such Exceptions as were just. In pursuance of that Order, a Jury was that Evening struck, to the Satisfaction of both Parties, though my Friends and Counsel insisted on no Objections but want of Freeholders; and though they did not insist, that Mr. Attorney General (who was assisted by Mr. Blagge) should shew any particular Cause, against any Persons he disliked, but acquiesced that any Person he disliked should be out of the 48.

Before James De Lancey, Esq. Chief-Justice of the Province of New York, and Frederick Phillips, second Judge, came on my Trial, on the fourth Day of August, 1735, upon an Information for printing and publishing two News-papers, which were called Libels against our Governor and his Administration.

The Defendant John Peter Zenger, being called, appeared.

And the Sheriff returned his Venire for the Trial of this said Cause.

Mr. Chambers, of Counsel for the Defendant. I humbly move your Honours, that we may have Justice done by the Sheriff, and that he may return the Names of the Jurors in the same Order as they were struck.

Mr. Chief Justice. How is that? Are they not so returned?

Mr. Chambers. No, they are not; for some of the Names that were last set down in the Pannel, are now placed first.

Mr. Chief Justice. Make out that, and you shall be righted.

O o

Mr.

Mr. Chambers. I have the Copy of the Pannel in my Hand, as the Jurors were struck; and if the Clerk will produce the Original, signed by Mr. Attorney and myself, your Honour will see our Complaint is just.

Mr. Chief-Justice. Clerk, is it so? Look upon that Copy; is it a true Copy of the Pannel as it was struck?

Clerk. Yes, I believe it is.

Mr. Chief-Justice. How came the Names of the Jurors to be misplaced in the Pannel annexed to the Verdict?

Mr. Sheriff. I have returned the Jurors in the same Order in which the Clerk gave them to me.

Mr. Chief-Justice. Let the Names of the Jurors be ranged in the Order they were struck, agreeable to the Copy here in Court.

Which was done accordingly. And the Jury, whose Names were as follow, were called and sworn:

Hermanus Rutgers,
Stanley Holmes,
Edward Man,
John Bell,
Samuel Weaver,
Andries Marschalk,

Egbert Van Borson,
Thomas Hunt, Foreman,
Benjamin Hildreth,
Abraham Keteltas,
John Golet,
Hercules Wandover.

Mr. Attorney General opened the Information, which was as follows:

Mr. Attorney General. May it please your Honours, and you Gentlemen of the Jury; the Information now before the Court, and to which the Defendant, Zenger, has pleaded *Not Guilty*, is an Information for printing and publishing a false, scandalous, and seditious Libel, in which his Excellency, the Governor of this Province, who is the King's immediate Representative here, is greatly and unjustly scandalized, as a Person that has no Regard to Law nor Justice; with much more, as will appear upon reading the Informations. This of Libelling is what has always been discouraged, as a Thing that tends to create Differences among Men, ill Blood among the People, and oftentimes great Bloodshed between the Party libelling and the Party libelled. There can be no doubt but you, Gentlemen of the Jury, will have the same ill Opinion of such Practices, as the Judges have always shewn upon such Occasions: But I shall say no more at this Time, until you hear the Information, which is as follows.

New-York, Supreme Court.

Of the Term of January, in the eight Year of the Reign of our Sovereign Lord King George the Second, &c.

New York, ss. **B**E it remembered, That Richard Bradley, Esq. Attorney General of our Sovereign Lord the King

for the Province of New-York, who for our said Lord the King in this Part prosecutes, in his own proper Person comes here into the Court of our said Lord the King, and for our said Lord the King gives the Court here to understand, and be informed, That John Peter Zenger, late of the City of New-York, Printer, (being a seditious Person, and a frequent Printer and Publisher of false News and seditious Libels, and wickedly and maliciously devising the Government of our said Lord the King of this his Majesty's Province of New-York, under the Administration of his Excellency William Cosby, Esq. Captain-General and Governor in Chief of the said Province, to traduce, scandalize and vilify, and his Excellency the said Governor, and the Ministers and Officers of our said Lord the King, of and for the said Province, to bring into Suspicion, and the ill Opinion of the Subjects of our said Lord the King residing within the said Province) the twenty-eighth Day of January, in the seventh Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great-Britain, France and Ireland, King, Defender of the Faith, &c. at the City of New-York, did falsely, seditiously and scandalously print and publish, and cause to be printed and published a certain false, malicious, seditious, scandalous Libel, intituled, *The New-York Weekly Journal, containing the freshest Advices, foreign and domestic*; in which Libel (of and concerning his Excellency the said Governor, and the Ministers and Officers of our said Lord the King, of and for the said Province) among other Things therein contained are the Words, "Your Appearance in Print, at last, gives a Pleasure to many, though most with you had come fairly into the open Field, and not appeared behind Retrenchments made of the supposed Laws against Libelling, and of what other Men have said and done before: These Retrenchments, Gentlemen, may soon be shewn to you, and all Men, to be weak, and to have neither Law nor Reason for their Foundation, so cannot long stand you in stead: Therefore, you had much better as yet leave them, and come to what the People of this City and Province [the City and Province of New-York meaning] think are the Points in Question; (to wit) They [the People of the City and Province of New-York meaning] think, as Matters now stand, that their Liberties and Properties are precarious, and that Slavery is like to be intailed on them and their Posterity, if some past Things be not amended; and this they collect from many past Proceedings." [Meaning many the past Proceedings of his Excellency the said Governor, and of the Ministers and Officers of our said Lord the King, of and for the said Province.] And the said Attorney-General of our said Lord the King, for our said Lord the King, likewise gives the Court here to understand, and be informed, that the said John Peter Zenger afterwards, (to wit) the eighth Day of April, in the seventh Year of the Reign of our said Lord the King, at the City of New-York aforesaid, did falsely, seditiously, and scandalously print and publish, and cause to be printed and published, another false, malicious, seditious, and scandalous Libel, intituled, *The New-York Weekly Journal, containing the freshest Advices foreign and domestic*. In which Libel, [of and concerning the Government of the said Province of New-York, and of and concerning his Excellency the said Governor, and the Ministers and Officers of our said Lord the King, of and for the said Province] among other Things therein contained are these Words, "One of our Neighbours [one of the Inhabitants of New-Jersey meaning] being in Company, observing the Strangers [some of the Inhabitants of New-York meaning] full of Complaints, endeavoured to persuade them to remove into Jersey; to which it was replied, That would be leaping out of the Frying-pan into the Fire: for, says

he, we both are under the same Governor [his Excellency the said Governor meaning], and your Assembly have sworn with a Witness what is to be expected from them; one that was then moving to Pennsylvania, [meaning one that was then removing from New-York with intent to reside at Pennsylvania] to which Place it is reported several considerable Men are removing [from New-York meaning], expressed in Terms very moving, much Concern for the Circumstances of New-York [the bad Circumstances of the Province and the People of New-York meaning], seemed to think them very much owing to the Influence that some Men [whom he called Tools] had in the Administration [meaning the Administration of Government of the said Province of New-York], said he was now going from them, and was not to be hurt by any Measures they should take, but could not help having some Concern for the Welfare of his Countrymen, and should be glad to hear that the Assembly [meaning the General Assembly of the Province of New-York] would exert themselves as became them, by shewing that they have the Interest of their Country more at Heart, than the Gratification of any private View of any of their Members, or being at all affected by the Smiles or Frowns of a Governor, [His Excellency, the said Governor, meaning] both which ought equally to be despised, when the Interest of their Country is at Stake. You, says he, complain of the Lawyers, but I think the Law itself is at an End. We [the People of the Province of New-York meaning] see Men's Deeds destroyed, Judges arbitrarily displaced, new Courts erected, without Consent of the Legislature [within the Province of New-York meaning], by which it seems to me, Trials by Juries are taken away when a Governor pleases, [His Excellency the said Governor meaning] Men of known Estates denied their Vote, contrary to the received Practice, the best Expofitor of any Law: Who is then in that Province [meaning the Province of New-York], that call [can call meaning] any Thing his own, or enjoy any Liberty, [Liberty meaning] longer than those in the Administration [meaning the Administration of Government of the said Province of New-York] will condescend to let them do it, for which Reason I have left it [the Province of New-York meaning] as I believe more will; to the great Disturbance of the Peace of the said Province of New-York, to the great Scandal of our said Lord the King, of His Excellency the said Governor, and of all others concerned in the Administration of the Government of the said Province, and against the Peace of our Sovereign Lord the King his Crown and Dignity, &c." Whereupon the said Attorney-General of our said Lord the King, for our said Lord the King, prays the Advancement of the Court here, in the Premises, and the due Process of the Law, against him the said John Peter Zenger; in this Part to be done, to answer to our said Lord the King of and in the Premises, &c.

R. Bradley, Attorney-General.

To this Information the Defendant has pleaded *Not Guilty* and we are ready to prove it.

Mr. Chambers has not been pleased to favour me with his Notes, so I cannot, for fear of doing him Injustice pretend to set down his Argument; but here Mr. Chambers set forth very clearly, the Nature of a Libel, the great Allowances that ought to be made for what Men speak or write; that in all Libels there must be some particular Persons so clearly pointed out that no Doubt must remain about who is meant; that he was in hopes Mr. Attorney would fail in his Proof, as to this Point; and therefore desired that he would go on to examine his Witnesses.

Then Mr. Hamilton, who at the Request of some of my Friends, was so kind as to come from Philadelphia to assist me on the Trial, spoke.

Mr. Hamilton. May it please your Honour: I am concerned in this Cause on the Part of Mr. Zenger, the Defendant. The Information against my Client was sent me, a few Days before I left Home, with some Instructions to let me know how far I might rely upon the Truth of those Parts of the Papers set forth in the Information, and which are said to be libellous. And though I am perfectly of the Opinion with the Gentleman who has just now spoke, on the same Side with me, as to the common Course of Proceedings, I mean in putting Mr. Attorney upon proving, that my Client printed and published those Papers mentioned in the Information; yet I cannot think it proper for me (without doing Violence to my own Principles) to deny the Publication of a Complaint, which, I think, is the Right of every free-born Subject to make, when the Matters so published can be supported with Truth; and therefore I'll save Mr. Attorney the Trouble of examining his Witnesses to that Point; and I do (for my Client) confess, that he both printed and published the two News Papers set forth in the Information, and I hope in so doing he has committed no Crime.

Mr. Attorney. Then, if Your Honour pleases, since Mr. Hamilton has confessed the Fact, I think our Witnesses may be discharged; we have no further Occasion for them.

Mr. Hamilton. If you brought them here only to prove the printing and publishing of these News-Papers, we have acknowledged that, and shall abide by it.

Here my Journeyman and two Sons (with several others subpoena'd by Mr. Attorney, to give Evidence against me) were discharged, and there was Silence in the Court for some Time.

Mr. Chief-Justice. Well, Mr. Attorney, will you proceed?

Mr. Attorney. Indeed, Sir, as Mr. Hamilton has confessed the printing and publishing these Libels, I think the Jury must find a Verdict for the King; for supposing they were true, the Law says that they are not the less libellous for that; nay indeed the Law says, their being true is an Aggravation of the Crime.

Mr. Hamilton. Not so neither, Mr. Attorney, there are two Words to that Bargain: I hope it is not our bare printing and publishing a Paper, that will make it a Libel: You will have something more to do, before you make my Client a Libeller; for the Words themselves must be libellous, that is false, scandalous, and seditious, or else they are not guilty.

As Mr. Attorney has not been pleased to favour us with his Argument which he read, or with the Notes of it, we cannot take upon us to set down his Words, but only to shew the Book Cases he cited, and the general Scope of his Argument, which he drew from those Authorities. He observed upon the Excellency, as well as Use of Government, and the great Regard and Reverence which had been constantly paid to it, both under the Law and the Gospel. That by Government we were protected in our

Lives

Lives, Religion and Properties; and that, for these Reasons, great Care had always been taken to prevent every thing that might tend to scandalize Magistrates, and others concerned in the Administration of the Government, especially the supreme Magistrate. And that there were many Instances of very severe Judgments, and of Punishments inflicted upon such as had attempted to bring the Government into Contempt; by publishing false and scurrilous Libels against it, or by speaking evil and scandalous Words of Men in Authority; to the great Disturbance of the publick Peace. And to support this, he cited, 5 Coke 121. (I suppose it should be 125.) Wood's Instit. 430. 2 Lilly 168. 1 Hawkins 73. 11. 6. From these Books he insisted, 'That a Libel was a malicious Defamation of any Person, expressed either in Printing or Writing, Signs or Pictures, to asperse the Reputation of one that is alive, or the Memory of one that is dead; if he is a private Man, the Libeller deserves a severe Punishment, but if it is against a Magistrate, or other publick Person, it is a greater Offence; for this concerns not only the Breach of the Peace, but the Scandal of the Government; for what greater Scandal of Government can there be, than to have corrupt or wicked Magistrates to be appointed by the King, to govern his Subjects under him? And a greater Imputation to the State cannot be, than to suffer such corrupt Men to sit in the sacred Seat of Justice, or to have any meddling in, or concerning the Administration of Justice.' And from the same Books Mr. Attorney insisted, that whether the Person defamed is a private Man or a Magistrate, whether living or dead, whether the Libel is true or false, or if the Party against whom it is made is of good or evil Fame, it is nevertheless a Libel. For in a settled State of Government, the Party grieved ought to complain for every Injury done him, in the ordinary Courie of the Law. And as to its Publication, the Law had taken so great Care of Men's Reputations, that if one maliciously repeats it, or sings it in the Presence of another, or delivers the Libel or a Copy of it over, to scandalize the Party, he is to be punished as a Publisher of a Libel. He said it was likewise evident, that Libelling was an Offence against the Law of God. Acts xxiii. 5. *Then, said Paul, I wist not, Brethren, that he was the High-Priest: For it is written, Thou shalt not speak evil of the Ruler of the People.* 2 Pet. ii. 10. *Despise Government, presumptuous are they, self-willed, they are not afraid to speak evil of Dignities, &c.* He then insisted that it was clear, both by the Law of God and Man, that it was a very great Offence to speak evil of, or to revile those in Authority over us; and that Mr. Zenger had offended in a most notorious and gross Manner, in scandalizing His Excellency our Governor, who is the King's immediate Representative, and the supreme Magistrate of this Province: For can there be any thing more scandalous said of a Governor than what is published in those Papers? Nay, not only the Governor, but both the Council and Assembly are scandalized; for there it is plainly said, That 'as Matters now stand, their Liberties and Properties are precarious, and that Slavery is like to be entailed on them and their Posterity. And then again Mr. Zenger says, The Assembly ought to despise the Smiles or Frowns of a Governor; that he thinks the Law is at an End; that we see Men's Deeds destroyed, Judges arbitrarily displaced, new Courts erected, without Consent of the Legislature; And, that it seems Trials by juries are taken away when a Governor pleases; that none can call any thing their own, longer than those in the Administration will condescend to let them do it. - - - - -' And Mr. Attorney added, 'That he did not know what could be said in Defence of a Man, that had so notoriously scandalized the Governor and principal Magistrates and Officers of the Government, by charging them with depriving the People of their Rights and Liberties, and taking away Trials by Juries; and in short, putting an End to the Law itself.——If this was not a Libel, he said, he did not know what was one. Such Persons as will take those Liberties with Governors and Magistrates, he thought, ought to suffer for stirring up Sedition and Discontent among the People. And concluded, by saying, that the Government had been very much traduced and exposed by Mr. Zenger, before he was taken Notice of; that at last it was the Opinion of the Governor and Council, that he ought not to be suffered to go on, to disturb the Peace of the Government, by publishing such Libels against the Governor, and the chief Persons in the Government; and therefore they had directed this Prosecution, to put a Stop to this scandalous and wicked Practice, of libelling and defaming his Majesty's Government, and disturbing his Majesty's Peace.'

Mr. Chambers then summed up to the Jury, observing with great Strength of Reason on Mr. Attorney's Defect of Proof, that the Papers in the Information were *false, malicious or seditious*, which was incumbent on him to prove to the Jury, and without which they could not on their Oaths say, that they were so charged.

Mr. Hamilton. "May it please your Honour: I agree with Mr. Attorney, that Government is a sacred Thing; but I differ very widely from him, when he would insinuate, that the just Complaints of a Number of Men, who suffer under a bad Administration, is libelling that Administration. Had I believed that to be Law, I should not have given the Court the Trouble of hearing any thing that I could say in this Cause. Now, when I read the Information, I had not the Art to find out (without the Help of Mr. Attorney's Innuendoes) that the Governor was the Person meant in every Period of that News Paper; and I was inclined to believe, that they were wrote by some, who from an extraordinary Zeal for Liberty, had misconstrued the Conduct of some Persons in Authority into Crimes; and that Mr. Attorney, out of his too great Zeal for Power, had exhibited this Information, to correct the Indiscretion of my Client; and at the same Time, to shew his Superiors the great Concern he had, lest they should be treated with any undue Freedom. But from what Mr. Attorney has just now said, to wit, That this Prosecution was directed by the Governor and Council, and from the extraordinary Appearance of the People of all Conditions, which I observe in Court upon this Occasion, I have Reason to think, that those in the Administration have by this Prosecution something more in View, and that the People believe they have a good deal more at Stake than I apprehended: And, therefore, as it is become my Duty, to be both plain and particular in this Cause, I beg leave to bespeak the Patience of the Court.

I was in hopes, as that terrible Court, where those dreadful Judgments were given, and that Law established, which Mr. Attorney has produced for Authorities to support this Cause, was long ago laid aside, as the most

dangerous Court to the Liberties of the People of England that ever was known in that Kingdom; that Mr. Attorney knowing this, would not have attempted to set up a Star-Chamber here, nor to make their Judgments a Precedent to us: For it is well known, that what would have been judged Treason in those Days for a Man to speak, I think, has since not only been practised as lawful, but the contrary Doctrine has been held to be Law.

In *Brewster's Case*, for Printing, *That the Subjects might defend their Rights and Liberties by Arms, in case the King should go about to destroy them*, he was told, by the Chief-Justice, that it was a great Mercy he was not proceeded against for his Life; for that to say the King could be resisted by Arms in any Case whatsoever, was express Treason. And yet we see, since that Time, Dr. Sacheverell was sentenced in the highest Court in Great-Britain, for saying, *That such a Resistance was not lawful*. Besides, as Times have made very great Changes in the Laws of England, so in my Opinion, there is good Reason that Places should do so too:

Is it not surprising to see a Subject, upon his receiving a Commission from the King to be a Governor of a Colony in America, immediately imagining himself to be vested with all the Prerogatives belonging to the sacred Person of his Prince? And which is yet more astonishing, to see that a People can be so wild as to allow of and acknowledge those Prerogatives and Exemptions, even to their own Destruction? Is it so hard a Matter to distinguish between the Majesty of our Sovereign, and the Power of a Governor of the Plantations? Is not this making very free with our Prince, to apply that Regard, Obedience and Allegiance to a Subject which is due only to our Sovereign? And yet in all the Cases which Mr. Attorney has cited, to shew the Duty and Obedience we owe to the Supreme Magistrate, it is the King that is there meant and understood, tho' Mr. Attorney is pleased to urge them as Authorities to prove the Heinousness of Mr. Zenger's Offence against the Governor of New-York. The several Plantations are compared to so many large Corporations, and perhaps not improperly; and can any one give an instance, that the Mayor or Head of a Corporation ever put in a Claim to the sacred Rights of Majesty? Let us not (while we are pretending to pay a great Regard to our Prince and his Peace) make bold to transfer that Allegiance to a Subject, which we owe to our King only. What strange Doctrine is it, to preis every Thing for Law here which is so in England? I believe we should not think it a Favour, at present at least, to establish this Practice. In England so great a Regard and Reverence is had to the Judges, (C. 3. Inst. 140.) that if any Man strikes another in *Westminster-Hall*, while the Judges are sitting, he shall lose his Right-Hand, and forfeit his Land and Goods for so doing. And though the Judges here claim all the Powers and Authorities within this Government, that a Court of King's-Bench has in England, yet I believe Mr. Attorney will scarcely say, that such a Punishment could be legally inflicted on a Man for committing such an Offence, in the Presence of the Judges sitting in any Court within the Province of New-York. The Reason is obvious; a Quarrel or Riot in New-York cannot possibly be attended with those dangerous Consequences that it might in *Westminster-Hall*; nor (I hope) will it be alledged, that any Misbehaviour to a Governor in the Plantations will, or ought to be judged of or punished, as a like Undutifulness would be to our Sovereign. From all which, I hope Mr. Attorney will not think it proper to apply his Law-Cases (to support the Cause of his Governor), which have only been judged, where the King's Safety or Honour was concerned. It will not be denied but that a Freeholder, in the Province of New-York, has as good a Right to the sole and separate Use of his Lands, as a Freeholder in England, who has a Right to bring an Action of Trespass against his Neighbour, for suffering his Horse or Cow to come and feed upon his Lands, or eat his Corn, whether inclosed or not inclosed; and yet I believe it would be looked upon as a strange Attempt for one Man here to bring an Action against another, whose Cattle and Horses feed upon his Grounds not inclosed, or indeed for eating and treading down his Corn, if that were not inclosed. Numberless are the Instances of this Kind that might be given, to shew, that what is good Law at one Time, and in one Place, is not so at another Time, and in another Place; so that I think the Law seems to expect, that in these Parts of the World, Men should take Care, by a good Fence, to preserve their Property from the Injury of unruly Beasts. And perhaps there may be as good a Reason why Men should take the same Care, to make an honest and upright Conduct a Fence and Security against the Injury of unruly Tongues.

Mr. Attorney. I don't know what the Gentleman means, by comparing Cases of Freeholders in England with the Freeholders here. What has this Case to do with Actions of Trespass, or Men's fencing their Ground? The Case before the Court is, Whether Mr. Zenger is guilty of libelling his Excellency the Governor of New-York, and indeed the whole Administration of the Government? Mr. Hamilton has confessed the printing and publishing, and I think nothing is plainer, than that the Words in the Information are *scandalous, and tend to Sedition, and to disquiet the Minds of the People of this Province*. And if such Papers are not Libels, I think it may be said, there can be no such Thing as a Libel.

Mr. Hamilton. May it please your Honour, I cannot agree with Mr. Attorney; for though I freely acknowledge that there are such Things as Libels, yet I must insist at the same Time, that what my Client is charged with, is not a Libel; and I observed just now, that Mr. Attorney, in defining a Libel, made use of the Words, *scandalous, seditious, and tend to disquiet the People*; but (whether with Design, or not, I will not say) he omitted the Word *false*.

Mr. Attorney. I think I did not omit the Word *false*: But it has been said already, that it may be a Libel, notwithstanding it may be true.

Mr. Hamilton. In this I must still differ with Mr. Attorney; for I depend upon it, we are to be tried upon this Information now before the Court and Jury, and to which we have pleaded *Not Guilty*, and by it we are charged with printing and publishing a *certain false, malicious, seditious and scandalous Libel*. This Word *false* must have some Meaning, or else how came it there? I hope Mr. Attorney will not say he put it there by Chance, and I am of Opinion his Information would not be good without it. But to shew that it is the principal Thing, which, in my Opinion, makes a Libel, I put the Case, the Information had been for printing and publishing a *certain true Libel*, would that be the same Thing? Or could Mr. Attorney support such an Information by any Precedent in the

the *English Law*? No, the *Falshood* makes the *Scandal*, and both make the *Libel*. And to shew the Court that I am in good earnest, and to save the Court's Time, and *Mr. Attorney's* Trouble, I will agree, that if he can prove the Facts charged upon us to be *false*, I'll own them to be *scandalous, seditious*, and a *Libel*. So the Work seems now to be pretty much shortened, and *Mr. Attorney* has now only to prove the Word *false*, in order to make us *Guilty*.

Mr. Attorney. We have nothing to prove; you have confessed the printing and publishing; but if it was necessary (as I insist it is not), how can we prove a Negative? but I hope some Regard will be had to the Authorities that have been produced; and that supposing all the Words to be true, yet that will not help them; that Chief Justice *Holt*, in his Charge to the Jury, in the Case of *Tutchin*, made no Distinction, whether *Tutchin's* Papers were *true or false*; and as Chief Justice *Holt* has made no Distinction in that Case, so none ought to be made here; nor can it be shewn in all that Case, there was any Question made about their being *false or true*.

Mr. Hamilton. I did expect to hear, that a Negative cannot be proved; but every body knows there are many Exceptions to that general Rule; For if a Man is charged with killing another, or stealing his Neighbour's Horse; if he is innocent in the one Case, he may prove the Man said to be killed to be really alive; and the Horse said to be stolen, never to have been out of his Master's Stable, &c. and this I think is proving a Negative. But we will save Mr. Attorney the Trouble of proving a Negative, and take the *Onus Probandi* upon ourselves, and prove those very Papers that are called Libels to be true.

Mr. Chief Justice. You cannot be admitted, Mr. *Hamilton*, to give the Truth of a Libel in Evidence. A Libel is not to be justified; for it is nevertheless a Libel that it is *true*.

Mr. *Hamilton*. I am sorry the Court has so soon resolved upon that Piece of Law; I expected first to have been heard to that Point. I have not in all my Reading met with an Authority that says, we cannot be admitted to give the Truth in Evidence, upon an Information for a Libel.

Mr. Chief Justice. The Law is clear, that you cannot justify a Libel.

Mr. Hamilton. I own that, may it please your Honour, to be so; but with Submission I understand the Word, *justified* there, to be a Justification by Plea, as it is in the Case upon an Indictment for *Murder*, or an *Assault and Battery*; there the Prisoner cannot justify, but plead *Not Guilty*: Yet it will not be denied but he may, and always is admitted to give the Truth of the Fact, or any other Matter in Evidence, which goes to his Acquittal; as in *Murder* he may prove it was in Defence of his Life, his House, &c. and in *Assault and Battery*, he may give in Evidence, that the other Party struck first, and in both Cases he will be acquitted. And in this Sense I understand the Word *justify*, when applied to the Case before the Court.

Mr. Chief Justice. I pray shew that you can give the Truth of a Libel in Evidence.

Mr. *Hamilton*. I am ready, both from what I understand to be the Authorities in the Case, and from the Reason of the Thing, to shew that we may lawfully do so. But here I beg leave to observe, That Informations for Libels is a Child, if not born, yet nursed up, and brought to full Maturity, in the Court of the Star-Chamber.

Mr. Chief Justice. Mr. Hamilton, you'll find yourself mistaken; for in *Coke's Institutes* you'll find Informations for Libels, long before the Court of Star-Chamber.

Mr. Hamilton. I thank Your Honour; that is an Authority I did propose to speak to by and bye: But as you have mentioned it, I'll read that Authority now. I think it is in the 3 Co. Inst. under Title *Libel*; it is the Case of *John de Northampton* for a Letter wrote to *Robert de Ferrers*, one of the King's Privy-Council, (*Coke 3. Inst. 174.*) concerning Sir *William Scot*, Chief Justice, and his Fellows; but it does not appear to have been upon Information; and I have good Grounds to say it was upon Indictment, as was the Case of *Adam de Ravensworth*, just mentioned before by Lord *Coke* under the same Title; and I think there cannot be a greater, at least a plainer Authority for us, than the Judgment in the Case of *John de Northampton*, which my Lord has set down at large. *Et quia prædictus Johannes cognovit dictam Literam per se scriptam Roberto de Ferrers, qui est de Concilio Regis, quæ litera continet in se nullam veritatem, &c.* Now Sir, by this Judgment it appears the libellous Words were utterly false, and there the Falseness was the Crime, and is the Ground of that Judgment: And is not that what we contend for? Do not we insist that the Falseness makes the Scandal, and both make the Libel? And how shall it be known whether the Words are libellous, *that is, true or false*, but by admitting us to prove them *true*, since *Mr. Attorney* will not undertake to prove them *false*? Besides, is it not against Common Sense, that a Man should be punished in the same Degree for a *true Libel* (if any such Thing could be) as for a *false one*? I know it is said, *That Truth makes a Libel the more provoking, and therefore the Offence is the greater, and consequently the Judgment should be the heavier*. Well, suppose it were so, and let us agree for once, *That Truth is a greater Sin than Falseness*: Yet as the Offences are not equal, and as the Punishment is arbitrary, *that is*, according as the Judges in their Discretion shall direct to be inflicted; is it not absolutely necessary that they should know whether the Libel is *true or false*, that they may by that Means be able to proportion the Punishment? For would it not be a sad Case, if the Judges, for want of a due Information, should chance to give as severe a Judgment against a Man for writing or publishing a Lie, as for writing or publishing a Truth? And yet this (with Submission), as monstrous and ridiculous as it may seem to be, is the natural Consequence of *Mr. Attorney's Doctrine*, *That Truth makes a worse Libel than Falseness*, and must follow from his not proving our Papers to be *false*, or not suffering us to prove them to be *true*. But this is only reasoning upon the Case, and I will now proceed to shew, what in my Opinion will be sufficient to induce the Court to allow us to prove the Truth of the Words, which in the Information are called libellous. And first I think there cannot be a greater Authority for us, than the Judgment I just now mentioned in the Case of *John de Northampton*, and that was in early Times, and before the Star-Chamber came to its Fulness of Power and Wickedness. In that Judgment, as I observed, the *Falseness* of the Letter which was wrote, is assigned as the very Ground of the Sentence. And agree-

Mr. Chief Justice. Use the Court with Good-Manners, and you shall be allowed all the Liberty you can reasonably desire.

Mr. Hamilton. I thank your Honour. Then, Gentlemen of the Jury, it is to you we must now appeal, for Witnesses to the Truth of the Facts we have offered, and are denied the Liberty to prove; and let it not seem strange, that I apply myself to you in this manner; I am warranted so to do, both by Law and Reason. The Law supposes you to be summoned out of the Neighbourhood where the Fact is alleged to be committed; and the Reason of your being taken out of the Neighbourhood is, because you are supposed to have the best Knowledge of the Fact that is to be tried. And were you to find a Verdict against my Client, you must take upon you to say, the Papers referred to in the Information, and which we acknowledge we printed and published, are false, scandalous, and seditious; but of this I can have no Apprehension. You are Citizens of New York; you are really, what the Law supposes you to be, honest and lawful Men; and, according to my Brief, the Facts which we offer to prove were not committed in a Corner; they are notoriously known to be true; and therefore in your Justice lies our Safety. And as we are denied the Liberty of giving Evidence, to prove the Truth of what we have published, I will beg Leave to lay it down as a standing Rule in such Cases, That the suppressing of Evidence ought always to be taken for the strongest Evidence; and I hope it will have that Weight with you. But since we are not admitted to examine our Witnesses, I will endeavour to shorten the Dispute with *Mr. Attorney*; and to that End, I desire he would favour us with some standard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or not.

Mr. Att. Gen. The Books, I think, have given a very full Definition of a Libel: They say (1 Hawk. chap. 73. §. 1. & seq.) it is, 'in a strict Sense, taken for a malicious Defamation, expressed either in Writing or Printing, and tending either to blacken the Memory of one who is dead, or the Reputation of one who is alive, and to expose him to publick Hatred, Contempt, or Ridicule. §. 2. But it is said, That, in a larger Sense, the Notion of a Libel may be applied to any Defamation whatsoever, expressed either by Signs or Pictures, as by fixing up a Gallows against a Man's Door, or by painting him in a shameful and ignominious Manner. §. 3. And since the chief Cause for which the Law so severely punishes all Offences of this Nature, is the direct Tendency of them to a Breach of publick Peace, by provoking the Parties injured, their Friends and Families, to Acts of Revenge, which it would be impossible to restrain by the severest Laws, were there no Redress from publick Justice for Injuries of this Kind, which, of all others, are most sensibly felt; and since the plain Meaning of such Scandal, as is expressed by Signs, or Pictures, is as obvious to common Sense, and as easily understood by every common Capacity, and altogether as provoking as that which is expressed by Writing or Printing, why should it not be equally criminal? §. 4. And from the same Ground it seemeth also clearly to follow, That such Scandal, as is expressed in a scoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expressed in direct Terms; as where a Writing, in a taunting manner reckoning up several Acts of publick Charity done by one, says, *You will not play the Jew, nor the Hypocrite*, and so goes on in a Strain of Ridicule to insinuate, that what he did was owing to his Vain-Glory; or where a Writing, pretending to recommend to one the Characters of several great Men for his Imitation, instead of taking notice of what they are generally esteemed famous for, pitched on such Qualities only which their Enemies charge them with the want of; as by proposing such a one to be imitated for his Courage, who is known to be a great Statesman, but no Soldier; and another to be imitated for his Learning, who is known to be a great General, but no Scholar, &c. which Kind of Writing is as well understood to mean only to upbraid the Parties with the want of these Qualities, as if it had directly and expressly done so.'

Mr. Hamilton. Ay, *Mr. Attorney*; but what certain standard Rule have the Books laid down, by which we can certainly know, whether the Words or the Signs are malicious? Whether they are defamatory? Whether they tend to the Breach of the Peace, and are a sufficient Ground to provoke a Man, his Family, or Friends, to Acts of Revenge, especially those of the ironical Sort of Words? And what Rule have you to know when I write ironically? I think it would be hard, when I say, *Such a Man is a very worthy, honest Gentleman, and of fine Understanding*, that therefore I meant he was a Knave or a Fool.

Mr. Att. Gen. I think the Books are very full: It is said in 1 Hawk. p. 193. just now read, 'That such Scandal as is expressed in a scoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expressed in direct Terms; as where a Writing, in a taunting manner says, reckoning up several Acts of Charity done by one, *You will not play the Jew or the Hypocrite*; and so goes on to insinuate, that what he did was owing to his Vain-Glory, &c. which Kind of Writing is as well understood to mean only to upbraid the Parties with the want of these Qualities, as if it had directly and expressly done so.' I think nothing can be plainer or more full than these Words.

Mr. Hamilton. I agree the Words are very plain; and I shall not scruple to allow (when we are agreed that the Words are false and scandalous, and were spoken in an ironical and scoffing Manner, &c.) that they are really libellous; but here still occurs the Uncertainty, which makes the Difficulty to know what Words are scandalous, and what not; for you say, they may be scandalous, true or false: Besides, how shall we know whether the Words were spoke in a scoffing and ironical Manner, or seriously? Or how can you know, whether the Man did not think as he wrote? For, by your Rule, if he did, it is no Irony, and consequently no Libel. But, under Favour, *Mr. Attorney*, I think the same Book, and the same Section, will shew us the only Rule by which all these Things are to be known. The Words are these; 'which Kind of Writing is as well understood to mean only to upbraid the Parties with the want of these Qualities, as if they had directly and expressly done so.' Here, it is plain, the Words are scandalous, scoffing, and ironical, only as they are understood; I know no Rule laid down in the Books but this; I mean, as the Words are under-

Mr. Chief Justice. *Mr. Hamilton*, do you think it so hard to know when Words are ironical, or spoke in a scoffing Manner?

Mr. Hamilton. I own it may be known; but I insist, the only Rule to know is, as I do or can understand them: I have no other Rule to go by, but as I understand them.

Mr. Chief Justice. That is certain. All Words are libellous, or not, as they are understood. Those who are to judge of the Words, must judge whether they are scandalous or ironical, tend to the Breach of the Peace, or are seditious: There can be no Doubt of it.

Mr. Hamilton. I thank your Honour; I am glad to find the Court of this Opinion. Then it follows, that those twelve Men must understand the Words in the Information to be scandalous, that is to say, false; for I think it is not pretended they are of the ironical Sort; and when they understand the Words to be so, they will say we are guilty of publishing a false Libel, and not otherwise.

Mr. Chief Justice. No, *Mr. Hamilton*; the Jury may find that *Mr. Zenger* printed and published those Papers, and leave it to the Court to judge whether they are libellous: You know this is very common; it is in the Nature of a Special Verdict, where the Jury leave the Matter of Law to the Court.

Mr. Hamilton. I know, may it please your Honour, the Jury may do so; but I do likewise know they may do otherwise. I know they have the Right, beyond all Dispute, to determine both the Law and the Fact; and where they do not doubt of the Law, they ought to do so. This of leaving it to the Judgment of the Court, whether the Words are libellous or not, in effect, renders Juries useless (to say no worse) in many Cases; but this I shall have Occasion to speak to by-and-bye: And I will, with the Court's Leave, proceed to examine the Inconveniencies that must inevitably arise from the Doctrines *Mr. Attorney* has laid down; and I observe, in support of this Prosecution, he has frequently repeated the Words taken from the Case of *Libel, Famous*, in 5 Co. This is indeed the leading Case, and to which almost all the other Cases upon the Subject of Libels do refer; and I must insist upon saying, that, according as this Case seems to be understood by the Court and *Mr. Attorney*, it is not Law at this Day: For though I own it to be base and unworthy to scandalize any Man, yea, I think it is even villainous to scandalize a Person of publick Character; and I will go so far into *Mr. Attorney's* Doctrine as to agree, that if the Faults, Mistakes, nay even the Vices, of such a Person be private and personal, and don't affect the Peace of the Publick, or the Liberty or Property of our Neighbour, it is unmanly and unmannerly to expose them, either by Word or Writing. But when a Ruler of the People brings his Personal Failings, but much more his Vices, into his Administration, and the People find themselves affected by them, either in their Liberties or Properties, that will alter the Case mightily; and all the high Things that are said in favour of Rulers, and of Dignities, and upon the Side of Power, will not be able to stop People's Mouths when they feel themselves oppressed, I mean in a free Government. It is true, in Times past, it was a Crime to speak Truth; and in that terrible Court of Star-Chamber, many worthy and brave Men suffered for so doing; and yet, even in that Court, and in those bad Times, a great and good Man durst say, what I hope will not be taken amiss of me to say in this Place, to wit, 'The Practice of Informations for Libels is a sword in the Hands of a wicked King, and an arrant Coward, to cut down and destroy the Innocent; the one cannot, because of his high Station, and the other dares not, because of his Want of Courage, revenge himself in another manner.'

Mr. Att. Gen. Pray, *Mr. Hamilton*, have a care what you say; don't go too far neither: I don't like those Liberties.

Mr. Hamilton. Sure, *Mr. Attorney*, you won't make any Applications: All Men agree, that we are governed by the best of Kings; and I cannot see the Meaning of *Mr. Attorney's* Caution: My well-known Principles, and the Sense I have of the Blessings we enjoy under his present Majesty, makes it impossible for me to err, and, I hope, even to be suspected, in that Point of Duty to my King. May it please your Honour, I was saying, that notwithstanding all the Duty and Reverence claimed by *Mr. Attorney* to Men in Authority, they are not exempt from observing the Rules of common Justice, either in their private or publick Capacities; the Laws of our Mother-Country know no Exception. It is true, Men in Power are harder to be come at; for Wrongs they do, either to a private Person, or to the Publick; especially a Governor in the Plantations, where they insist upon an Exemption from answering Complaints of any Kind in their own Government. We are indeed told, and it is true, they are obliged to answer a Suit in the King's Courts at Westminster, for a Wrong done to any Person here: But do we not know how impracticable this is to most Men among us, to leave their Families, (who depend upon their Labour and Care for their Livelihood) and carry Evidences to Britain, and at a great, nay, a far greater Expence, than almost any of us are able to bear, only to prosecute a Governor for an Injury done here? But when the Oppression is general, there is no Remedy even that Way: No, our Constitution has (blessed be God) given us an Opportunity, if not to have such Wrongs redressed, yet, by our Prudence and Resolution, we may in a great measure prevent the committing of such Wrongs, by making a Governor sensible, that it is his Interest to be just to those under his Care; for such is the Sense that Men in general (I mean Freemen) have of common Justice, that when they come to know that a chief Magistrate abuses the Power with which he is intrusted for the Good of the People, and is attempting to turn that very Power against the Innocent, whether of high or low Degree, I say, Mankind in general seldom fail to interpose, and, as far as they can, prevent the Destruction of their Fellow Subjects. And has it not often been seen (and, I hope, it will always be seen) that when the Representatives of a free People are, by just Representations or Remonstrances, made sensible of the Sufferings of their Fellow Subjects, by the Abuse of Power in the Hands of a Governor, they have declared (and loudly too) that they were not obliged by any Law to support a Governor who goes about to destroy a Province or Colony, or their Privileges, which by his Majesty he was appointed, and by the Law he is bound, to protect and encourage. But I pray it may be considered, of what Use is this mighty Privilege, if every Man that suffers must be silent?

And if a Man must be taken up as a Libeller, for telling his Sufferings to his Neighbour, I know it may be answered, *Have you not a Legislature? Have you not a House of Representatives, to whom you may complain?* And to this I answer, We have: But what then? Is an Assembly to be troubled with every Injury done by a Governor? Or are they to hear of nothing but what those in the Administration will please to tell them? Or what Sort of a Trial must a Man have? And how is he to be remedied; especially if the Case were, as I have known it to happen in America in my Time, that a Governor who has Places (I will not say Pensions, for, I believe, they seldom give that to another which they can take to themselves) to bestow, and can or will keep the same Assembly (after he has modelled them so as to get a Majority of the House in his Interest) for near twice Seven Years together? I pray, what Redress is to be expected for an honest Man, who makes his Complaint against a Governor to an Assembly, who may properly enough be said to be made by the same Governor against whom the Complaint is made? The Thing answers itself. No, it is natural, it is a Privilege—I will go farther, it is a Right which all Freemen claim, and are intitled to, to complain when they are hurt; they have a Right publicly to remonstrate the Abuses of Power, in the strongest Terms, to put their Neighbours upon their Guard, against the Craft or open Violence of Men in Authority, and to assert with Courage the Sense they have of the Blessings of Liberty, the Value they put upon it, and their Resolution at all Hazards to preserve it, as one of the greatest Blessings Heaven can bestow. And when a House of Assembly, composed of honest Freemen, sees the general Bent of the People's Inclinations, that is it which must and will (I'm sure it ought to) weigh with a Legislature, in spite of all the Craft, Caressing, and Cajoling, made use of by a Governor, to divert them from hearkening to the Voice of their Country. As we all very well understand the true Reason, why Gentlemen take so much Pains, and make such great Interest, to be appointed Governors, so the Design of their Appointment is not less manifest. We know his Majesty's gracious Intentions to his Subjects; he desires no more than that his People in the Plantations should be kept up to their Duty and Allegiance to the Crown of Great Britain; that Peace may be preserved amongst them, and Justice impartially administered; that we may be governed so as to render us useful to our Mother-Country, by encouraging us to make and raise such Commodities as may be useful to Great Britain. But will any one say, that all or any of these good Ends are to be effected by a Governor's setting his People together by the Ears, and by the Assistance of one Part of the People to plague and plunder the other? The Commission which Governors bear, while they execute the Powers given them, according to the Intent of the Royal Grantor, expressed in their Commissions, requires and deserves very great Reverence and Submission; but when a Governor departs from the Duty enjoined him by his Sovereign, and acts as if he was less accountable than the Royal Hand that gave him all that Power and Honour which he is possessed of, this sets People upon examining and inquiring into the Power, Authority, and Duty of such a Magistrate, and to compare those with his Conduct; and just as far as they find he exceeds the Bounds of his Authority, or falls short in doing impartial Justice to the People under his Administration, so far they very often, in return, come short in their Duty to such a Governor. For Power alone will not make a Man beloved; and I have heard it observed, that the Man who was neither good nor wise before his being made a Governor, never mended upon his Preferment, but has been generally observed to be worse: For Men who are not endued with Wisdom and Virtue, can only be kept in Bounds by the Law; and by how much the further they think themselves out of the Reach of the Law, by so much the more wicked and cruel they are. I wish there were no Instances of the Kind at this Day. And wherever this happens to be the Case of a Governor, unhappy are the People under his Administration, and in the end he will find himself so too; for the People will neither love him nor support him. I make no doubt but there are those here, who are zealously concerned for the Success of this Prosecution, and yet I hope they are not many; and even some of those, I am persuaded (when they consider to what Lengths such Prosecutions may be carried, and how deeply the Liberties of the People may be affected by such Means) will not all abide by their present Sentiments; I say, *not all*: For the Man who, from an Intimacy and Acquaintance with a Governor, has conceived a personal Regard for him; the Man who has felt none of the Strokes of his Power; the Man who believes that a Governor has a Regard for him, and confides in him; it is natural for such Men to wish well to the Affairs of such a Governor; and as they may be Men of Honour and Generosity, may, and no doubt will, wish him Success, so far as the Rights and Privileges of their Fellow-Citizens are not affected. But as Men of Honour, I can apprehend nothing from them; they will never exceed that Point. There are others that are under stronger Obligations, and those are such as are in some Sort engaged in Support of a Governor's Cause, by their own or their Relations Dependence on his Favour for some Post or Preferment: Such Men have, what is commonly called, Duty and Gratitude to influence their Inclinations, and oblige them to go his Lengths. I know Men's Interests are very near to them, and they will do much, rather than forego the Favour of a Governor, and a Livelihood at the same Time; but I can with very just Grounds hope, even from those Men, whom I will suppose to be Men of Honour, and Conscience too, that when they see the Liberty of their Country is in Danger, either by their Concurrence, or even by their Silence, they will, like *Englishmen*, and like themselves, freely make a Sacrifice of any Preferment or Favour, rather than be accessory to destroying the Liberties of their Country, and entailing Slavery upon their Posterity. There are indeed another Set of Men, of whom I have no Hopes; I mean, such who lay aside all other Considerations, and are ready to join with Power in any Shape, and with many or any Sort of Men, by whose Means or Interest they may be assisted to gratify their Malice and Envy, against those whom they have been pleased to hate; and that for no other Reason, but because they are Men of Abilities and Integrity, or at least are possessed of some valuable Qualities far superior to their own. But as Envy is the Sin of the Devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this detestable and worthless Sort of Men, nor will their Opinions or Inclinations have any Influence upon this Trial. But to proceed: I

beg Leave to insist, that the Right of complaining or remonstrating is natural; and the Restraint upon this natural Right is the Law only, and that those Restraints can only extend to what is false: For as it is Truth alone which can excuse or justify any Man for complaining of a bad Administration, I as frankly agree, that nothing ought to excuse a Man who raises a false Charge or Accusation, even against a private Person, and that no Manner of Allowance ought to be made to him who does so against a public Magistrate. Truth ought to govern the whole Affair of Libels, and yet the Party accused runs Risk enough even then; for if he fails of proving every Title of what he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Cost, that when the Prosecution is set on foot by Men in Power, it seldom wants Friends to favour it. And from thence (it is said) has arisen the great Diversity of Opinions among Judges, about what Words were or were not scandalous or libellous. I believe it will be granted, that there is not greater Uncertainty in any Part of the Law, than about Words of Scandal: It would be mispending of the Court's Time to mention the Cases; they may be said to be numberless; and therefore the utmost Care ought to be taken in following Precedents; and the Times when the Judgments were given, which are quoted for Authorities in the Case of Libels, are much to be regarded. I think it will be agreed, that ever since the Time of the Star-Chamber, where the most arbitrary and destructive Judgments and Opinions were given, that ever an *Englishman* heard of, at least in his own Country: I say, Prosecutions for Libels since the Time of that arbitrary Court, and until the glorious Revolution, have generally been set on foot at the Instance of the Crown, or its Ministers; and it is no small Reproach to the Law, that these Prosecutions were too often and too much countenanced by the Judges, who held their Places at Pleasure (a disagreeable Tenure to any Officer, but a dangerous one in the Case of a Judge). To say more to this Point may not be proper. And yet I cannot think it unwarrantable, to shew the unhappy Influence that a Sovereign has sometimes had, not only upon Judges, but even upon Parliaments themselves.

It has already been shewn, how the Judges differed in their Opinions about the Nature of a Libel, in the Case of the seven Bishops. There you see three Judges of one Opinion, that is, of a wrong Opinion, in the Judgment of the best Men in England, and one Judge of a right Opinion. How unhappy might it have been for all of us at this Day, if that Jury had understood the Words in that Information as the Court did? Or if they had left it to the Court to judge, whether the Petition of the Bishops was or was not a Libel? No! they took upon them, to their immortal Honour, to determine both Law and Fact, and to understand the Petition of the Bishops to be no Libel, that is, to contain no Falshood nor Sedition, and therefore found them Not Guilty. And remarkable is the Case of Sir Samuel Barnardiston, who was fined 10,000 l. for writing a Letter, in which, it may be said, none saw any Scandal or Falshood but the Court and Jury; for that Judgment was afterwards looked upon as a cruel and detestable Judgment, and therefore was reversed by Parliament. Many more Instances might be given of the Complaisance of Court-Judges about those Times, and before; but I will mention only one Case more, and that is the Case of Sir Edward Hales, who, though a Roman Catholic, was by King James II. preferred to be a Colonel of his Army, notwithstanding the Statute of 25 Cha. II. Chap. 2. by which it is provided, *That every one that accepts of an Office, Civil or Military, &c. shall take the Oaths, subscribe the Declaration, and take the Sacrament, within three Months, &c. otherwise he is disabled to hold such Office, and the Grant for the same to be null and void, and the Party to forfeit 500 l.* Sir Edward Hales did not take the Oaths or Sacrament, and was prosecuted for the 500 l. for exercising the Office of a Colonel by the Space of three Months, without conforming as in the Act is directed. Sir Edward pleads, *That the King, by his Letters Patent, did dispense with his taking the Oaths and Sacrament, and subscribing the Declaration, and had pardoned the Forfeiture of 500 l.* And whether the King's Dispensation was good, against the said Act of Parliament? was the Question. I shall mention no more of this Case, than to shew how in the Reign of an arbitrary Prince, where Judges hold their Seats at Pleasure, their Determinations have not always been such as to make Precedents of, but the contrary; and so it happened in this Case, where it was solemnly judged, *That, notwithstanding this Act of Parliament, made in the strongest Terms, for Preservation of the Protestant Religion, that yet the King had, by his Royal Prerogative, a Power to dispense with that Law; and Sir Edward Hales was acquitted by the Judges accordingly.* (*State Trials*, Vol. VII. p. 612.) So the King's dispensing Power being by the Judges set up above the Act of Parliament, this Law, which the People looked upon as their chief Security against Popery and arbitrary Power, was, by this Judgment rendered altogether ineffectual. But this Judgment is sufficiently exposed by Sir Edward Atkins, late one of the Judges of the Court of Common Pleas, in his *Enquiry into the King's Power of dispensing with penal Statutes*; wherein it is shewn, *who it was that first invented Dispensations; how they came into England; what ill Use has been made of them there; and all this principally owing to the Countenance given them by the Judges.* He says of the dispensing Power, *The Pope was the Inventor of it; our Kings have borrowed it from them; and the Judges have, from Time to Time, nursed and dressed it up, and given it Countenance; and it is still upon the Growth, and encroaching, till it has almost subverted all Law, and made the Regal Power absolute, not dissoluble.* This seems not only to shew how far Judges have been influenced by Power, and how little Cases of this Sort, where the Prerogative has been in question in former Reigns, are to be relied upon for Law. But I think it plainly shews too, that a Man may use a greater Freedom with the Power of his Sovereign, and the Judges in Great Britain, than seems he may with the Power of a Governor in the Plantations, who is but a Fellow-Subject. Are the Words with which we are charged, these? Do Mr. Zenger's Papers contain any such Freedoms with his Governor, or his Council, as Sir Edward Atkins has taken with the Regal Power and the Judges in England? And yet I never heard of any Information brought against him for these Freedoms.

If then, upon the Whole, there is so great an Uncertainty among Judges (learned and great Men) in Matters of this Kind; if Power had so great an Influence on Judges, how cautious ought we to be in determining by their Judgments, especially in the Plantations, and in the Case of Libels? There is Heresy in Law as well as in Religion, and

have changed very much; and we well know that it is not two Centuries ago that a Man would have been burnt as an Heretick, for owning such Opinions in Matters of Religion as are publicly wrote and printed at this Day. They were fallible Men, it seems, and we take the Liberty not only to differ from them in religious Opinions, but to condemn them and their Opinions too; and I must presume, that in taking these Freedoms in thinking and speaking about Matters of Faith or Religion, we are in the right: For, tho' it is said there are very great Liberties of this Kind taken in New-York, yet I have heard of no Information preferred by Mr. Attorney for any Offences of this Sort. From which I think it is pretty clear, that in New-York a Man may make very free with his God, but he must take special Care what he says of his Governor. It is agreed upon by all Men, that this is a Reign of Liberty; and while Men keep within the Bounds of Truth, I hope they may with Safety both speak and write their Sentiments of the Conduct of Men in Power, I mean of that Part of their Conduct only, which affects the Liberty or Property of the People under their Administration; were this to be denied, then the next Step may make them Slaves. For what Notions can be entertained of Slavery, beyond that of suffering the greatest Injuries and Oppressions, without the Liberty of complaining; or if they do, to be destroyed, Body and Estate, for so doing.

It is said, and insisted upon by Mr. Attorney: That Government is a sacred Thing; that it is to be supported and revered; it is Government that protects our Persons and Estates; that prevents Treasons, Murders, Robberies, Riots, and all the Train of Evils that overturns Kingdoms and States, and ruins particular Persons; and if these in the Administration, especially the supreme Magistrates, must have all their Conduct censured by private Men, Government cannot subsist. This is called a Licentiousness not to be tolerated. It is said, That it brings the Rulers of the People into Contempt, and their Authority not to be regarded, and so in the End the Laws cannot be put in Execution. These, I say, and such as these, are the general Topics insisted upon by Men in Power, and their Advocates. But I wish it might be considered at the same Time, how often it has happened, that the Abuse of Power has been the primary Cause of these Evils, and that it was the Injustice and Oppression of these great Men, which has commonly brought them into Contempt with the People. The Craft and Art of such Men is great, and who, that is the least acquainted with History or Law, can be ignorant of the specious Pretences, which have often been made use of by Men in Power, to introduce arbitrary Rule, and destroy the Liberties of a free People. I will give two Instances, and as they are Authorities not to be denied, nor can be misunderstood, I presume they will be sufficient.

The first is the Statute of 3d of Hen. VII. Cap. 1. The Preamble of the Statute will prove all, and more than I have alledged. It begins: *The King Our Sovereign Lord remembereth, how by unlawful Maintinances, giving of Liveries, Signs and Tokens, &c. untrue Demeanings of Sheriffs in making of Pannels, and other untrue Returns, by taking of Money, by Injuries, by great Riots and unlawful Assemblies; the Policy and good Rule of this Realm is almost subverted; and for the not punishing these Inconveniencies, and by Occasion of the Premises, little or nothing may be found by Inquiry, &c. to the Increase of Murders, &c. and Unsureties of all Men living, and Losses of their Lands and Goods.* Here is a fine and specious Pretence for introducing the Remedy, as it is called, which is provided by this Act; that is, instead of being lawfully accused by twenty-four good and lawful Men of the Neighbourhood, and afterwards tried by twelve like lawful Men, here is a Power given to the Lord Chancellor, Lord Treasurer, the Keeper of the King's Privy Seal, or two of them, calling to them a Bishop, a temporal Lord, and other great Men mentioned in the Act, (who, it is to be observed, were all to be Dependants on the Court) to receive Information against any Person for any of the Misbehaviours recited in that Act, and by their Discretion to examine, and to punish them according to their Demerit.

The second Statute I proposed to mention, is the 11th of the same King, Chap. 3d, the Preamble of which Act has the like fair Pretences as the former; for the King calling to his Remembrance the good Laws made against the receiving of Liveries, &c. unlawful Extortions, Maintinances, Embracery, &c. unlawful Games, &c. and many other Great Encroachments, and Offences committed against many good Statutes, to the Displeasure of Almighty God, which, the Act says, could not, nor yet can, be conveniently punished by the due Order of the Law, except it were first found by Twelve Men, &c. which, for the Causes aforesaid, will not find nor yet present the Truth. And therefore the same Statute directs, that the Justices of Assize, and Justices of the Peace, shall upon Information for the King before them made, have full Power, by their Discretion, to hear and determine all such Offences. Here are two Statutes that are allowed to have given the deepest Wound to the Liberties of the People of England of any that I remember to have been made, unless it may be said that the Statute made in the Time of Henry VIIIth, by which his Proclamations were to have the Effect of Laws, might in its Consequence be worse. And yet we see the plausible Pretences found out by the great Men to procure these Acts. And it may justly be said, that by those Pretences the People of England were cheated or awed into the delivering up their ancient and sacred Right of Trials by Grand and Petit Juries. I hope to be excused for this Expression, seeing my Lord Coke calls it (4 Inst.) unjust and strange Act, that tended in its Execution to the great Displeasure of Almighty God, and the utter Subversion of the Common Law.

These, I think, make out what I alledged, and are flagrant Instances of the Influence of Men in Power, even upon the Representatives of a whole Kingdom. From all which, I hope, it will be agreed, that it is a Duty which all good Men owe to their Country, to guard against the unhappy Influence of ill Men when intrusted with Power, and especially against their Creatures and Dependents, who, as they are generally more necessitous, are surely more covetous and cruel. But it is worthy of Observation, that though the Spirit of Liberty was borne down and oppressed in England that Time, yet it was not lost; for the Parliament laid hold of the first Opportunity to free the Subject from the many insufferable Oppressions and Outrages committed upon their Persons and Estates by Colour of these Acts, the last of which being deemed the most grievous, was repealed in the first Year of Hen. VIIIth. Tho' it is to be observed, that Hen. VIIth, and his Creatures, reaped such great Advantages by the grievous Oppressions and Exactions, grinding the Faces of the poor Subjects,

as my Lord Coke says, by Colour of this Statute by Information only, that a Repeal of this Act could never be obtained during the Life of that Prince. The other Statute being the favourite Law for supporting arbitrary Power, was continued much longer. The Execution of it was by the great Men of the Realm; and how they executed it, the Sense of the Kingdom, expressed in the 7th of Charles I. (by which the Court of Star-Chamber, the Soil where Informations grew rankest) will best declare. In that Statute *Magna Charta*, and the other Statutes made in the Time of Edw. III. which, I think, are no less than five, are particularly enumerated as Acts, by which the Liberties and Privileges of the People of England were secured to them, against such oppressive Courts as the Star-Chamber, and others of the like Jurisdiction. And the Reason assigned for their pulling down the Star-Chamber, is, *That the Proceedings, Censures and Decrees of the Court of Star Chamber, even though the great Men of the Realm, nay, and a Bishop too (holy Man) were Judges, had by Experience been found to be an intolerable Burthen to the Subject, and the Means to introduce an arbitrary Power and Government.* And therefore that Court was taken away, with all the other Courts in that Statute mentioned, having like Jurisdiction.

I do not mention this Statute, as if by the taking away the Court of Star-Chamber, the Remedy for many of the Abuses or Offences censured there, was likewise taken away; no, I only intend by it to shew, that the People of England saw clearly the Danger of trusting their Liberties and Properties to be tried, even by the greatest Men in the Kingdom, without the Judgment of a Jury of their Equals. They had felt the terrible Effects of leaving it to the Judgment of these great Men to say what was scandalous and seditious, false or ironical. And if the Parliament of England thought this Power of judging was too great to be trusted with Men of the first Rank in the Kingdom, without the Aid of a Jury, how sacred soever their Characters might be, and therefore restored to the People their original Right of Trial by Juries, I hope to be excused for insisting, that by the Judgment of a Parliament, from whence no Appeal lies, the Jury are the proper Judges of what is false at least, if not of what is scandalous and seditious. This is an Authority not to be denied, it is as plain as it is great, and to say, that this Act indeed did restore to the People Trials by Juries, which was not the Practice of the Star-Chamber, but that it did not give the Jurors any new Authority, or any Right to try Matters of Law, I say this Objection will not avail; for I must insist, that where Matter of Law is complicated with Matter of Fact, the Jury have a Right to determine both. As for Instance; upon Indictment for Murder, the Jury may, and almost constantly do, take upon them to judge whether the Evidence will amount to Murder or Manslaughter, and find accordingly; and I must say, I cannot see, why in our Case the Jury have not at least as good a Right to say, whether our News Papers are a Libel or no Libel, as another Jury has to say, whether killing of a Man is Murder or Manslaughter. The Right of the Jury to find such a Verdict as they in their Conscience do think is agreeable to their Evidence, is supported by the Authority of *Bushe's Case*, in *Vaughan's Reports*, pag. 135, beyond any doubt. For, in the Argument of that Case, the Chief-Justice who delivered the Opinion of the Court, lays it down for Law: (*Vaughan's Rep. p. 150.*) *That in all General Issues, as upon Non. Cul. in Trespass, Non Tort. Nul Disseizin in Assize, &c. though it is Matter of Law, whether the Defendant is a Trespasser, a Disseizer, &c. in the particular Cases in Issue, yet the Jury find not (as in a special Verdict) the Fact of every Case, leaving the Law to the Court; but find for the Plaintiff or Defendant upon the Issue to be tried, wherein they resolve both Law and Fact complicitely.* It appears by the same Case, that though the discreet and lawful Assistance of the Judge, by way of Advice to the Jury, may be useful, yet that Advice or Direction ought always to be upon Supposition, and not positive and upon Coercion. The Reason given in the same Book is, page 144, 147. *Because the Judge (as Judge) cannot know what the Evidence is which the Jury have, that is, he can only know the Evidence given in Court; but the Evidence which the Jury have, may be of their own Knowledge, as they are returned of the Neighbourhood. They may also know from their own Knowledge, that what is sworn in Court is not true; and they may know the Witnesses to be stigmatized, to which the Court may be Strangers.* But what is to my Purpose, is, that suppose that the Court did really know all the Evidence which the Jury know, yet in that Case it is agreed, That the Judge and Jury may differ in the Result of their Evidence, as well as two Judges may, which often happens. And in page 148. the Judge subjoins the Reason, why it is no Crime for a Jury to differ in Opinion from the Court, where he says, *That a Man cannot see with another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the Thing by another's Understanding or Reasoning.* From all which (I insist) it is very plain, That the Jury are by Law at Liberty (without any Affront to the Judgment of the Court) to find both the Law and the Fact, in our Case, as they did in the Case I am speaking to, which I will beg leave just to mention, and it was this: Mr. Penn and Mead being Quakers, and having met in a peaceable Manner, after being shut out of their Meeting-House, preached in Grace-Church-Street, in London, to the People of their own Persuasion, and for this they were indicted; and it was said, *That they with other Persons, to the Number of 300, unlawfully and tumultuously assembled, to the Disturbance of the Peace, &c.* To which they pleaded, *Not Guilty.* And the Petit Jury being sworn to try the Issue between the King and the Prisoners, that is, whether they were Guilty, according to the Form of the Indictment? Here there was no Dispute but they were assembled together, to the Number mentioned in the Indictment; but, whether that Meeting together was riotously, tumultuously, and to the Disturbance of the Peace? was the Question. And the Court told the Jury it was, and ordered the Jury to find it so; For (said the Court) *the Meeting was the Matter of Fact, and that is confessed, and we tell you it is unlawful, for it is against the Statute; and the Meeting being unlawful, it follows of course that it was tumultuous, and to the Disturbance of the Peace.* But the Jury did not think fit to take the Court's Word for it, for they could neither find Riot, Tumult, or any Thing tending to the Breach of the Peace committed at that Meeting; and they acquitted Mr. Penn and Mead. In doing of which they took upon them to judge both the Law and the Fact; at which the Court (being themselves true Courtiers) were so much offended, that they fined the Jury 40 Marks a-piece, and committed them 'till paid. But Mr. *Bushe*, who valued the Right of a Juryman and the Liberty of his Country more than his own, refused to pay the Fine, and was resolved (though at

a great Expence and Trouble too) to bring, and did bring, his *Habeas Corpus*, to be relieved from his Fine and Imprisonment, and he was released accordingly; and this being the Judgment in his Case, it is established for Law, That the Judges, how great soever they be, have no Right to fine, imprison, or punish a Jury, for not finding a Verdict according to the Direction of the Court. And this, I hope, is sufficient to prove, that Jurymen are to see with their own Eyes, to hear with their own Ears, and to make use of their own Consciences and Understandings in judging of the Lives, Liberties, or Estates of their Fellow-Subjects. And so I have done with this Point.

This is the second Information, for libelling of a Governor, that I have known in America. And the first, though it may look like a Romance, yet, as it is true, I will beg Leave to mention it. Governor Nicholson, who happened to be offended with one of his Clergy, met him one Day upon the Road; and as it was usual with him (under the Protection of his Commission) used the poor Parson with the worst of Language, threatened to cut off his Ears, slit his Nose, and at last to shoot him through the Head. The Parson, being a reverend Man, continued all this Time uncovered in the Heat of the Sun, until he found an Opportunity to fly for it; and coming to a Neighbour's House, felt himself very ill of a Fever, and immediately writes for a Doctor; and that his Physician might the better judge of his Distemper, he acquainted him with the Usage he had received; concluding, that the Governor was certainly mad; for that no Man in his Senses would have behaved in that Manner. The Doctor unhappily shews the Parson's Letter: The Governor came to hear of it, and so an Information was preferred against the poor Man for saying, *He believed the Governor was mad*; and it was laid in the Information to be false, scandalous, and wicked, and wrote with Intent to move Sedition among the People, and bring his Excellency into Contempt. But by an Order from the late Queen Anne, there was a Stop put to the Prosecution, with sundry others set on Foot by the same Governor, against Gentlemen of the greatest Worth and Honour in that Government.

And may not I be allowed, after all this, to say, that, by a little Countenance, almost any Thing which a Man writes, may, with the Help of that useful Term of Art called an *Innuendo*, be construed to be a Libel, according to Mr. Attorney's Definition of it, That *whether the Words are spoke of a Person of a publick Character, or of a private Man, whether dead or living, good or bad, true or false, all make a Libel*; for, according to Mr. Attorney, *after a Man hears a Writing read, or reads and repeats it, or laughs at it, they are all punishable*. It is true, Mr. Attorney is so good as to allow, *after the Party knows it to be a Libel*; but he is not so kind as to take the Man's Word for it.

Here were several Cases put to shew, that though what a Man writes of a Governor was true, proper, and necessary, yet, according to the foregoing Doctrine, it might be construed to be a Libel. But Mr. Hamilton, after the Trial was over, being informed, that some of the Cases he had put had really happened in this Government, he declared he had never heard of any such; and as he meant no personal Reflections, he was sorry he had mentioned them, and therefore they are omitted here.

Mr. Hamilton. If a Libel is understood in the large and unlimited Sense urged by Mr. Attorney, there is scarce a Writing I know that may not be called a Libel, or scarce any Person safe from being called to Account as a Libeller: For *Moses*, meek as he was, libelled *Cain*; and who is it that has not libelled the Devil? For, according to Mr. Attorney, it is no Justification to say one has a bad Name. *Echard* has libelled our good King *William*; *Burnet* has libelled, among many others, King *Charles* and King *James*; and *Ropin* has libelled them all. How must a Man speak or write, or what must he hear, read, or sing? Or when must he laugh, so as to be secure from being taken up as a Libeller? I sincerely believe, that were some Persons to go through the Streets of *New York* now-a-days, and read a Part of the Bible, if it was not known to be such, Mr. Attorney, with the Help of his *Innuendos*, would easily turn it into a Libel. As for Instance, *Jf. xi. 16. The Leaders of the People cause them to err, and they that are led by them are destroyed*. But should Mr. Attorney go about to make this a Libel, he would read it thus: *The Leaders of the People [Innuendo, the Governor and Council of New-York] cause them [Innuendo, the People of this Province] to err, and they [the Governor and Council meaning] are destroyed [Innuendo, are deceived into the Loss of their Liberty]*; which is the worst Kind of Destruction. Or if some Persons should publicly repeat, in a Manner not pleasing to his Betters, the 10th and the 11th Verses of the 14th Chap. of the same Book, there Mr. Attorney would have a large Field to display his Skill, in the artful Application of his *Innuendos*. The Words are; *His Watchmen are blind, they are ignorant, &c. Yea, they are greedy Dogs, that can never have enough*. But to make them a Libel, there is, according to Mr. Attorney's Doctrine, no more wanting but the Aid of his Skill, in the right adapting his *Innuendos*. As for Instance; *His Watchmen [Innuendo, the Governor's Council and Assembly] are blind, they are ignorant, [Innuendo, will not see the dangerous Designs of his Excellency.] Yea, they [the Governor and Council meaning] are greedy Dogs, which can never have enough [Innuendo, enough of Riches and Power.]* Such an Instance as this seems only fit to be laughed at; but I may appeal to Mr. Attorney himself, whether these are not at least equally proper to be applied to his Excellency, and his Ministers, as some of the Inferences and *Innuendos* in his Information against my Client. Then if Mr. Attorney is at Liberty to come into Court, and file an Information in the King's Name, without Leave, who is secure, whom he is pleased to prosecute as a Libeller? And as the Crown Law is contended for in bad Times, there is no Remedy for the greatest Oppression of this Sort, even though the Party prosecuted is acquitted with Honour. And give me Leave to say, as great Men as any in *Britain* have boldly asserted, that the Mode of prosecuting by Information (when a Grand Jury will not find *Billa vera*) is a national Grievance, and greatly inconsistent with that Freedom which the Subjects of *England* enjoy in most other Cases. But if we are so unhappy as not to be able to ward off this Stroke of Power directly, let us take care not to be cheated out of our Liberties by Forms and Appearances; let us always be sure that the Charge in the Information is made out clearly, even beyond a Doubt; for though Mat-

ters in the Information may be called *Firm* upon Trial, yet they may be, and often have been found to be, *Matters of Substance* upon giving Judgment.

Gentlemen, the Danger is great, in Proportion to the Mischief that may happen through our too great Credulity. A proper Confidence in a Court is commendable; but as the Verdict (whatever it is) will be yours, you ought to refer no Part of your Duty to the Discretion of other Persons. If you should be of Opinion, that there is no Falseness in Mr. Zenger's Papers, you will, nay, (pardon me for the Expression) you ought to say so; because you don't know whether others (I mean the Court) may be of that Opinion. It is your Right to do so, and there is much depending upon your Resolution, as well as upon your Integrity.

The Loss of Liberty, to a generous Mind, is worse than Death; and yet we know there have been those in all Ages, who, for the Sake of Preference, or some imaginary Honour, have freely lent a helping Hand to oppress, nay, to destroy their Country. This brings to my Mind that Saying of the immortal *Brutus*, when he looked upon the Creatures of *Cæsar*, who were very great Men, but by no Means good Men: "Yai Romans, said *Brutus*, if yet I may call you so, consider what you are doing; remember that you are assisting *Cæsar* to forge those very Chains, which one Day he will make yourselves wear." This is what every Man (that values Freedom) ought to consider: He should act by Judgment, and not by Affection or Self-interest; for where those prevail, no Ties of either Country or Kindred are regarded; as, upon the other Hand, the Man who loves his Country, prefers its Liberty to all other Considerations, well knowing that without Liberty Life is a Misery.

A famous Instance of this you will find in the History of another brave Roman, of the same Name; I mean *Lucius Junius Brutus*, whose Story is well known; and therefore I shall mention no more of it, than only to shew the Value he put upon the Freedom of his Country. After this great Man, with his Fellow-Citizens, whom he had engaged in the Cause, had banished *Tarquius the Proud*, the last King of *Rome*, from a Throne which he ascended by inhuman Murders, and possessed by the most dreadful Tyranny and Proscriptions, and had by this Means amassed incredible Riches, even sufficient to bribe to his Interest many of the young Nobility of *Rome*, to assist him in recovering the Crown; but the Plot being discovered, the principal Conspirators were apprehended, among whom were two of the Sons of *Junius Brutus*. It was absolutely necessary that some should be made Examples of, to deter others from attempting the restoring of *Tarquius*, and destroying the Liberty of *Rome*. And to effect this it was, that *Lucius Junius Brutus*, one of the Consuls of *Rome*, in the Presence of the Roman People, sat Judge, and condemned his own Sons, as Traitors to their Country: And to give the last Proof of his exalted Virtue, and his Love of Liberty, he, with a Firmness of Mind, (only becoming so great a Man) caused their Heads to be struck off in his own Presence; and when he observed that his rigid Virtue occasioned a Sort of Horror among the People, it is observed he only said, "My Fellow-Citizens, do not think that this proceeds from any Want of natural Affection: No, the Death of the Sons of *Brutus* can affect *Brutus* only; but the Loss of Liberty will affect my Country." Thus highly was Liberty esteemed in those Days, that a Father could sacrifice his Sons to save his Country. But why do I go to *Heathen Rome*, to bring Instances of the Love of Liberty? The best Blood in *Britain* has been shed in the Cause of Liberty; and the Freedom we enjoy at this Day, may be said to be (in a great Measure) owing to the glorious Stand the famous *Hampden*, and others of our Countrymen, [in the Case of Ship-Money; see his Trial in *State Trials*, Vol. I. p. 505.] made against the arbitrary Demands, and illegal Impositions, of the Times in which they lived; who, rather than give up the Rights of *Englishmen*, and submit to pay an illegal Tax of no more, I think, than three Shillings, resolved to undergo, and, for the Liberty of their Country, did undergo the greatest Extremities in that arbitrary and terrible Court of Star-Chamber; to whose arbitrary Proceedings (it being composed of the principal Men of the Realm, and calculated to support arbitrary Government) no Bounds or Limits could be set, nor could any other Hand remove the Evil but a Parliament.

Power may justly be compared to a great River; while kept within its due Bounds, it is both beautiful and useful; but when it overflows its Banks, it is then too impetuous to be stemmed; it bears down all before it, and brings Destruction and Desolation wherever it comes. If then this is the Nature of Power, let us at least do our Duty, and like wise Men (who value Freedom) use our utmost Care to support Liberty, the only Bulwark against lawless Power, which, in all Ages, has sacrificed to its wild Lust, and boundless Ambition, the Blood of the best Men that ever lived.

I hope to be pardoned, Sir, for my Zeal upon this Occasion: It is an old and wise Caution, *That when our Neighbour's House is on Fire, we ought to take care of our own*. For though, blessed be God, I live in a Government where Liberty is well understood, and freely enjoyed; yet Experience has shewn us all (I'm sure it has to me), that a bad Precedent in one Government, is soon set up for an Authority in another; and therefore I cannot but think it mine, and every honest Man's Duty, that (while we pay all due Obedience to Men in Authority) we ought at the same time to be upon our Guard against Power, wherever we apprehend that it may affect ourselves or our Fellow-Subjects.

I am truly very unequal to such an Undertaking, on many Accounts. And you see I labour under the Weight of many Years, and am borne down with great Infirmities of Body; yet old and weak as I am, I should think it my Duty, if required, to go to the utmost Part of the Land, where my Service could be of any Use, in assisting to quench the Flame of Prosecutions upon Informations, set on Foot by the Government, to deprive a People of the Right of remonstrating, (and complaining too) of the arbitrary Attempts of Men in Power. Men who injure and oppress the People under their Administration, provoke them to cry out and complain; and then make that very Complaint the Foundation for new Oppressions and Prosecutions. I wish I could say there were no Instances of this Kind. But to conclude; the Question before the Court, and you, Gentlemen of the Jury, is not of small nor private Concern; it is not the Cause of a poor Printer, nor of *New-York* alone, which you are now trying: No! It may, in its Consequence, affect every Freeman that lives under a *British* Government on the Main of *America*. It is the best Cause; it is the Cause of Liberty; and I make

not doubt but your upright Conduct, this Day, will not only intitle you to the Love and Esteem of your Fellow-Citizens; but every Man, who prefers Freedom to a Life of Slavery, will bless and honour you, as Men who have baffled the Attempt of Tyranny; and, by an impartial and uncorrupt Verdict, have laid a noble Foundation for securing to ourselves, our Posterity, and our Neighbours, that to which Nature and the Laws of our Country have given us a Right—the Liberty—both of exposing and opposing arbitrary Power (in these Parts of the World, at least) by speaking and writing Truth.

Here Mr. Attorney observed, that Mr. Hamilton had gone very much out of the Way, and had made himself and the People very merry; but that he had been citing Cases not at all to the Purpose. He said, there was no such Cause as Mr. Busb's, or Sir Edward Hale's, before the Court; and he could not find out what the Court or Jury had to do with Dispensations, Riots, or unlawful Assemblies: All that the Jury had to consider of, was Mr. Zenger's printing and publishing two scandalous Libels, which very highly reflected on his Excellency, and the principal Men concerned in the Administration of this Government, which is confessed; that is, the Printing and Publishing of the Journals set forth in the Information is confessed. And concluded, that as Mr. Hamilton had confessed the Printing, and there could be no doubt but they were scandalous Papers, highly reflecting upon his Excellency, and the principal Magistrates in the Province; and therefore he made no doubt but the Jury would find the Defendant guilty, and would refer to the Court for their Direction.

Mr. Chief Justice. Gentlemen of the Jury, the great Pains Mr. Hamilton has taken to shew how little Regard Juries are to pay to the Opinion of the Judges, and his insisting so much upon the Conduct of some Judges in Trials of this Kind, is done, no doubt, with a Design that you should take but very little Notice of what I may say upon this Occasion. I shall therefore only observe to you, that, as the Facts or Words in the Information are confessed, the only Thing that can come in question before you is, whether the Words, as set forth in the Information, make a Libel; and that is a Matter of Law, no doubt, and which you may leave to the Court. But I shall trouble you no further with any Thing more of my own; but read to you the Words of a learned and upright Judge, in a Case of the like Nature. [Lord Chief Justice Holt, in *Tutchin's Case*, *State Trials*, Vol. V. p. 542.]

'To say that corrupt Officers are appointed to administer Affairs, is certainly a Reflection on the Government. If People should not be called to account for possessing the People with an ill Opinion of the Government, no Government can subsist; for it is necessary for all Governments that the People should have a good Opinion of it; and nothing can be worse to any Government, than to endeavour to procure Animositities. As to the Management of it, this has been always looked upon as a Crime, and no Government can be safe without it be punished.

'Now you are to consider, whether these Words I have read to you do not tend to beget an ill Opinion of the Administration of the Government; to tell us, that those that are employed know nothing of the Matter, and those that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Interest, and not to their Fitness for the Places. This is the Purport of these Papers.'

Mr. Hamilton. I humbly beg your Honour's Pardon; I am very much misapprehended, if you suppose what I said was so designed.

Sir, you know I made an Apology for the Freedom I found myself under a Necessity of using upon this Occasion. I said, there was nothing personal designed; it arose from the Nature of our Defence.

The Jury withdrew, and in a small time returned; and being asked by the Clerk,

Whether they were agreed of their Verdict, and whether *John Peter Zenger* was guilty of printing and publishing the Libels in the Information mentioned?

They answered, by *Thomas Hunt*, their Foreman, *Not Guilty*.

Upon which there were three Huzzas in the Hall, which was crouded with People; and the next Day I was discharged from my Imprisonment.

City of } *N. Y.* At a Common Council, held at the City-Hall of the said City, on Tuesday the sixteenth Day of September, Anno Dom. 1735.

PRESENT,

Paul Richards, Esq. Mayor.
Gerardus Stuyvesant, Esq. Deputy Mayor.
Daniel Horsfemenden, Esq. Recorder.

ALDERMEN,

William Roome, Esq.
Simon Johnson, Esq.
John Walter, Esq.

ASSISTANTS,

Mr. Johannes Waldron,
Mr. Ede Myer,
Mr. John Moore,
Christopher Fell, Esq.
Stephen Bayard, Esq.
Johannes Burger, Esq.

Ordered, That *Andrew Hamilton*, Esq. of Philadelphia, Barrister at Law, be presented with the Freedom of this Corporation: And that *Alderman Bayard*, *Alderman Johnson*, and *Alderman Fell*, be a Committee to bring in Draught thereof.

City of } *N. Y.* At a Common Council, held at the City-Hall of the said City, on Monday the twenty-ninth Day of September, being the Feast-Day of St. Michael the Archangel, Anno Dom. 1735.

PRESENT,

Paul Richards, Esq. Mayor.
Daniel Horsfemenden, Esq. Recorder.

ALDERMEN,

William Roome, Esq.
Simon Johnson, Esq.
John Walter, Esq.

Christopher Fell, Esq.
Stephen Bayard, Esq.
Johannes Burger, Esq.

ASSISTANTS,

Mr. Johannes Waldron,
Mr. John Fred,
Mr. Charles Le Roux,
Mr. Evert Byvank,
Mr. Henry Bogert.

Stephen Bayard, *Simon Johnson*, and *Christopher Fell*, Esqrs. Aldermen, to whom it was referred to prepare the Draught of the Freedom of this Corporation, to be presented to *Andrew Hamilton*, Esq. make the Report thereon in the Words following, (to wit) That they have prepared the Form of the Grant to the said *Andrew Hamilton*, Esq. of the Freedom of the City of New York, in these Words, (to wit)

City of } *N. Y.* *Paul Richards*, Esq. the Recorder, Aldermen, and Assistants of the City of New York, convened in Common Council, To all to whom these Presents shall come Greeting. WHEREAS Honour is the just Reward of Virtue, and publick Benefits demand a publick Acknowledgment: We therefore, under a grateful Sense of the remarkable Service done to the Inhabitants of this City and Colony by *Andrew Hamilton*, Esq. of Pennsylvania, Barrister at Law, by his learned and generous Defence of the Rights of Mankind, and the Liberty of the Press, in the Case of *John Peter Zenger*, lately tried on an Information exhibited in the Supreme Court of this Colony, do, by these Presents, bear to the said *Andrew Hamilton*, Esq. the publick Thanks of the Freeman of this Corporation for that signal Service, which he cheerfully undertook under great Indisposition of Body, and generously performed, refusing any Fee or Reward: And in Testimony of our great Esteem for his Person, and Sense of his Merit, do hereby present him with the Freedom of this Corporation. These are therefore to certify and declare, that the said *Andrew Hamilton*, Esq. is hereby admitted, received, and allowed a Freeman and Citizen of the said City: To have, hold, enjoy, and partake of all the Benefits, Liberties, Privileges, Freedoms and Immunities whatsoever, granted or belonging to a Freeman and Citizen of the same City. In Testimony whereof, the Common Council of the said City, in Common Council assembled, have caused the Seal of the said City to be hereunto affixed, this twenty-ninth Day of September, Anno Domini One Thousand Seven Hundred and Thirty-five.

By Order of the Common Council,

William Sharpas, Clerk.

And we do further report, that sundry of the Members of this Corporation, and Gentlemen of this City, have voluntarily contributed sufficient for a Gold-Box of five Ounces and a half, for inclosing the Seal of the said Freedom; upon the Lid of which, we are of Opinion, should be engraved the Arms of the City of New-York. Witness our Hands this twenty-ninth Day of September, 1735.

Stephen Bayard,
Simon Johnson,
Christopher Fell.

Which Report is approved by this Court, and Ordered, That the Freedom and Box be forthwith made, pursuant to the said Report; and that *Mr. Sharpas*, the Common Clerk of this City, do affix the Seal of the same Freedom, and inclose it in the said Box.

Mr. Alderman Bayard going to Philadelphia, and offering to be the Bearer of the said Freedom to *Mr. Hamilton*; Ordered, That *Mr. Sharpas* deliver it to *Alderman Bayard* for that Purpose; and that *Alderman Bayard* do deliver it to *Mr. Hamilton*, with Assurances of the great Esteem that this Corporation have for his Person and Merit.

City of } *N. Y.* At a Common Council, held at the City-Hall of the said City, on Wednesday the fifteenth Day of October, Anno Domini 1735.

PRESENT,

Paul Richards, Esq. Mayor.
Daniel Horsfemenden, Esq. Recorder.

ALDERMEN,

John Walter, Esq.
Simon Johnson, Esq.

William Roome, Esq.
Johannes Burger, Esq.

ASSISTANTS,

Mr. Johannes Waldron,
Mr. Abraham De Peyster,
Mr. Gerardus Beekman,
Mr. Peter Stoutenburgh,
Mr. Henry Bogert.

Ordered, That the Freedom granted by this Corporation to *Andrew Hamilton*, Esq. with the Report of the Committee for preparing a Draught of the same, and the Order of this Court thereon, may be printed.

William Sharpas.

Round on the Lid of the Box, mentioned in the abovesaid Report and Order, there is engraved not only the Arms of the City of New York, but also this Motto in a Garter;

Demersæ Leges—timesacta Libertas—hæc tandem emergunt.

On the inner Side of the Lid of the Box, shewing itself at the same time with the Certificate of the Freedom, there is engraven, in a flying Garter, these Words;

Non nummis, Virtute paratur.

As an Incentive to publick Virtue, on the Front of the Rim of the said Box, there is engraven a Part of *Tully's* With;

Ita cuique eveniat, ut de republica meruit.

Which Freedom and Box was presented in the manner that had been directed, and gratefully accepted by the said *Andrew Hamilton*, Esq.

XXIII. *Remarks on the Trial of JOHN PETER ZENGER, Printer of the New-York Weekly Journal who was lately tried and acquitted, for printing and publishing two Libels against the Government of that Province.*

S I R,

It has been a common Remark among those who have observed upon the capricious Dispensations of Fortune, that great Events are often produced by Instruments that are not seemingly adequate; nay, that the same apparent Causes have quite contrary Effects; and the Road that leads one Man to Wealth, Honour, and Power, sometimes carries another to Poverty, Infamy, and Ruin. Hence comes that confused Distribution of Axes and Coronets, Halsters and Ribbons, which History displays by numerous shocking Examples; and thus it is, that Fate seems to play at Crofs-purposes with Mankind; or to speak in Scripture-phrase, in this Sense as well as many others, *the Wisdom of this World is Foolishness.*

I find myself drawn into these grave Reflections, by reading the Trial of *John Peter Zenger*, at New-York, upon an Information for printing and publishing a Libel. This Piece, it seems, has been lately printed there, and was put into my Hand another Day by a Friend, who has both a general Acquaintance and a Correspondence with the Northern Colonies, as a rare Production, containing many Things new and surprising. And, in truth, I must say it affords a lively Specimen, in Miniature, of the Justness of the foregoing Remarks: I mean that Part of it which is attributed to *Andrew Hamilton*, Esq. of *Philadelphia*, Barrister at Law; together with the Sequel, describing the munificent Behaviour of the Citizens, in Common Council assembled, to the learned Gentleman, for his singular Performance on that Occasion.

I must at the same Time assure you, that if *Zenger's* Trial had been printed by Order of the Court that tried him, or from a Copy taken by a private Hand at the Trial, or by any other Means that excluded Mr. *Hamilton's* Approbation or Privity, I should have enjoyed my own Opinion, without troubling you or any body else about it, and had the Charity to resolve all the Extravagancies that occur throughout his Declamation, into a right Discernment of the People he talked to, and a Dexterity in captivating them, which had its Effect in the Acquittal of his Client. But when a Gentleman of the Bar takes the Pains to write over a long Discourse (he being the only Lawyer, of either Side, who gave the Printer his Notes), in order to send it abroad through the World, as a Specimen of his Abilities, Sentiments and Principles; as a solemn Argument in the Law, fit to see the Light, and abide the Test in all Places; and, above all, as a *Task of Duty*, which he thought himself bound to perform, even by going to the utmost Parts of the Land for the Purpose; and all this, without Fee or Reward, under the Weight of many Years, and great Infirmities of Body: When a Barrister, I say, thus becomes a Volunteer for Error, and presumes to obtrude bad Law and false Reasoning upon the Sense of Mankind, because the sage Magistrates of New-York have put their Seal to it; I think myself at Liberty, without using any other Apology, to exercise the judging Privilege of a Reader, since the Gentleman himself has put me into the Possession of it.

In doing this, I shall not in the least gratify a vain Itch of Writing; for there are no extraordinary Talents necessary for refuting gross Absurdities; but I shall have the honest Merit of endeavouring to undeceive such of my Fellow-Subjects in the Plantations as may, from the late uncommon Success of the Doctrine, mistake the Liberty of the Press for a Licence to write and publish infamous Things of their Superiors, and of all others, at their Pleasure, provided they write and publish nothing but what is true. In the next Place, I would preserve, as far as I am able, the Dignity of the Profession of the Law in these remote Parts of the *British* Dominions; and prevent its learned Professors in *England*, who probably will see the renowned Piece above mentioned (if we may judge from the Industry used in dispersing it), from suspecting that all their *American* Brethren use the like Arts to gain Popularity and honourable Rewards. The former, having the Advantage of going daily to the great School of Law at *Westminster*, are already apt enough to think meanly of the Accomplishments of the latter, who are far removed from Instruction; and their Opinion must be strongly confirmed in this Respect, if such a Rhapsody, as was uttered at New-York, should not only be applauded and rewarded publicly there, but printed and scattered in Reams through the other Colonies, without being followed by a suitable Animadversion.

Neither will it be amiss to take some Notice, in this Place, of the Quackery of the Profession in general, without any particular Application, as it has been practised with vast Success in some of our Colonies. You will often see (if common Fame may be trusted) a self-sufficient enterprising Lawyer, compounded of something between a Politician and a Broker, who, making the Foibles of the Inhabitants his capital Study, and withal taking Advantage of the Weakness of his Judges, the Ignorance of some of his Brethren, the Modesty of others, and the honest Scruples of a third Sort (without having any of his own), becomes insensibly an Oracle in the Courts, and acquires by Degrees a Kind of

Dominion over the Minds, as well as the Estates of the People; an Influence never to be obtained but by the Help of Qualities very different from Learning and Integrity. Wherever such a Man is found, the Wonder is not great, if, from a long Habit of advancing what he pleases, and having it received for Law, he comes in Time to fancy that what he pleases to advance is really Law.

I have taken the Pains, during this short Vacation between our monthly Courts, candidly to examine this new System of *Libels*, lately composed and propagated on the Continent; the Discovery of which cost the good City of New-York five Ounces and a half of Gold, a Scrip of Parchment, and three Latin Sentences. My Intention is to consider Things, not Persons, having no other Knowledge of the Gentleman principally concerned, than what is derived from the Paper now before me; and being wholly a Stranger to the Merit of those Disputes that gave Rise to the Prosecution of this Printer.

Much less shall I turn Advocate for any lawless Power in Government: God forbid I should be guilty of such a Prostitution, who know by Experience of what Stuff they are commonly made; the wrong Impressions they are apt to receive of themselves and others; their Passions, Prejudices, and Pursuits; though, when all reasonable Allowances are made for certain Circumstances that attend their Mission from home, and their Situation abroad, a considerate Person may be tempted to think—it is well they are no worse than they are.

But to come to my Remarks on Mr. *Zenger's* Trial.

In considering the Defence made for the Defendant (Mr. *Zenger*) by his Counsel (Mr. *Hamilton*), upon *Not Guilty* pleaded to an Information for printing and publishing a Libel, it is not to the Purpose to inquire how far the Matters charged in the Information are in their Nature libellous; nor whether the *Innuendoes* are properly used, to apply the Matters to Persons, Things and Places. It is only necessary to examine the Truth of the single Proposition, upon which the whole Defence is grounded, and to which the several Parts of it refer; namely, *That the several Matters charged in the Information are not, and cannot be libellous, because they are true in fact.*

This is the cardinal Point upon which the learned Gentleman's whole Argument turns, and which he lays down, over and over, as the first Principle that governs the Doctrine of Libels; and accordingly he confesses the printing and publishing of the Papers laid in the Information, and puts it upon the King's Counsel to prove the Facts contained in them to be false; alledging, at the same Time, that, unless that were done, the Defendant could not be guilty; but if the same were proved to be false, he would own the Papers containing them to be Libels. To this, it seems, the Attorney General answered, that a Negative is not to be proved; and the other replied in these Words, which I choose to lay down, that I may not be thought to do him wrong—I did expect to hear that a Negative cannot be proved; but every body knows, there are many Exceptions to that general Rule: For if a Man is charged with killing another, or stealing his Neighbour's Horse; if he is innocent in the one Case, he may prove the Man said to be killed to be still alive; and the Horse said to be stolen, never to have been out of his Master's Stable, &c. and this, I think, is proving a Negative. Now, I must think, that it is strange a Gentleman of his Sagacity, who owns he was prepared for the Objection, could not yet hit upon some of these many Exceptions which every body knows; for he does no more than give two Instances of one Affirmative being destroyed by another, that infers a Negative of the first; at which Rate most Negatives may be proved, and then the old Rule may be discarded. Thus, if it is shewn that a Man is alive, it follows clearly that he was not killed; and if a Horse is proved to have been always in his Master's Stable (for this is what must be understood of his being never out of the Stable), it certainly follows that he could not be stolen. So that, according to this new Scheme of Proof, he who is accused of killing a Man, or stealing a Horse, is to be put upon proving that he did not kill or steal, because it is possible that such Proof may be had sometimes; And so, in the principal Case, if a Question arises whether a certain Magistrate has done particular Acts of Injustice or not, the Method is to shew that he did not do such Acts, not that he did them. I have touched upon this, not for its Importance, but as a Specimen of the learned Barrister's Manner of Reasoning, and of the Spirit with which he sets out from the Beginning.

At length, however, he takes the *Onus probandi* upon himself; and rather than the Thing should go unproved, generously undertakes, at his Client's Peril, to prove the Matters, charged in the Information as libellous, to be true. But I would be glad to know, by the way, how this undertaking Gentleman could have proved the Truth of diverse Facts contained in the Paper which the Defendant published, supposing the Court had been so much overseen as to let him into a Proceeding of this Sort. Could he prove, for Example, that Judges were arbitrarily displaced, and new Courts erected, in the Province of New-York, without Consent of the Legislature? For, I am credibly informed, there never was a Pretence or Surmise of more than

* These Remarks were written by two eminent Lawyers in one of our Colonies in America, immediately after the Publication of the Trial of Mr. *Zenger*, it seems had been industriously spread over that Part of the World, before it reached England.

As the Doctrines contained in that Trial, or rather in the Speech of Mr. *Hamilton*, are of so new a Cast, and so absolutely contradictory to all the Resolutions and Judgments that have been settled and established for so many Ages, and by Judges of the highest Reputation, and most unquestionable Characters, for their Integrity, Virtues and Abilities, it could not be imagined so wild and idle an Harangue could have had any Weight, or have met with any Reception here, where the Law relating to Libels have been so often canvassed, and are generally so well understood; and therefore the Person to whom these Remarks were sent, never thought of making any other Use of them than to satisfy his own Curiosity, and that of his Friends.

But seeing, to his great Surprise, that this extraordinary Declaration has been mentioned with an Air of Applause and Triumph in several News-Papers, as that out some new Lights with regard to the Doctrine of Libels; and, upon the Credit of that Recommendation, the whole Trial not only twice printed here, but scattered in Scraps in the publick News-Papers, whereby many well meaning People may be deceived, and led into wrong Notions concerning the Laws of their Country, this Point: He has thought fit to communicate these Remarks to the Publick, in order to remove any Mistakes or Errors that Persons may fall into for want of an adequate Judgment in these Matters; and the rather, because if such false Opinions should happen to influence the Conduct or Practice of any, the Consequences may be very dangerous; it being an established Maxim in our Law, that neither Ignorance nor Mistake is an Excuse to any one who has broke it, from the Penalty of it. Professed to the Remarks.

being displaced, or more than one Court erected; under Mr. Cofby's Administration, both which happened upon one and the same Occasion. Now I would not have this esteemed a captious Exception, when I have to deal with a Man of Law, who must or ought to know, that, if such a Justification as he offered were at all allowable, it ought to be full and express, so as to leave no Room for a Libeller to multiply and exaggerate Facts at his Pleasure, when he is disposed to traduce Persons in Authority; there being a manifest Difference between a single Act of Power without or against Law (from which perhaps few Governments have been free), and an habitual Abuse of Power in repeated instances of the same Species. I would further ask, how he could prove, that the *Libel itself* was an *End*, and that *Trials by Jury* were taken away when a Governor pleased; for, if I mistake not, he was at that Time speaking to a Jury in a regular Court of Law, and in a Prosecution which the Governor had much at Heart (as the Gentleman himself insinuates), and would have been highly pleased to convict his Client; yet would not attempt it, but in the ordinary Course of Trial by a Jury; and then too, could not find a Jury that would convict him. I think I am warranted in putting these Questions; even by the Authority of the Barrister himself, who says, — *Truth ought to govern the whole Affair of Libels, and yet the Party accused runs Risque enough even then; for if he fails of proving every Title he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Cost, &c.*

But, for the present, I will suppose Mr. Hamilton was able to prove all these Things; nay, that the Jury knew them all to be true. I will go farther, and allow, that Juries in criminal Cases may determine both Law and Fact, when they are complicated, if they will take such a Decision upon their Consciences (which is almost the only Point in which I can have the Honour of agreeing with him); yet, after all these Concessions, the main Question rests still between us, viz. *Whether a Writing can be a Libel, in legal Acceptation, if the Matter contained in it be true?* He is pleased, indeed, to express his Dislike of infamous Papers, even when they are true, if levelled against private Vices and Faults; and in this Case he calls them *base, unworthy, scandalous, unmanly and unmannerly*. But surely it might be expected, when a Point of Law was in question, that he would have told us, whether they were lawful or unlawful; innocent or criminal, since these last are the only Epithets that were relative to his Subject, though the first might have their Weight in a Sermon or moral Essay. But, it is plain, he was aware of the Consequence of being explicit upon this Head; for had he owned such Writings to be lawful, because true, he would have alarmed the common Sense of Mankind, by opening a Door for exposing at Mercy the Frailties, Vices, Defects and Misfortunes of every Person, high and low, which must inevitably destroy the Peace of Families, and beget ill Blood and Disorders. If, on the other Hand, he had acknowledged such Writings to be unlawful, inasmuch as they concerned private Miscarriages and Transactions; but that every Man might write as much Truth as he pleased about the Administration of the Government, not only by pointing out Faults and Mistakes, but by publishing his own Comment and Inferences, in order to fill the Minds of the People with all the Jealousies and Apprehensions his Imagination can form; it must have shocked Men of Understanding to be thus told, that the Law had provided against private Quarrels and Breaches of the Peace, occasioned by virulent Writing; but had taken no care to prevent Sedition and publick Disturbance arising from the same Cause.

His favourite Position, however, was to be maintained at all Events; and therefore, when the Chief-Justice rightly instructed him, that he could not be admitted to give the Truth of a Libel in Evidence, *that the Law was clear that he could not justify a Libel; for it is nevertheless a Libel, though it is true;* the discerning Gentleman was pleased to understand by the Word *justify*, a *Justification by Plea*, as it is in the Case of an *Indictment for Murder, or an Assault and Battery*: There (says he) the Prisoner cannot justify, but plead *Not Guilty*; yet in *Murder*, he may prove it was in Defence of his Life, his House, &c. and in *Assault and Battery*, he may give in Evidence, that the other Party struck first; and in both these Cases he will be acquitted.

If the Party in either Case is acquitted, the Reason is, I presume, because the Matter given in Evidence amounts to a Justification in Law of the Fact charged on him, and is equivalent to a Confession and Avoidance in pleading. In like manner, if Truth be a sufficient Justification of a Libel, the Defendant will be acquitted upon proving the Contents of his Paper to be true. Now let it be observed, that the Words of the Book which the Chief-Justice relied on are these: — *It is far from being a Justification of a Libel, that the Contents thereof are true;—since the greater Appearance there is of Truth in any malicious Invektive, so much the more provoking it is.* That this is good Law, I hope I shall be able to shew fully hereafter, as I shall shew, in the mean Time, that it is an express Authority against the well-read Barrister, who declares, *he has not in all his reading met with an Authority that says, he cannot be admitted to give the Truth in Evidence, &c.*

He seems to take it for granted (and I shall not dispute it with him now) that Matter of Justification cannot, in any Case, be pleaded specially to an Indictment of *Assault or Murder*; but the Party is to take Advantage of it in Evidence upon *Not Guilty* pleaded. Let it be so; yet still this Matter must be a sufficient Justification, or the Party can have no Benefit from it any way. In an Action of *Assault and Battery*, where the first *Assault* must be pleaded specially; the Matter of Justification is just the same, as in an Indictment for the same Offence, where it must be given in Evidence upon the general Issue. I ask then, Whether the first *Assault* in a Justification in an Indictment of *Assault and Battery*? If the Barrister should answer negatively, such Answer is against all Sense, for the Party is acquitted by Virtue of the Justification only. If he should answer affirmatively, he is inconsistent with himself; for he has but just affirmed that when the Book says, *Truth is no Justification*, it must be understood of a Justification by Plea, by which he must mean that nothing else is a Justification but what is pleaded, or he must mean nothing at all. For the Words of the Book are, — *it is far from being a Justification, &c.* it is not said, — *you are far from being at Liberty to plead it in Bar.* In Truth, the Author is not there speaking of the Forms and Rules of Proceedings upon Libels, (1 Hawk. Ch. 73. § 5, 6, 7.) but upon the Substance and Nature of the Crime, what shall and what shall not excuse or justify it.

This is manifest from the Reason subjoined to support his Assertion, viz. *since the greater Appearance there is of Truth, &c.* which is a solid Reason grounded on the Wisdom of the Law; which punishes Libels even against private Persons, as publick Offences, because they provoke Men to Acts of Revenge and Breaches of the Peace. I hope it will not be said that a Libel is less provoking, because the Truth of it is to be given in Evidence; than if it was to be pleaded in Bar.

But all this is *Star-Chamber Doctrine* with the Barrister, and the very Mention of that Court serves him for an Answer to every Thing, for which he has no other Answer; because the Memory of that Tribunal is justly detested on Account of many illegal and exorbitant Proceedings. No; this is the Authority of Mr. Serjeant *Havokins* (though he uses marginal References to some *Star-Chamber Cases*), whose name is too great to receive any Addition from this Paper, and who, after a long and studious Search in the Crown-Law, laid down this Proposition for Law at the Time he wrote his Book; and I believe it will appear in the Sequel that he was not mistaken. And now I come to join Issue with the Barrister upon this Point, whether Mr. Serjeant or he is in the right; or, in other Words, whether Falsity in Fact be essential to a Libel, so that the Truth of the Fact may be given in Evidence to prove a Writing to be no Libel.

He maintains the Affirmative of the Question, *both from what he understands to be the Authorities in the Case, and from the Reason of the Thing.* All which shall be considered in their Order.

The Authorities cited by Mr. Hamilton to support the Proposition formerly stated, consist principally of four Cases, which I shall consider in the Order as they were produced.

The first is the Case of *John de Northampton*, 18 Edw. III. 3 Inst. 174. which he observes does not appear to have been a Case upon an Information, but that *he has good Grounds to say it was upon an Indictment.* This is what I shall not contest with him; because it is not material, or indeed easy to be determined, without seeing the Record; though I conceive there are Grounds to say it was not upon an Indictment, as was the Case of *Adam de Ravensworth*, mentioned by Lord Coke in the same Chapter. The Case, however, stands thus: *John de Northampton*, an Attorney of the King's Bench, wrote a Letter to one *Ferrers*, one of the King's Council, that neither Sir *William Scot*, Chief-Justice, nor his Fellows the King's Justices, nor their Clerks, any great Thing would do by the Commandment of our Lord the King, &c. which said *John* being called, confessed the Letter, &c. *Et quia predictus Johannes cognovit dictam litteram per se scriptam Roberto de Ferrers, qui est de concilio Regis; quæ littera continet in se nullam veritatem: Prætextu cuius Dom. Rex erga Curiam & Justiciarios suos habere posset indignationem, quod esset in scandalum Justicie & Curie. Ideo dictus Johannes committitur, &c.* Here says the Barrister, by this Judgment it appears the libellous Words were utterly false, and there the *Falshood* was the Crime, and is the Ground of the Judgment. For my own Part, I can neither see Truth nor Falshood in the Words at the Time they were wrote, for they refer to a future Contingency that might, or might not be as he said; and in this Respect, they were the same as if the Man had said, the Roof of *Westminster-Hall* would fall upon Sir *William Scot* and his Fellows. Besides, the Words taken by themselves have no ill Meaning; for I imagine it will be allowed that most of the great Things which Judges do, as Judges, are such as ought neither to be done nor left undone by the King's Commandment. Where then was the Offence in the Record, I think, shews that in the following Words: *prætextu cuius Dom. Rex erga Curiam & Justic. suos habere posset indignationem, &c. Ideo dictus Johannes committitur, &c.* It is observable, that the Author of this Letter was an Attorney of the Court, and by the Contents thereof he presumes to undertake for the Behaviour of the Judges in some great Matters that concerned their Office. The Letter was addressed to a Person who was of the King's Council, and might possibly communicate the Contents of such a Letter to the King; the Consequence of which might naturally be, that *Dom. Rex habere posset indignationem erga Curiam, &c.* for great Things were sometimes done, in those Days, by the King's Commandment; and the Judges, besides, held their Posts at Will and Pleasure.

The Words, *quæ littera continet in se nullam veritatem*, were therefore proper for the Judges to insert, in order to acquit themselves to the King; but they are no more the Ground of the Judgment than these other Words, *qui est de Concilio Regis*; both being only incidental Clauses that come in by way of Description; for it is not said, *Quia littera predicta continet in se nullam veritatem.* After all, I would not have this Construction of the Case, plain and natural as it is, pass merely upon my own Credit; for I shall shew that this Case was so understood by one of the greatest Lawyers of his Time, before Lord Coke's 3d Inst. appeared in the World.

21 Jac. B. R. *Tanfield v. Hiron*. Godbolt 405, 6.

The Plaintiff brought an Action upon the Case against the Defendant, for delivering of a scandalous Writing to the Prince, &c. Now for the Plaintiff cited, 18 Ed. III. a Letter was sent to *Ferrers*, one of the King's Council, the Effect of which was, that *Scot* Chief-Justice, and his Companions of the same Bench, would not do a vain Thing at the Command of the King; yet because he sent such a Letter to the King's Council, although he spoke no Ill, yet because it might incense the King against the Judges, he was punished. If no Ill was said, will it be pretended that the Falshood of what was said could be a Reason for punishing a Man? Is it not ridiculous to say, that the Falshood of innocent or insignificant Words can be Criminal? This Book, therefore, follows the Record of *Northampton's Case*, and says, because it might incense the King against the Judges, he was punished; which is almost a Translation of *prætextu cuius, &c.* which was the Ground of the Judgment, *Ideo committitur.*

The next Case which the Barrister called to his Aid, is that of the *Seven Bishops*. *State Trials*, Vol. IV. And here he relies on a Flourish of one of the Counsel for the Bishops, and a dubious Expression of one of the Judges, separated from the rest of his Discourse.

Sir Robert Sawyer, tis true, says, *Both the Falsity of it (the Libel) and that it was malicious and seditious, are all Matters of Fact, which they (the King's Counsel) have offered to the Jury no Proof of, &c.* This, I must confess, proves one Point to which the Barrister adduced it, viz. that he was not the first who insisted that to make a Writing a Libel, it must be false. And when I have allowed this, I may almost venture to say, it is the only Point he does prove from the Beginning to the Ending of his long, elaborate

elaborate Speech.—Let me, however, oppose to this the Reply of Sir Thomas Powis, in these Words; *Whether a Libel be true or not, as to the Matter of Fact; was it ever yet permitted in any Court of Justice to be made a Question, whether the Party be punishable for it? And therefore I wonder to hear these Gentlemen say, that because it is not a false one, therefore it is not a Libel.* Fol. 382.

Mr. Justice Powel also does say, *that to make it a Libel, it must be false; it must be malicious; and it must tend to Sedition.* Upon which Words of this learned and worthy Judge, I would not presume to offer any Comment, except that which other Words of his own afford, that plainly shew in what Sense he then spoke. His subsequent Words are these: *They (the Bishops) tell his Majesty, it is not out of Averseness to pay all due Obedience; nor want of Tenderness to their Dissenting Fellow-Subjects; but because they do conceive the Thing that was commanded them, was against the Law of the Land. They say, they apprehend the Declaration is illegal, because it is founded on a dispensing Power. I do not remember in any Case in all our Law, that there is any such Power in the King; and the Case must turn upon that. In short, if there be no such dispensing Power in the King, then that can be no Libel which they presented to the King, which says that the Declaration, being founded upon such a pretended Power, is illegal.* So that the Judge put the whole upon that single Point, whether it be true that the King had such a dispensing Power, or not; which is a Question of Law, and not of Fact; and accordingly the Judge appeals to his own Reading in the Law, not to Witnesses or other Testimony, for a Decision of it. In Truth, the Petition of the Bishops is not capable of having Falshood or Truth applied to it in any other Sense, there being nothing else affirmed or denied in it, but that they thought they could not do what was commanded them, because it was against the Law. This was the Behaviour, these were the Sentiments of that upright Judge, that gained him so much Honour among all good Men, as the Barrister takes notice; not any Opinion of his, that the Contents of a Libel must be false in Fact, to make it a Libel; as he would unfairly insinuate.

Sir Samuel Barnardiston's Case is the third that is touch'd upon; and here too the Gentleman finds nothing that can be strain'd to his Purpose, but the Defendant's Counsel insisting on the Want of Proof to the Malice and seditious Intent of the Author. He seems to have forgot that the same Gentleman insisted also to have it proved, *that the Defendant was a Person of a turbulent and unquiet Spirit*, because these Words were set forth in the Information; and he takes no manner of Notice how all this was answered, which I must now do for him, in the Words of the Court: *Certainly the Law supplies the Proof, if the Thing itself speaks Malice and Sedition. As it is in Murder; we say always in the Indictment, he did it by the Instigation of the Devil: Can the Jury, if they find the Fact, find he did it not by such Instigation? No, that does necessarily attend the very Nature of such an Action or Thing. So in Informations for Offences of this Nature, we say, he did it falsely, maliciously, and seditiously, which are the formal Words; but if the Nature of the Thing be such as necessarily imports Malice, Reproach and Scandal to the Government, there needs no Proof but of the Fact done; the Law supplies the rest.* How shall any Man prove another Person's Malice, which is a Thing that lies only in a Man's Mind? How should any Man know that I am malicious against the Government, but by my Actions? These Words, indeed, were pronounced by the Chief Justice Jefferies, who was then the Mouth of the Court; but tho' he was really an intemperate Judge, (or a Monster, as the Barrister, in his Bar-Language, delights to call him) yet I may safely refer it to all Men of Law, whether these Words could have discredited the best Mouth that ever spoke upon that Bench. *State-Trials, Vol. III. 939.*

An Instance of this Sort may not be impertinent, where a Chief Justice (who was no Monster) addresses himself to a Jury, that was trying a Libel, in this Manner: *I will not repeat the Particulars to you, only something to what the Defendant has said, that you may not be misled. He says, it does not appear that he did it maliciously or knowingly. There are some Things that you that are of the Jury are not to expect Evidence for, which it is impossible to know but by the Act itself. Malice is conceived in the Heart; no Man knows it, unless he declares it: As in Murder, I have Malice to a Man; no Man knows it. I meet this Man and kill him; the Law calls this Malice. If a Man speak scandalous Words against a Man in his Calling or Trade, he lays his Action, Malice; though he cannot prove it but by the Words themselves; you may see, there is Malice supposed to a private Person in that Slander, much more to the King and the State.* *State-Trials, Vol. II. 537.*

Tutchin's Case, the Barrister does not properly cite, but endeavours to answer as a Case urged against him by the King's Counsel; and therefore I shall observe upon it in another Place.

But the Case of Cafes is still behind, which he reserved for the last, to make the Point clearer on his Side, than all the rest put together could do. It is Fuller's Case, *State-Trials, Vol. V. 441.* And it deserves Notice, that although Fuller was charged with writing a Libel, yet that was not the Gift of the Information. He was, in Truth, prosecuted for being a Cheat and Impostor, by Order of the House of Lords, as the King's Counsel declare in the Opening.

The Information accordingly sets forth, 'That W. F. intending the late King William and his Subjects to deceive, and to get several great Sums of Money fraudulently and deceitfully from the said King, concerning a Correspondency between divers Officers and Subjects of the said late King, and the late King James, falsely pretended to be had; did write and print a Libel, intitled, *Original Letters*, &c. with the Deposition of T. J. and T. F. Esqrs. proving the Corruption lately practised in this Nation; and the said W. F. afterwards did publish, utter, and for Truth affirm, the said several false and scandalous Libels, without any lawful Authority; whereas in Truth, the said T. J. did not depose, upon his Oath, as is contained in the said false and scandalous Libel; but the said scandalous Libels are false, feigned, and altogether contrary to Truth, &c.' Here it is manifest he was accused of a Cheat, in forging the Correspondence and the Depositions just mentioned, with a Design of getting Money by his pretended Discovery. And hence it comes, that the Judge very properly asks him, *Have you any Witnesses? If you take upon you to write such Things as you are charged with, it lies upon you to prove them true, at your Peril. How came you to write those Books that are not true? If you have any Witnesses, produce them.* Thus said and thus did that great Man, Lord Chief Justice Holt; but not upon a Trial of the like Kind with Mr. Zenger's, as his

Counsel would have it thought. For, in this Case, the Cheat and the *Libel* posture was the Offence, which consisted wholly in the Falshity; that is, in affirming such Things for Realities, when they were nought but Fictions. On the contrary, had he been able to prove those Letters and those Depositions to be authentick, the Discovery would have been valuable, and might intitle him perhaps to Favour and Protection, instead of Punishment, however irregular he was in taking such a Method to publish Matters of that high Consequence. After this, let the learned Barrister, in all his Reading, shew an Information or Indictment for a Libel, where the Falshity is assigned in Form with an *ubi re vera*, as the Foundation of the Offence, which is done in Fuller's Case; and then I will acknowledge, that the Questions put here by Lord Holt would have been proper, upon the Trial of his Client.

This is the Sum of the Barrister's Law-Cases. And is it not high Time to ask, whether such gross Misrepresentations of the Books can proceed from Ignorance or Disingenuity? Be that as it will, it might certainly be expected, that a Proposition, advanced with so much Assurance, by a Man of Years and Reading, should have been supported by some one Authority in Point, rather than by a Series of low Prevarication and Quibble. Could he not find, in all the Book-Cases and Trials at large, concerning Libels (which are sufficient of themselves to make a large Volume), one Example of Proof being received to the Truth or Falshity contained in a libellous Writing? Indeed, there is nothing like it to be found; though the Occasions have been many, where such Proof might be had, if it were proper; nay, where the Truth of the Thing was notorious to all Men, and yet no Question ever moved concerning it. This shall fully appear in the Sequel.

If any Thing can be necessary further to expose Mr. Hamilton's Doctrine of Libels, after answering his own Cases, it is only to subjoin some others, that will shew how much he is mistaken in almost every Thing he has offered on the Subject. I shall therefore mention a very few, that will bear a particular Application to his crude Notions, without entering into a Multitude of others, to tire the Reader.

16 Car. II. the King v. Pym, 1 Sid. 219. B. R.

Pym was indicted at Exeter for a Libel, which he delivered to a Parson to be published in Church there, and was to this Effect: 'You are de-famed to bewail the Sodomitry, Wickedness, Whoredom, Lewdness, that is of late broken out in this formerly well-governed City; that God would turn their Hearts from committing those Wickednesses which go unpunished by the Magistrates.' Pym confessed the Indictment, and was fined 100*l.* He afterwards brought a Writ of Error, and assigned for Error, that this was no Offence, because though he says, *go unpunished by the Magistrates*; yet he does not say that the Magistrates knew of it, and Wickedness unknown cannot be punished. It was answered by the Court, that this contains Matter of great Scandal to the Government of the City; for it makes the late Government better than the present, &c. *Hide, Twisden, Keelyng, Windham, Just.*

I have pitched upon this Case, because the Barrister is fond of comparing the Plantations to large Corporations; and he will find here, that even those are not left to the Mercy of Libellers, *altho' they do not put in a Claim to the sacred Rights of Majesty*: And that a Misbehaviour of this Kind to the Magistrates of a Corporation is not intirely innocent, *because it is not to be judged of, or punished, as a like Undutifulness would be to our Sovereign.*

This Case was adjudged about four Years after the Restoration, when the Memory of the preceding Usurpation was fresh in every Body's Mind. It is strange, therefore, Mr. Pym did not put himself on his Trial at Exeter; for it was evident, beyond Contradiction, to the People of that Age, from their own Knowledge, as it is now to us from History, that the Wickedness specified in the Libel was restrained by a stricter Hand before, than after the Restoration. But this notorious Truth, it seems, did not avail Mr. Pym.

22 Car. II. the King v. Saunders. Raym. 201. B. R.

Information for writing a scandalous Libel to H. Rich, who was indebted to him, and kept him out of his Money three Years by obtaining a Protection, and at length getting into the Prison of the King's Bench. Saunders wrote him a Letter, wherein he tells him, *That if he had any Honesty, Civility, Sobriety, or Humanity, he would not deal so by him; and that he would one Day be damned, and be in Hell for his Cheating*; and cited several Places of Scripture to make good his Allegations. The Defendant was found Guilty, and moved in Arrest of Judgment, that the Substance of the Letter is not scandalous, but impertinent and insignificant, &c. Cur. The Letter is provocative, and tends to the incensing Mr. Rich to break the Peace. The Court adjudged the Letter scandalous, and fined him 40 Marks. *Keelyng, Twisden, Rainsford, Moreton, Just.*

I would intreat the clear-sighted Barrister to look carefully into the Words of this Libel, and try if he can discover any Truth or Falshood in them that was capable of Proof. And I must remark upon both these Cases, that though they were adjudged in the Reign of K. Charles II. yet neither of them was upon a State-Prosecution, or at a Time when the Spirit of Plots and Factions had infected the Courts of Justice; but they remain unquestionable Authorities at this Day.

State-Trials, Vol. V. The Case of Tutchin is strong against him; a Case adjudged since the Revolution, before that learned and upright Judge Sir John Holt, and plainly shews the Fallacy that runs throughout his whole Argument.

The Points insisted on by this Chief Justice, in his Charge to the Jury, were these: 'To say that corrupt Officers are appointed to administer Affairs, is certainly a Reflection on the Government. If People should not be called to an Account for possessing the People with an ill Opinion of the Government, no Government can subsist: Now you are to consider, whether these Words I have read to you do not tend to beget an ill Opinion of the Administration of the Government; to tell us, that those that are employed know nothing of the Matter, and those that do know are not employed. Men are not adapted to Offices, but Offices to Men, out of a particular Regard to their Interest, and not to their Fitness for the Places. This is the Purport of these Papers.' If this was the Purport of the Papers, and so criminal as hath been just said, it is amazing surely, that Mr. Tutchin did not offer to prove the Truth of these Allegations, and thereby take out their Sting! Could not he possibly think of as many corrupt or incompetent Officers, Ecclesiastical

Magistral, Civil, or Military in England, preferred by Interest rather than Merit, as there were Judges displaced and Courts erected in New York? Or if he was restrained, by the hard-hearted Judge, from desporting himself in this pleasant and spacious Field, could he not apply to the private Knowledge which the Jurors (as well as the rest of Mankind) had of these Matters? For I imagine it will be allowed, that if no Instances of this Sort could be shewn at the Time of *Tutchin's* Trial, it was the only Period within the Memory of Man, or the Reach of History, that wanted the like.

But the Misfortune was, the poor Man was not blessed with such skillful Counsel as is to be had in *Philadelphia*, to think of these good Things for him; otherwise you might have heard an alert Advocate (after returning Thanks to his Lordship for nothing) address himself to the Jury in this or the like eloquent Strain: 'Then, Gentlemen of the Jury, it is to you we must appeal for Witnesses to the Truth of the Facts we have offered, and are denied the Liberty to prove: The Law supposes you to be summoned out of the Neighbourhood where the Fact is alleged to be committed; and the Reason of your being taken out of the Neighbourhood is, because you are supposed to have the best Knowledge of the Fact that is to be tried. And were you to find a Verdict against my Client, you must take upon you to say, the Papers referred to in the Information, and which are proved to be written and published by us, are false, scandalous, and seditious. You are Citizens of *London*, honest and lawful Men, and the Facts which we offer to prove were not committed in a Corner; they are notoriously known to be true. And as we are denied the Liberty of giving Evidence to prove the Truth of what we have published, I will beg Leave to lay it down as a standing Rule in such Cases, that the suppressing of Evidence ought always to be taken for the strongest Evidence; and I hope it will have that Weight with you. Lay your Hands upon your Hearts, Gentlemen, and recollect: Do none of you know, nay, do not all of you know, certain Persons, who shall be nameless, that have been lately promoted, by Favour and Interest, to Places of Trust and Profit, both in Church and State, Army and Navy, whom you must know and believe in your Consciences to be ill Men, and no way qualified for such Preferment; as my sagacious Client has most seasonably remonstrated to the Neighbours, by virtue of that Right which every free-born Subject hath of publishing his Complaints, when the Matters so published can be supported with Truth?' But is Lord *Holt* asleep all this time? Can any reasonable Man, who has but common Notions of Judicature, imagine that this great Judge would suffer such Trash as this to be thrown out in any Court where he sat in Judgment? But what must he have said, if the Libeller before him had offered to prove, that the Law itself was at an end; that Trials by Juries were taken away when a Minister pleased; that no Man could call any Thing his own, or enjoy any Liberty, longer than those in the Administration would condescend to let him do it? Would he have said, that these Things did not tend to possess the People with an ill Opinion of the Government; and that Governments might well subsist, though Men should not be called to an Account for publishing the like? Or would he have said, it was no matter what Opinion the People had of the Government, nor whether it subsisted or not, provided these Assertions were true; and so have discharged the Man as a Publisher of precious and useful Truths, to put the Neighbours on their Guard?

But here also the Barrister lays hold of a random Question, put by one of the King's Counsel to Mr. *Montague*, who was for the Defendant, and was then touching upon the Affairs of the Navy: Saith the former, Will you say they are true? Now the latter had hinted as much as that these Things were true; but did it with that Caution which a Man of Skill uses, when he would say something in support of a lame Cause, but don't care to press an Impropriety too far. For that learned Gentleman was very sensible, that if he had presumed to insist expressly on the Truth of the Matters contained in his Client's Papers, a severe Reprimand was the best Thing that could have befallen him. His Words are these: *Nobody can say, that we never had any Mismanagements in the Royal Navy; and whenever that has happened, the Merchants of England, in all probability, have suffered for it.* But does the Judge, in his Charge to the Jury, vouchsafe to give this Matter any Answer, or so much as to mention it? Lord *Holt* did not usually pass by material Things, that were offered in Defence of Persons tried before him; yet, in this Case, he makes no Question or Scruple about the Truth or Falshood of *Tutchin's* Papers, although they contained many Things which his Lordship, the Jury, and all the World knew to be false. This candid Judge, however, puts the Merits of the Whole upon the Scandal of the Government, and the evil Tendency of such Writings. And therefore I must once more call upon the Northern Barrister to shew a single Instance, where Witnesses have been produced by Counsel, and admitted by the Court to prove the Truth of a Libel. When he does this, it will deserve Consideration; but till then, he may talk by the Hour without any Meaning.

I could mention some Cases of a more modern Date, that have been adjudged in *Westminster-Hall*, when this wild Doctrine was not so much as thought of, and when it would not have been altogether useless, had it been practicable; but I have chose to mention such only as are reported, that the Books may speak for themselves, and judge between us.

But this Lawyer seems to be above having his Points of Law decided by the Authorities of the Law; and has something in Reserve, which may serve to overthrow not only what has been offered in this Paper, but even all the Books of the Law. This is what he calls the Reason of the Thing; but is truly and properly a Sketch of his own Politics; which leads me to shew, that the true Reason of the Thing here agrees with the Law, and consequently both these are against this expert Master of Law and Reason.

The Reason of the Thing, as well as it can be collected from a Heap of Particulars huddled together without Order and Method, may be reduced to the three following Heads:

1. The Form of an Information for a Libel, and the Necessity of knowing the Truth or Falshood of its Contents, in order to direct the Judges in awarding arbitrary Punishment.
2. The Right every Man hath of publishing his Complaints, when the Matters so published can be supported with Truth.
3. The Necessity there is of using this Right, in the Plantations especially.

cially, by reason of the Difficulty of obtaining Redress against evil Governors by any other Means:

1. It will not be improper to premise, under the first Head, that a Gentleman of the Law, who takes upon him to pronounce so magisterially as the Northern Barrister has done concerning *Libels*, ought to have considered well the Nature and Extent of his Subject. It might be expected, that he is not unknowing in any Part of Learning necessary to fix his Idea of a *Libel*; and yet the present Case would appear to be quite different. This learned Gentleman might have informed himself, by reading some of the ancient Laws before the Conquest, that when the *Falsity* of virulent Writings and Speeches was taken into the Description of the Crime, there was a specific Penalty annexed, viz. *Cutting out the Offender's Tongue, Lamb. Sax. Laws.* But this Severity seems to have fallen into Disuse under the Norman Kings; and accordingly *Bracton*, who wrote in the Reign of *Henry III.* gives a Description of these Offences, as they were understood in his Days, wherein *Falsity* is neither expressed nor implied. These are his Words: *Fit autem injuria, non solum cum quis pugno percussus fuerit, verberatus, vulneratus, vel fistibus caesus; verum cum ei Convitium dictum fuerit, vel de eo factum Carmen famosum & bujusmodi*, Fol. 155. Indeed, here is no mention of *Libels* against the King, or the State; the Reason of which seems plainly to be, that Offences of this Sort were considered as a Species of *Treason*, not only in that Age; but in several Ages after, notwithstanding the Statute 25 Ed. III. and though they have by happy degrees dwindled into *Misdemeanors*, yet nobody, except the Barrister, will say they are come to have a greater Indulgence from the Law, than the like Offences against private Persons. How far, therefore, *Bracton's* Acceptation of a *Libel* has prevailed ever since, must be submitted upon what has been offered in the preceding Part of the Remarks.

Here the Barrister throws in a shrewd Question, arising from the Form of the Information, which charges the Libel to be false: *This Word false, says he, must have some Meaning, else how come it there? I hope Mr. Attorney will not say he put it there by chance; and, I am of Opinion, his Information would not be good without it.* By way of Answer to this, I must take Leave to put a Question or two in the same Strain. Suppose a Man brings an Action of *Trespass* for violating his Wife, and he fairly sets forth the Truth of the Case, viz. That the Defendant, by amorous Addresses, Letters, Presents, &c. did gain the Consent of the Plaintiff's Wife, and at length debauched her: I would ask, whether an Action of *Trespass* thus laid can be supported? I fancy not; and yet this is a more just Account of the Matter, than when *Vi et Armis*, viz. *Swords, Staves, Knives, &c.* are introduced as Instruments of invading this tender Part of our Neighbour's Property. Suppose further, a Man kills another, whom he never saw or heard of before, and he is accused of murdering him of *Malice fore-thought*, How come such Words to be put into an Indictment for a Fact so circumstanced? They must have some Meaning; surely they are not put there by Chance; and, I am of Opinion, the Indictment would not be good without them? Why, there is this short Answer to be given to all these childish Questions: There are many Words used in Pleadings of most Kinds, sometimes for Aggravation, sometimes for Comprehension, often in compliance with antient Usage, which are not traversable, and many times are incapable of Proof. The Form of Indictments and Informations follows the Nature of the Fact, and sets it out in its worst Drefs; and if the Fact is made appear to be unlawful, all the hard Names are supplied by Implication of Law.

This is not all, quoth the Counsellor: 'It is said, that Truth makes a Libel the more provoking: Well, let us agree for once, that Truth is a greater Sin than Falshood; yet, as the Offences are not equal, and as the Punishment is arbitrary, is it not absolutely necessary that they should know whether the Libel is true or false, that they may by that means be able to proportion the Punishment? For would it not be a sad Case, if the Judges, for want of a due Information, should chance to give as severe a Judgment against a Man for writing or publishing a Lye, as for writing or publishing a Truth?' Now is it not a sad Case, that he should want to be told, that human Laws don't strictly regard the moral Pravity of Actions, but their Tendency to hurt the Community, whose Peace and Safety are their principal Objects; so that by this Standard only are Punishments measured? If this profound Sophister is of another Opinion, let him give a Reason why it should be a greater Crime in our Law for a Man to counterfeit a Silver Shilling, than to cut his Father's Throat.

2. The Right of remonstrating or publishing just Complaints, the Barrister thinks the Right of all Freemen; and so think I, provided such Remonstrances and Complaints are made in a lawful Way. But when he comes to explain, it is not a Court of Justice, it is not a House of Representatives, it is not a Legislature that is to be troubled (as he phrases it) with these Things. Who then, I pray, is to be troubled with them; for the King, it seems, is out of the Question? Let the Barrister speak for himself: *They have a Right (says he) publicly to remonstrate against the Abuses of Power in the strongest Terms, to put their Neighbours upon their Guard, &c. and in another Place, he speaks of it as a Hardship, if a Man must be taken up as a Libeller, for telling his Sufferings to his Neighbour.* Now, though I wish and hope, as earnestly as he can do, that a free People may never want the Means of uttering their just Complaints, and of redressing their Wrongs too, when their Complaints are not heard; yet I always thought these Things were better understood than expressed in a Court of Law; and I shall probably remain in that Opinion, till the learned Gentleman can produce something from the Common or Statute Law to shew, that a British Subject has a Right of appealing publicly to his Neighbours (that is, to the Collective Body of the People), when he is injured in his Person, Rights, or Possessions. When I am assured that he can do this, I promise him I shall not grudge a Voyage to that Country, where Liberty is so well understood, and so freely enjoyed, that I may receive the important Discovery from his own instructive Mouth.

I know the Law-Books assert the Right of complaining to the Magistrates and Courts of Justice, to the Parliament, to the King himself; but a Right of complaining to the Neighbours is what has not occurred to me. After all, I would not be thought to derogate, by any Thing I have said, or shall say, from that noble Privilege of a free People, the Liberty of the Press. I think it the Bulwark of all other Liberty, and

the surest Defence against Tyranny and Oppression. But still it is a two-edged Weapon, capable of cutting both ways, and is not therefore to be trusted in the hands of every discontented Fool, or designing Knave. Men of Sense and Address (who alone deserve publick Attention) will ever be able to convey proper Ideas to the People; in a Time of Danger, without running counter to all Order and Decency, or crying *Fire and Murder* through the Streets, if they chance to awake from a frightful Dream. But I must again urge, that these Points are not fit to be discussed in a Court of Justice, whose Jurisdiction is circumscribed by positive and known Laws. Besides, they take place properly in a sovereign State, which has no Superior on Earth; and where an injured People can expect no Relief, but from an Appeal to Heaven. This is far from being the Case of Colonies; and therefore I come to shew, under the third Head, that the Barrister's Reason of the Thing is no other than Reason inverted, which possibly may help the Projects of a Demagogue in America, but can never be reconciled to the Sentiments of a Lawyer, or the Principles of a Patriot, considered as a Subject of Great Britain.

3. I have hitherto been taught to believe, that when a brave and free People have resorted to Measures unauthorized by the ordinary Course of the Laws, such Measures have been justified by the extraordinary Necessity of the Case, which excluded all other Means of Redress: And, as far as I understand the Constitution, and have heard Accounts of the *British* Colonies, such a Case cannot well happen, and has never yet happened among them. But here the Barrister is ready to ask, how must we behave when we are oppressed by a Governor, in a Country where the Courts of Law are said to have no coercive Power over his Person, and where the Representatives of the People are, by his Intrigues, made Accomplices of his Iniquity? Certainly it can't be a new Discovery to tell this Lawyer, that as the Governor is a Creature of the Crown, so the most natural and easy Course is to look up to the Hand that made him. And I imagine it may be affirmed (without catching an Occasion of offering Incense to Majesty), that if one Half of the Facts contained in Zenger's Papers, and vouched for true by his Counsel, had been fairly represented and proved at home, Mr. Cosby would not have continued much longer in his Government; and then the City of New York might have applied to itself the Inscription of the Gold Box, *Demerſe Leges, timeſta Libertas hæc tandem emergunt*, with greater Propriety and Security, than could possibly be derived from the impetuous Harangue of any Lawyer whatsoever. I am the more emboldened to say thus much, because though it is my Lot to dwell in a Colony where Liberty has not always been well understood, at least not freely enjoyed, yet I have known a Governor brought to Justice, within these last twenty Years, who was not only supported by a Council and Assembly, besides a numerous Party here, but also by powerful Friends at home; all which Advantages were not able to screen him from Censure, Disgrace, and a Removal from the Trust he had abused.

It is not always necessary, that particular Persons should leave their Affairs and Families in the Plantations to prosecute a Governor in *Westminster-Hall*, unless their Fortunes are equal to the Expence; for it is seldom seen, that the Violence of a bad Governor terminates in private Injuries, inasmuch as he can't find his Account in any Thing less than what is of a general and publick Nature. And when this is the Case, I hope none of our Colonies are, even at this Time, so destitute, but that they can find the Means of making a regular Application to their Sovereign, either in Person, or in his Courts at *Westminster*, as their Case may require.

But the wild Inconsistency that shines through most Parts of this Orator's Speech, is peculiarly glaring in that Part of it now before me. The Remedy which he says our Constitution prescribes, for curing or preventing the Diseases of an evil Administration in the Colonies, I shall give in his own Words: 'Has it not been often seen (and I hope it will always be seen), that when the Representatives of a free People are, by just Representations or Remonstrances, made sensible of the Sufferings of their Fellow-Subjects, by the Abuse of Power in the Hands of a Governor, they have declared (and loudly too), that they were not obliged by any Law to support a Governor, who goes about to destroy a Province or Colony, &c. One would imagine, at first sight, that this Man had the same Notion, with the rest of Mankind, of just Representations and Remonstrances to the Representatives of a free People, which has ever been understood to be by way of Petition or Address, directed and presented to them in Form; in which Case it is hoped that they, being moved by the Complaints of the People, will stretch forth their Arms to help them. But, alas! we are all mistaken; for he tells us, in the same Breath, that the right way is by telling our Sufferings to our Neighbours in Gazettes and News-papers; for the Representatives are not to be troubled with every Injury done by a Governor; besides, they are sometimes in the Plot with the Governor, and the injured Party can have no Redress from their Hands; so that the first Complaint (instead of the last Resort) must be to the Neighbours, and so come about to the Representatives through that Channel.

Now I would be very glad to know, what the Neighbours can do towards effecting the desired Reformation, that will be attended with so good Success, and so few ill Consequences, as a regular Application to his Majesty would be. It would be pleasant, doubtless, to hear this Politician speak out and explain himself at large upon this Subject. I confess it surpasses my Comprehension to conceive what the Neighbours, inspired with weekly Revelations from the City Journalist, can do with their Governor and Assembly, unless it be to reform them by those persuasive Arguments which the *major vis* never wants good Store of. If this be the Patriot's Meaning, his Words may possibly be understood; but without this Meaning they are mere Jargon.

In a word, I shall agree with the Barrister (and so take my Leave of him), that the Liberty of exposing and opposing arbitrary Power is the Right of a free People; and he ought, at the same time, to admit, that the Order of Things, and the Peace of Society, require that extraordinary Means should not be used for this Purpose, till the ordinary have failed in the Experiment. The supreme Magistrate of an independent Kingdom or State, cannot always be controuled by the one, and then the other is justified by that Consideration. But in Colonies, that are from their Creation subordinate to their Mother-Country, there is no Person who is not controul-

able by regular and well-known Methods of proceeding; and consequently there can be no absolute Necessity of flying to Extremities, at least in the first Instance. From all which, I conceive, it follows, that *local Combinations*, upon which the Gentleman lays so great Stress, conclude directly against him; and I hope the Security which the *British* Constitution affords to every Man's Person, Property, and Reputation, as well as to the publick Tranquillity, is not lessened by any Distance from the Fountain of Power and Justice; but that a Libel is a Libel, and punishable as such in America, as well as in Europe.

I am sensible, there is a Freedom of Expression used in these Papers, of which I should disapprove in the common Cases of Controversy; but I found myself under a Necessity of shewing no Respect to the Performance under Consideration, unless I were to forfeit the little that might be due to the Remarks. For though a Lawyer is free, nay obliged by the Duty of his Profession, to make the most of the Cause he espouses, (his real Sentiments being suspended for that Time, by reason of the Bias under which he acts) yet when he draws his private Opinion into the Debate, and interests his Passions in the Success of it, he then departs from his Character, and becomes a Party, rather than an Advocate. In short, there is an Air of Self-sufficiency and Confidence mixed with the whole Lump, enough to give a Disrelish even to good Sense and good Law; but is nauseous, beyond all bearing, when neither of these is found. Among Lawyers, I was sure this Lawyer deserved no Answer; and yet an Answer seemed indispensable, not only for the Reasons given at my setting out, but also in order to save many well-meaning People from reverencing a Piece of Buffoonery, that had been thrust into the World with so much florid Conceit, and a Gold Box tagged to the End of it: A Piece, where in the whole Common-place of popular Declamation (equally adapted to all popular Occasions) is exhausted, and the *Holy Scriptures* brought in to season his Jokes. But as this last seems designed only for a Sally of Wit and Humour, I shall not offer to detract from its Merit; considering too, it had so happy an Effect as to set the good People a-laughing, when they heard the Word of God most ingeniously burlesqued in a *Christian Court*: A Piece that hardly shews the Author to have been serious when he pronounced it, or his wise Benefactors when they rewarded him; but that his solemn Professions of Principle and Duty compel a charitable Mind to suspect his Knowledge rather than his Sincerity; and Citizens are ever thought to be in earnest, when they part with their Gold and shew their Learning.

Sir, I ought to make an Apology to you for trespassing so long upon your Patience, which might have been better employed; but I flatter myself with the Hopes of having some Allowance made for an honest, though weak Attempt to rescue the Profession of the Law, and the Interest of lawful Liberty, from the Disgrace thrown upon both in one of our Sister Colonies. This is the Truth, and let it be my Excuse.

I am yours, &c.

ANGLO-AMERICANUS.

LETTER II.

SIR,

It must be mortifying, no doubt, to a Person who has received peculiar Marks of publick Approbation to be told, that the very Act which procured it was so far from being commendable, that it really deserved a severe Censure; and one would the rather decline such an Office, how just soever the Occasion, because it cannot be done without condemning at the same time the Judgment of those whose Suffrage had been thus unworthily obtained. But when the Laws are openly perverted, and Courts of Justice, with an Air of Gravity, drolled out of their established Rules, by such whose Profession supposes them Ministers of Justice; and when this too shall be dignified with Applause, and made highly meritorious; I conceive neither Good-nature, nor the Solemnity of *Publick Seats*, should restrain an honest Pen from exploding the Practice, in order as well to stop the Progress of its evil Effects, as to prevent the like Attempts for the future.

Virtue and Merit, it is most certain, ought to be encouraged, especially by all in Authority; but when that which is merely counterfeit shall gain Esteem, stand in the room of what is truly genuine, and be actually loaded with the Rewards thereof, it does not only frustrate the original Intention of such Rewards, but likewise give Countenance to the Impostor, and furnish him with still further Means of vending his false Wares, in prejudice of the Publick. Now this, with all due Submission, I take to be the Case of the Corporation in North America, with regard to the Honours they were lately pleased to confer on a noted Barrister in those Parts, for his supposed Services in the Affair of Zenger the Printer, whose Trial has been so plentifully dispersed here, and in other Places. Aggregate Bodies, we find, may be mistaken, and too often are, as well as private Men; and when they do err, it is of the more dangerous Consequence, on account of the Extent of their Power and Influence. The Province in general of New York, or the City in particular, might, for aught I know, have sufficient Cause of Complaint, in some Respects, against their then Commander in Chief, and his Administration; but it is to be considered, that as there never was one absolutely free from Faults, so it is the great Privilege of the Inhabitants of every *British* Government, that a proper Channel is chalked out, in all such Events, and a Way open for Relief. The Method, therefore, which the Constitution prescribes ought to be strictly pursued; and any illegal Deviation is not only inconsistent, and unjustifiable in itself, but has, besides, a Tendency to introduce Mischiefs more to be dreaded even than those that were sought to be redressed. It is the Law which must be the Standard of Right and Wrong; and whoever has Recourse to any other Aid, or knowingly advises thereto, in the Case of particular Grievances, cannot act on a true Principle of Publick Spirit, but must be influenced by unworthy Motives, and is always more or less an Enemy to the Community, according to his Situation, and in proportion to the Talents he happens to possess. If Mr. Zenger then will avowedly publish seditious Libels against the Government under which he lives, and his Counsel will offer to support him by Artifices unbecoming the Long Robe, and advancing Propositions manifestly contrary to Law; as the former deserves to be punished by it, so the latter, I humbly presume to say, whatever he may claim from his Client, ought not to be paid his Wages by any Set of Men who owe their Being to the Law, and cannot exist without it.

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caious and I

But I shall not scruple to acknowledge here, and I do it on no superficial Observation, that there can't be a more pernicious Creature, in a distant Colony, than that of a Practitioner of the Law, with much Assurance, little Knowledge, and no Morals; a Character not unheard of in more than one of his Majesty's Plantations, and which yet I would by no Means apply to Mr. Hamilton, any otherwise than may appear to be just, from the Performance he has, it seems, taken so much Pains to publish to the World. The judicious Remarks already made upon it by *Anglo-Americanus*, will hardly leave Room for any Thing to be added that is very material; and therefore I shall content myself with a few Gleanings only, and make some cursory Reflections thereon, whilst they afford me an Opportunity of bearing my Testimony also against what I think the most indecent Behaviour at least, if it may not be called the boldest Outrage, that ever was exhibited from the Bar, without a suitable Chastisement.

Whoever has enquired into the Doctrine of Libels, and the Reason of their Punishment, will perceive, that they take their Degrees as they affect private Persons, particular Magistrates, or are aimed against the Government itself; and I may venture to say, that no Lawyer of Reputation will deny but what is set forth in the Information against *John Peter Zenger* was of this last Kind, and that too conceived in the grossest Terms, such as will not admit of a different Construction, or of any other Meaning than what is put upon them by the Prosecutor for the Crown. Now I am sensible, that great Allowances are, with good Reason, made to Counsel in the Heat of Argument, and when supposed to be animated with a laudable Zeal for their Clients. Nor has it been usual to correct them for every harsh and hasty Expression, provided they keep within Bounds, and stick to that which is their Duty, without running into Matters that have no Relation to the Issue, and cannot fairly serve the Side they espouse. Yet, as the Lord Chancellor Nottingham occasionally said, Counsel should not speak as if they would abate the Guilt of their Clients rather than advocate for their Innocency. And since your ingenious Correspondent has clearly evinced, that the Truth of a Libel cannot be given in Evidence, that it is no Justification, on the general Issue, and consequently no proper Defence to a Charge of that Nature (of all which Mr. Hamilton could not, or ought not to have been ignorant), it is worthy of Consideration whether he did not involve himself in his Client's Crime, and partake of his Guilt, by declaring in the most publick Manner, that the Facts published in the News-Papers, and contained in the Information, were true; and offering to prove them to be so before a Court, which had no Power to redress the Grievances complained of, 4 Co. 14. Hob. 166. 7.

Sir *Bartolomew Shower*, I remember, in his Argument in the Case of the King against *Berchet & al.* asserts, that 'in all Cases of Contempts to a Court, no Presentment is necessary, no not so much as to convict; for if done in *Facie Curie*, a Record may be made of it, and a Punishment judicially inflicted, and that executed immediately, *Show. Rep. 110.*' And agreeable hereto, we find, that in a late Case of the King against *Thoregood*, Trin. 9. *Geor. primi*, the Defendant having made an Affidavit in C. B. and appearing on Summons, confessed that he made it, and that it was false; whereupon the Court recorded his Confession, and ordered that he should be taken into Custody and stand in the Pillory, &c. which was executed accordingly the last Day of the Term. *Mod. Ca. in Law & Eq. 179. 180.* This is the more remarkable, because it was in the Court of Common-Pleas, which has ordinarily no Jurisdiction in Criminal Cases.—May it not from hence be inferred (I hint it with a due Saving to all the just Privileges of the Bar) that the Court at *New-York* might well have recorded some of the most seditious Expressions in Mr. Hamilton's Rhapsody, and committed him for the same, &c. If they had, I doubt the Blame must have centered in himself, and his own Conduct; of which therefore he might then have had Leisure to repent, as well as of his long Journey to so ill a Purpose.

But it will not be amiss, perhaps for Example Sake, to give an Instance of what has been done on the like Occasion with that before us; and to this End I shall cite a Case in the Court of King's-Bench, many Years after that of the Star-Chamber was at an End, and which, in the Words of Sir *Thomas Raymond*, was as followeth: 'Memorandum, June 18, 1680, Mr. *Nathaniel Reading* having been convicted (before Justices of Oyer and Terminer by virtue of a special Commission) for endeavouring to persuade *Bedlow*, who was a Witness against the Noblemen imprisoned in the Tower of London, to forbear his Prosecution of them; and he the said Mr. *Reading* having had Judgment executed upon him, by being set in the Pillory, and fined 1000*l.* and imprisoned for the same, but his Fine since pardoned by the King, came this Day into Court, and demanded that an Information, which he there brought in his Hand, might be received by Mr. *Astrey* against the Commissioners who condemned him, of which my Brother *Jones* and Brother *Dolben* were two, and that the Information might be filed. But the Court did declare, that he was in the wrong Way to exhibit any Information in this Manner, and did cause his Words, whereby he did accuse the two Judges of Oppression, to be recorded; and for these Words, and for that he was infamous by having been on the Pillory, the Gentlemen at the Bar did pray that his Gown might be pulled over his Ears, he having been formerly a Practitioner at the Bar, which was ordered and executed in Court; and he was also condemned in Court to pay the King 500*l.* and to lie in Prison till he paid it, *Raym. Rep. 376.* The Trial of this Gentleman referred to here, may be seen in the State Trials, Vol. II. p. 253. on which Occasion the Lord Chief-Justice *North* made a Speech aggravating the Defendant's Offence as he was a Counsel, one who ought to be a Man of Knowledge, and a Minister of Justice to assist the Court wherein he pleaded. He said, he thought the Court ought to shew a more than ordinary Severity against such an one; and that 'tis a great Credit and Benefit to the Profession, that the Members of it for such Offences should be dealt with more severely than we should deal in other Cases. Id. p. 374. 5. Far be it from me to make any invidious Comparison here betwixt the present Practitioner in *Pennsylvania*, and the quondam one in *Westminster-Hall*, though they are both celebrated, the one in the Trial of Mr. *Zenger*, and the other in his own. It may however be noted, that the latter was said to be artful and affectedly eloquent, and to

have strove to lead the Judges out of the Way, while he was told by the Chief-Justice, that his Defence was artificial, because it was nothing to the Purpose; and by another of the Judges, that he disgraced his Profession by making so weak a Defence. But without adverting to any particular Beauties in the modern Performances, this is certain, that Counsellor *Reading* lost the Bar-Gown by his Art, and Counsellor *Hamilton* got a Gold-Box of five Ounces, with the Freedom of the City of *New-York*, by his. A pregnant Instance of the Capriciousness of Fate, and of the Justness of your late Correspondent's Observation at the Entrance to his excellent Remarks!

The Gentlemen at the Bar (as indeed it might well be expected from their Education, and the Nature of their Business) have been remarkable for observing the Regard that is due to all in Authority with the utmost Delicacy; and in Return have always been used with suitable Respect. But that the Lawyer of *Philadelphia* may see the Courts of Justice in former Ages, as well as of late Years, did not spare the unruly Members of the Profession any more than others, for much less faulty Behaviour than that of the leading Counsel in *Zenger's* Trial, I will refer him to a Case which happened Mich. 13. *Eliz. Rot. 39.* when *Henry Blaundford*, a Counsellor at Law, was committed to the Fleet, and fined, for falsely reporting the Opinion of the Lord *Leicester* and Secretary *Cecil* with these Words, *Humanum est errare*. And that even Noblemen met with the like Treatment on such Occasions, will appear from the Case of the Lord *Stourton*, who, 19. *Hen. VIII.* was committed by the Court, and fined for saying these Words, *I am sorry to see Rhetorick rule where Law should.*

Before I proceed, I will mention one Case more, purely to shew how dangerous it is to afford any unlawful Helps to Persons on their Trials in Criminal Prosecutions, even though it be merely by Way of private Instructions, when such Instructions are to be publicly made use of, and import Scandal to the Government. It is the Case of the King against *Aaron Smith*, Mich. 35. *Car. II.* in B. R. 'This Term (says the Book which has the Allowance of all the Judges) *Aaron Smith* was brought into Court, being formerly convicted on a Trial at Bar, for delivering to *Stephen College*, being upon his Trial at *Oxford* for High-Treason, a Paper of Instructions, full of scandalous Reflections upon the King and Government; as, that they might as well have hanged him at *Tyburn* as he came by, as brought him thither, only to murder him with a little more Formality. For which the Court gave Judgment, that he should pay a Fine of 500*l.* stand on the Pillory twice, and be of the good Behaviour for a Twelve-month, *Skinner's Rep. 124.* I shall only observe this Case was on an Information, so much inveighed against by *Zenger's* Counsel, and yet I never heard it censured at all, as was that of poor *College*, I own, with too good Reason.

It is now Time to take Notice, that there is, amidst a Heap of Jargon and Absurdities, one obvious Mistake, which runs throughout Mr. *Hamilton's* ostentatious Harangue, and that is in Relation to the Court of Star-Chamber. He would suggest, that because that Court was abolished by Act of Parliament, on Account of some insufferable Abuses that had crept into it, all the Cases that had been adjudged there, on Informations for Libels, were consequently of no Authority. Whereas the Judgments given there, in Matters properly cognizable before them, which Libelling especially was, are allowed to be good Law at this Day, and are constantly quoted as such in the Court of King's-Bench. Indeed it is said, that the Reason of disallowing the Star-Chamber-Court, was because their Authority was before, and now is, in B. R. and consequently that Court unnecessary, *Comb. 36.* So the Lord Chief Justice *Holt* declared, that B. R. possess all the lawful Power the Star-Chamber had, *Id. 142.* And that the Court of Star-Chamber was taken away, because the Crimes were punishable here, 5 *Mod. 464.* which is likewise intimated by the Statute itself. Now though I am as well satisfied perhaps with the taking away of the Court of Star-Chamber, considering the Occasion that had been given, as our Northern Barrister can possibly be, and should equally rejoice, I hope, at the redressing any other publick Grievance; yet I cannot, with him, condemn by the Lump, and argue, that because that Court did some things amiss, therefore it did nothing right. At this Rate, every Court that had, or has a Being, may be in Danger of the same Epithets he loves to bestow on that we are speaking of; and it may as well be supposed, that because a certain Set of Citizens, not unknown to Mr. *Hamilton*, lately did a very silly Thing, they therefore never did a wise one. For which Reason I presume it will not be altogether impertinent to produce the Sentiments of that Oracle of the Law, Sir *Edward Coke*, concerning the Court of Star-Chamber. 'It is (says he) the most honourable Court, our Parliament excepted, that is in the Christian World, both in respect of the Judges, and of their honourable Proceedings according to their just Jurisdiction, and the ancient and just Orders of the Court. For the Judges of the same are, the Grandees of the Realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the King's Council, the Lord Privy Seal, all the Lords Spiritual and Temporal, and others of the King's most Honourable Privy Council, and the Principal Judges of the Realm, and such other Lords of Parliament as the King shall name. And they judge upon Confession, or Deposition of Witnesses. And the Court cannot sit for hearing of Causes under the Number of eight at the least. And it is truly said, *Curia Cameræ Stelata, si vetustatem spectemus, est antiquissima, si dignitatem, honoratissima.* This Court, the right Institution and ancient Orders thereof being observed, doth keep all England in Quiet.' (4th *Inst. p. 64.*) Conformable hereto, a late learned Writer, who was advanced to the highest Posts in the Law in a neighbouring Kingdom to that of our Mother Country, and wherein he died, has a Paragraph, which I believe will give us a truer Account of the Court itself, and the Abolishment of it, than what is to be learned from our Barrister's Speech at *New-York*, and therefore I will insert it here*. 'The Court of Star-Chamber, whilst kept within due Bounds, was certainly of the greatest Use to preserve the Peace and Security of the Kingdom; and perhaps was the only Court which by its ordinary and proper Jurisdiction, could effectually prevent and punish Riots, Perjuries, and other

* See A Discourse concerning Treasons and Bills of Attainder, p. 94. Printed Anno 1716, wrote by Mr. *West*, afterwards Lord Chancellor of Ireland, who also wrote an ingenious and learned Treatise, entitled, *An Inquiry into the Manner of creating Peers.*

• Misdemeanors of the highest Nature. But being made use of by the Court to support Proclamations and Orders of State, and to vindicate illegal Commissions and Monopolies, that Extension of their Power became a Grievance insupportable, and the Nation was never easy till that Court was entirely suppressed by Act of Parliament. *The House of Commons* were so eager in their Zeal to destroy what they called a Court of *Inquisition*, that though the Bill was of so great Consequence, yet they sent it up to the Lords, with only once reading it, and without its being ever committed, which was a Thing, perhaps, never before heard of in Parliament. *Gla. V. 1. 223.*

I need only add on this Head, that the Crime of *Libelling* is the same now as it was while the Court of the Star-Chamber subsisted, and the Nature of the Offence the same then as now; a Crime that must necessarily be punished as long as there are States and Communities established in the World. And our assuming Barrister will not find an Author that treats of the Crown Law since the Statute of 16 *Gha. I. Ch. 10.* any more than before, but makes use of the Cases adjudged in the Star-Chamber generally as good Law, and of equal Authority in those Matters with such as were afterwards adjudged in the King's Bench. Some indeed are justly liable to Exception in the former, as we have also known too many in the latter, particularly during the next succeeding Reign of *Ch. II.* none whereof are, however, God be praised, to be met with, or heard of since the glorious and happy Revolution in 1688, which, I trust, has for ever excluded all Partiality and Oppression from *Westminster-Hall*.

But the learned Lawyer of *Philadelphia* declares, *That he has not, in all his reading, met with an Authority that says we cannot be admitted to give the Truth in Evidence upon an Information for a Libel.* I don't know what this Gentleman's reading may be; but if he had read some of the Cases above-mentioned, which could not well escape him, it might reasonably have been expected he would have taken Warning, been a little more cautious, and not have ventured to incur the Penalties which others before him had so justly suffered. By all his reading, he would insinuate, I suppose, that he had read all: and if that was true, it might well be thought he had read to very little Purpose, who could make so ill an Use of it, or think it a Duty on him to go to the utmost Parts of the Land, to propagate Doctrines and Principles diametrically opposite to, and just the Reverse of what he must have read. We shall soon discover that the Barrister's Reading is not quite so extensive as he would have it imagined. But it is previously to be observed, that if there was no such Authority in *terminis* as that he calls for, a Man who reads with any tolerable Understanding would of course infer the same Thing, when all the Books on the Subject of Libels lay it down as a Rule, which they unanimously do, that it is not material whether the Libel be true or false. For if that be not material, to what End should the Truth be offered in Evidence? Or, how should it be rejected before it was offered, which undoubtedly is the Reason that there have been no late Instances of that Sort. It might suffice therefore to undertake, as often as this well-read Lawyer produced a Precedent of its being demanded from the Bar to give Evidence of the Truth of a Libel, to shew that it was as often denied by the Court. And though I admit it has been attempted before, on Trials for Libels of the less enormous Kinds, yet he is probably the only one that has done it in any Case within these hundred Years. However, if we would find an Instance of that Sort, we must necessarily have Recourse to the Proceedings of the Court where that Crime was usually punished. The *Star-Chamber Reports* then may satisfy Mr. Hamilton, that *Term Pasc. 7 Car. I.* there was the Case of *Coston, Gent. v. Hitchen, Mil. Servient. ad legem*, as follows: 'The Defendant, the Morning before he went to the Sessions, being a Justice of the Peace, received scandalous and libellous Articles against the Plaintiff, carried them to the Sessions in his Pocket, and, in open Court, in disgrace of the Plaintiff, pulled them out and said, You shall see what a lewd Fellow this is, and not fit to speak in this Place; and then caused the said libellous Articles to be read in the publick Sessions. And the Plaintiff then desiring a Copy of them, and to be tried upon them, the Witnesses to prove them being noted in the Margin, the Defendant did not suffer him to have a Copy, or to be tried thereupon, nor took any Course that he might at the next Sessions, or at any Time after be questioned for them, but took the Articles again out of the Sessions and carried them away. And after, further to disgrace the Plaintiff in his Practice (being an Attorney), sent the said Articles to Mr. Justice Harvey, at the Reference of a Cause to him, which *Coston* attended; and a Jury having given a Verdict against the Defendant, he sent for the Jurors and questioned them about their Verdict, and told them they were a Company of Fools, and that if there had been but one wise Man among them, their Verdict had not been so. And for these Offences he was committed to the Fleet, and fined 200 *l.* In this Cause, the Defendant would have had Witnesses to prove the Matter of the said scandalous Articles to be true, but that was disallowed by the Court. *Rush. Col. vol. III. p. 36. in Append.* This, I presume, the Barrister, when he is serious, will allow to be in point, though it happened not to fall in the Way of his Reading. He cannot object, surely, that it does not appear to be on an Information preferred by the Attorney-General, since it is a much stronger Case than if it had. For if the Court would not receive such Evidence in a Cause depending on the Complaint of a petty Solicitor for being libelled, and this too preferred against a Justice of Peace, a Knight, and a Serjeant at Law; a fortiori, they would never admit it on an Information exhibited, by his Majesty's Attorney-General, against a private Person, for libelling the Government.

There was also, as I have learned, divers Years before, viz. *Mich. 2 Jac.* the Case of *Peter Brereton*, Clerk, for writing a scandalous Letter to *Loyd*, Register of the Bishop of *St. Asaph*, and sent to himself, who was therein charged with Bribery and Extortion in his Office; for which libellous Letter the Defendant was sentenced, though, as the Book has it, he would have undertaken to prove the Contents of the Letter to be true. Here then are two Precedents of what the Barrister himself had never met with in all his reading; the one in a Case for libelling a practising Attorney, and the other of the Register of a Bishop's Court; but I believe I may defy this Gentleman, if he were to read as many more Years as he has done, to produce a third, where the Offence under Prosecution, being of the highest Degree, and levelled at the Government, like that for which

he was so zealous an Advocate, the Counsel for the Defendant dared to offer Evidence of the Truth of it. On the contrary, if he had dipped into the Lord Chief Justice *Keele's* Reports, fol. 23 (before he left his Chambers) he would have there found it resolved by the whole Court, that though a Counsellor at Law may plead his Client's Cause against the King, yet, if under Colour of that he takes upon him to vent Sedition he is to be punished.

It is no Wonder, indeed, if our Barrister should be unapprized of *Brereton's* Case, it not being (at least to my Knowledge) in Print; and you perceive I was under no Necessity of mentioning it, being before provided with an Authority to my Purpose. But it is reported, as above, in *Sir Thomas Mallet's MS. Treatise of the Court of Star-Chamber*, a Copy whereof has fallen into my Hands by the Favour of a Friend. And since I have named this Work, I shall, with his Leave, take a Paragraph out of it, which, I am persuaded, will not be deemed unsuitable to the present Debate, after hinting that the Book seems to be wrote in the Time of *James I.* when the Doctrine now revived, and so tenaciously advanced by Mr. Hamilton, is said to have been long before exploded as a gross Error. There are (says *Sir Thomas*) two gross Errors crept into the World concerning Libels; the one, that it is no Libel if the Party put his Hand unto it, and the other, that it is not a Libel if it be true; both which have been long since exploded out of this Court. For the first, the Cause why the Law punisheth Libels is, for that they tend to raise the Breach of the Peace, which may as well be done, and more easily, when the Hand is subscribed, than when it is not. And for the other, it hath been ever agreed, that it is not the Matter but the Manner which is punishable. For libelling against a common Trumpet is as great an Offence as against an honest Woman, and perhaps more dangerous to the Breach of the Peace; for, as the Woman said, she should never grieve to be told of her red Nose, if she had not one indeed. Neither is it a Ground to examine the Truth or Falshood of a Libel, because it is *Judice*, whether it be a Libel or not; for that takes away *Subjectum Questionis*, and determines it to be no Libel, by admitting the Defendant to prove the Truth; and the Defendant in that Case ought to plead a Justification and Demur in Law. But if he plead Not Guilty, the Question is gone, whether it be a Libel or not. Thus, according to this Author's Opinion, who, if I mistake not, was one of the Justices of the Court of King's Bench in his Time, Mr. Hamilton, could he really have persuaded himself that the Matters charged in the Information were not libellous, as he insists they are not, would have discovered more Accuracy in his Profession, as well as Candour in his Practice, by advising his Client to demur to it, whereby he would have admitted no more than what was avowed at the Trial on the general Issue. Then, indeed, it would have fairly come before the Court to be considered whether the Papers were libellous or not, and he, as Counsel for the Defendant, might regularly have been heard to it.

He would then have been at Liberty to exert his uncommon Talents, manifest his extraordinary reading, his superior Genius and great Skill in Language, and in explaining the true Import of Words, without so directly flying in the Face of every Authority, and opposing all the Cases that ever were adjudged concerning Libels, before he was born and since. But alas! that would not have answered the Intention of our eloquent Barrister. He would not then have had it in his Power to use his Arts, and play his Game with a dozen honest Men, of as good natural Understandings, perhaps, though not of equal Experience and Cunning with himself. If he had gone that Way to Work, he would have had no Chance for the Prize. Vain had been his Expedition, and lost, entirely lost, all his Labour. In a Word, if the Learning and Integrity of the Bar only were required, he might as well have staid at Home, where, if I am rightly informed, there are Instances in abundance of the blessed Effects of Mr. Hamilton's well-known Principles.

This sagacious Gentleman begs Leave to observe, that Informations for Libels is a Child, if not born, yet nursed up and brought to full Maturity in the Court of Star-Chamber: But what is particularly to be inferred from this shrewd Observation, he does not at present tell us. If the Star-Chamber was the Court where Crimes of this Nature were generally punished, according to its ordinary and proper Jurisdiction, as it certainly was, how should it be otherwise than that Informations for Libels must be met with there? And considering the Antiquity of that Court, is more than probable the Crime was first prosecuted and punished in it. But what then? Is the Legitimacy of the Child (if I may be allowed to carry on the Metaphor) therefore to be called in question; or its Education the less honourable? I might put out witty Barrister in mind, that what I have mentioned is the very Reason why the *spurious Brat* he is so fond of, which was never brought to full Maturity, nor ever will, first appeared in the Star-Chamber, though it has not been heard of since in any other Court, till very lately, at *New-York*; I mean that of making Falshood to be essential to a Libel, and claiming a Right to give Evidence of the Truth of it by way of Justification.

He must, however, intend by the foregoing Passage, to impeach the Legality of Informations *qua* such (which by some Words that drop from him many Pages after, would seem to be what he aims at), or as they relate only to Libels; and in either Case he will again betray the Scantiness of his Reading and Knowledge in the Law. As to Informations in general, it has been incontestibly proved, that this Method of proceeding is no way contrariant to any fundamental Rule of Law, but agreeable to it. That it was the constant Usage, and had the Approbation of the Judges and Lawyers of all Ages, and in all Reigns, Show. Rep. 106, to 125. And in the Cause of the Information against Seventy poor Persons for a Riot in pulling down Fences, &c. 2 *W. & M.* (which probably may be the same) it was said by Lord Chief Justice Holt, that the Lord Chief Justice *Hales* complained of the Abuse of Informations, but not that they were unlawful; — That he should not come now and impeach the Judgment of all his Predecessors; — That the Star-Chamber was not set up by the Statute of *Hen. VII.* but was as Common-Law, and Informations were accordingly brought in that Court and others. And the whole Court were of Opinion, that Informations lay at Common-Law, 5 *Mod.* 463, 4. Now this I take to be as good an Authority as the extrajudicial Opinions of those anonymous *Great Men* whom Mr. Hamilton says, have boldly asserted that the Mode of Prosecution

Information is a criminal Grievance, and greatly inconsistent with the Liberties which the Subjects of England enjoy in most other Cases; nor can we without observing, in passing, that he seems much more disposed, where there is no Danger at least, to follow the Example of *Seld.* than of wise and judicious Men.

This then being a legal Course of proceeding in criminal Cases, and for all publick Offences, it must undeniably be as proper in the Case of Libels as in any other. And Sir B. Shower in reckoning up the several Crimes that were cognizable in the Court of Star-Chamber, includes Libels among the rest, for which he says, *There were always Informations in the Star-Chamber and King's-Bench.* Show. 119. I am the more free in borrowing what I do from that eminent Practitioner, on the Subject of Informations; because he had studied it well, and taken more than usual Pains therein; and as the Judgment afterwards given by the Court of King's-Bench was pursuant thereto, so it seems to have put a Period in Westminster-Hall to all Cavils against that Mode of Prosecution.

If the Barrister means notwithstanding to suggest moreover, that Informations for Libels are but of modern Date, or little longer standing than about the Time of the Expiration of that Court, where he supposes they had their Origin, let him be further refuted by the above-mentioned Sir Thomas Mallet, who wrote professedly on the Court of Star-Chamber, and may be supposed to be pretty well acquainted with his Subject: He tells us, [*Treatise of the Court of Star-Chamber, ubi supra*] That 'in all Ages Libels have been severely punished in this Court, but most specially when they began to grow frequent about 42 and 43 Eliz. when Sir Edward Coke was her Attorney General.' And, treating of the Antiquity of that Court, he makes it very probable [*Id. 1 Part, 4th Confid.*] that it was the most ancient of any Court of Justice, and the Mother-Court of the Kingdom; wherein he does not differ from Sir Edward himself, in his 4th Inst. 64. already quoted. Now it was while this consummate Lawyer, it seems, was Attorney-General to the renowned Queen Elizabeth, that Informations for Libels began to be most frequent, or, in Mr. Hamilton's elegant Stile, when the *Child was brought to full Maturity*: And it is readily submitted to all who are versed in our History and Constitution, whether that Period will be any Disparagement to the Offspring.

But if Informations for Libels in particular, were one of the Grievances of that Court, may the Chief, as the Barrister would labour to make his Hearers believe, how came they to be practised after the Abolishment of it? Or what will he say to the Case of the King against *Darby*, which was an Information exhibited against the Defendant, being an Attorney of the Common-Pleas, for *defamatory Words* only of Sir John Kay, a Justice of Peace, concerning the Exercise of his Office? The Words were, as they are set forth in *Comb. 65.* Sir John Kay is a *Buffe-headed Fellow*, (a pretty Thing to be proved in Court!) *understands not Law, and is not fit to discourse it with me; he hath not done Justice to my Client.* There it was argued for the Defendant on a Demurrer, (and I chuse to recite it because of the Concessions of his Counsel against our Northern Advocate,) That an Information would not lie for scandalous Words spoken only of a particular Person, because he might have an Action on the Case to recompense him in Damages.-----This true, such a Proceeding might be warranted for Libels, or for dispersing defamatory Letters, because by such Means the publick Peace might be disturbed, and Discords fomented amongst Neighbours, which might at last be a publick Injury: But there is no such Thing alledged in this Case, only Words in common Discourse, for which an Action on the Case might lie, but no Information. On the other Side it was insisted, That this Information was founded on sufficient Matter, because the Prosecution is not only as it respects the Person of Sir John Kay, but it relates to him as he is a publick Magistrate, and who is subordinate to the Government, and therefore such defamatory Words are a Reproach to the supreme Governor, by whom Magistrates are intrusted, and from whom they derive their Authority; and it will not be denied, but that Words reflecting on the publick Government are punishable at the Suit of the King by an Information,-----And for this Reason the Court held that an Information would lie, and thereupon gave Judgment against the Defendant, and fined him an hundred Marks, *Co. 14. 15.*

Mr. Hamilton, who would seem to be more knowing than his Neighbours in many Things, affects to be more ignorant than every body, of what constitutes a Libel; and therefore, although he pretends *freely to acknowledge there are such Things as Libels*, yet he insists, at the same Time, that *what his Client is charged with, is not one*; and if it be not, I will as freely acknowledge there can be no such Thing. He desires the Attorney-General to favour them with some standard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or no. And what is this for? Why, truly, to shorten the Dispute. But what Dispute does he speak of? The only Point that could admit of Dispute had been given up before by his confounding the Matters in Issue, and the Prosecutor's Witnesses being thereupon discharged. As to what he requires, either there was such a Definition to be met with in the Books, or there was not; if there was, he ought to have known it; if there was not, why should he desire Mr. Attorney to favour him with one? Yet after he had been indulged beyond Measure, and a Definition was produced from a good Author, who besides refers to several others that are unquestionable, all which conclude against his Client; is this loquacious Advocate contented? No; *There are two Words to that Bargain*, as he had said before. He makes it a Foundation for further Disputes, and according to his wonted Ingenuity and Candour throughout his *Reverie*, calls the concurrent Sense of our Books *Mr. Attorney's Rule*, and *Mr. Attorney's Doctrine*.

But what certain Standard-Rule, quoth he, have the Books laid down, by which we can certainly know whether the Words are malicious? Whether they are defamatory? Whether they tend to a Breach of the Peace? and are a sufficient Ground to provoke a Man, his Family or Friends to Acts of Revenge? &c. Now these Queries methinks do not so well become the Mouth of an Advocate, as they might that of his Client, when abandoned to his own Defence in a desperate Cause. But I answer, no Rules certainly can be of use to those who are determined to act without any, or in Opposition to all Rules, in which Class our Northern Barrister must be placed, if we are to frame a Judgment of him from the Share he bore in this Trial. The Rule laid down in our Books

concerning Libels (I speak of Libels in the strict Sense, according to the Definition of Mr. Serjeant Hawkins, referred to in the Trial, and which alone concerns the present Case) is founded on the Reason of the Thing, and is the same which is to be observed in other Matters that depend upon the Construction of Words and Writings, which are Signs only, or Images of Ideas intended to be conveyed to the Understanding of the Reader. There may, indeed, be divers Rules applied, according to the Circumstances of the Case; and this, among the rest, that where Words are capable of two Senses, the one faulty, the other innocent, the latter is to be taken, provided such a Construction may be made without Violence to their natural Import and Meaning. From whence it will follow, that the same Cases may happen that are doubtful, and do not come under any standard Rule, on all which Occasions honest and upright Judges will incline to the favourable Side: There may be others again so clear and evident, that a Man must resign his Reason, or resolve to sacrifice his Conscience, that does not discern, or will not allow them to be libellous. But in none of these Cases can it come properly to be a Question before the Jury, whether a Libel or not, on the Plea of Not Guilty, tho' it might afterwards be so, before the Court, in Arrest of Judgment. By what has been said, there appears to be Latitude enough for a skilful Pen (who notwithstanding must do it at his Peril) to lash publick and private Vices, to caution the People against Measures that may be hurtful to them, or to remonstrate against the evil Practices even of those in Power, without being always exposed to the Penalties of the Law. Such a Liberty of Writing and Printing, under due Restrictions, I own *Englishmen* ought not, and I hope never will, be deprived of; and where this is dexterously done, it would be ridiculous for private Persons to put the Cap on their own Heads, and no less impolitick for those in high Stations to apply every Thing to their Administration. When such a Work is undertaken by able Hands, and with a generous View of serving the Publick, it is always laudable, and often very useful; but to succeed herein, requires a Capacity and Talents not to be discovered in Mr. Zenger's News-Papers, or his Counsel's Speech.

I perceive my Letter is unawares run to a great Length, by the Quotations that are interspersed, and which yet I am sensible is the least exceptionable Part of it. I shall therefore take Notice but of one Thing more in this matchless Harangue, which indeed ought not to be forgot, because it is made the Basis and Foundation of the Whole; and that is, concerning the Right of Freeman to complain when they are hurt. This our Lawyer often asserts in general Terms, with some Variation only of the Expression. As to which, I would ask, whether by it he means a Right to remonstrate and complain in a legal Way, or a Right in all Cases to appeal to the People by seditious and scandalous Libels? If the former, Nobody ever denied it, and what he said was not *ad idem*; so that he was fighting with the Air, and quarrelling without an Adversary: If the latter, he dishonoured his Gown, by advancing what is notoriously repugnant to all Laws, human and divine. It was ruled in the Court of B. R. *Trin. 16 Car.* That although a Bill be preferred in the Star-Chamber against a Judge for Corruption, or any other for any great Misdemeanor, yet if the Plaintiff will tell the Effect of his Bill in a Tavern, or any open Place, and by that Means scandalize the Defendant, the same is punishable in another Court. *March Rep. 76. 77.* So in the Case of *Hole and Mellers*, 28 Eliz. in C. B. it was said by the Court, that although the Queen is the Head and Fountain of Justice, and therefore it is lawful for all her Subjects to resort unto her *ad faciendam Querritionem*; yet if a Subject, after the Bill once exhibited, will divulge the Matter therein comprehended, to the Disgrace and Discredit of the Person intended, it is good Cause of Action, 3 *Leach. 138.* And to the same Purpose, in a much later Case, viz. that of *Lake and King*, reported in many of our Books, to which Mr. Serjeant Hawkins refers, it seems agreed, as he observes, that whoever delivers a Paper full of Reflections on any Person, in nature of a Petition to a Committee of Parliament, to any other Person except the Members of Parliament, may be punished as the Publisher of a Libel, in respect of such a dispersing thereof among those who have nothing to do with it. 1 *Hawk. Chap. 74. Sect. 12.*

But our forward Barrister, aged and infirm as he represents himself (which, compared with his Conduct, is the keenest Satire that could be suggested of him), ought to be further instructed, that even where Complaints are to the King himself, they must be made in a proper and regular Manner; a Decency is to be observed, and a Regard always had to the Characters and Stations of the Persons against whom such Complaints are made. In 13 R. II. *Rot. Parliament. N^o. 45.* the Commons desired they might not be troubled for any Matter that should be contained in Petitions to the King; and the King answered, Let every Man complain, so it be with Law and Reason. It is lawful therefore, no Doubt, as it has been resolved, for any Subject to petition to the King for Redress, in an humble and modest Manner, where he finds himself aggrieved by a Sentence or Judgment; for Access to the Sovereign must not be shut up, in case of the Subjects Distresses. But, on the other Side, it is not permitted, under Colour of a Petition and Refuge to the King, to rail upon the Judge or his Sentence, and to make himself Judge in his own Cause, by prejudging it before a Re-hearing. *Hob. 220.* Yet Sir Rowland Flaxing was committed, and deeply fined, for reporting to the King, that he could have no Indifferency before the Lords of the Council, 7 Feb. 18 Hen. VIII. So likewise, in the Time of Hen. VII, Sir Richard Terrets was committed, fined, sent to the Pillory, and adjudged to lose both his Ears, for his slanderous Complaint exhibited to the King, in a written Book, against the Chief-Justice *Fitz-James*. Which Cases are cited by Chief-Justice Montague, in the Case of *Wraynham* (who was severely punished for an Offence of the same Nature), as may be seen in *State Trials*, Vol. VII. p. 102. To these may be added, *Jeffe's* Case in the King's-Bench, *Mich. 5 Car.* *Jeffe* was indicted for exhibiting an infamous Libel, directed to the King, against Sir Edward Coke, late Chief-Justice of the King's-Bench, and against the said Court, for a Judgment given in the said Court, in the Case of *Magdalen-Collage*, affirming the said Judgment to be Treason, and calling him therein Traitor, perjured Judge, and scandalizing all the Professors of the Law. He fixed this Libel upon the great Gate at the Entrance of Westminster-Hall, and in divers other Places; and being hereupon arraigned, prayed that Counsel might be assigned him, which was granted; and he had them;

but would not be ruled to plead as they advised, but put in a scandalous Plea; and insisting upon it, affirmed he would not plead otherwise. Whereupon it was adjudged he should be committed to the Marshal, and that he should stand upon the Pillory at Westminster and Chancery, with a Paper mentioning the Offence, and with such a Paper be brought to all the Courts of Westminster, and be continued in Prison until he made his Submission in every Court; and that he should be bound with Sureties to be of good Behaviour during his Life, and pay a thousand Pounds Fine to the King. *Cro. Car. 175, 6.*

What now shall we say, or what must be thought of one, who, while he pretends to great Reading, and a thorough Knowledge of these Things, could yet, in the Face of a Court, and in Defiance of its Authority, and indeed of all Authority, presume to justify the Publication of the most audacious Libels against that very Government under which he was breathing the Sedition? A Person, who, as a Counsellor at Law, boasting at the same Time of having seen the Practices in very great Courts, would dare to call such Publication, addressed to the People, *the just Complaints of a Number of Men who suffer under a bad Administration!* Some of the Words charged in the Information, and which Mr. Hamilton offered to prove, are, *That the Law was at an End.* I can't tell what Proof he had to give of this Fact; but surely if his Doctrine were to prevail, it must soon be the Case; and, for my own Part, I will confess, I have not hitherto heard of any Thing, in that Province, which looked so much like it, as that such a Behaviour should not only go unpunished, but be attended with public Munificence and Applause. The Truth is, this Gentleman, tho' styled

a Barrister at Law in the Order of the Common-Council of the City of New-York, and which Title, therefore, I have therewith given him, notwithstanding, instead of maintaining that Character in the Trial before us, to be rather possessed with a Fit of Knight-Errantry, and to have sallied out from Philadelphia to the other Province, with a full Resolution to encounter every Thing that was Law, and to level all to the Ground that stood in his Way. Let the Reader then be Judge, upon the Whole, whether he comes within the Description of that *mischancous Animal* I mentioned towards the Beginning of these Sheets.

After all, I flatter myself it will not be imagined, that I was stimulated to these hasty Animadversions by a Principle of Envy to Mr. Hamilton, or any Disrespect to those who were pleased to patronize his Performances, since they are utter Strangers to me, and probably will ever remain so. On the contrary, they may believe me, when I declare, that if the one had really merited what the others were of Opinion he did, I should with much more Pleasure have signified my Approbation of the Conduct of both, than I now take in shewing my Dislike. 'Tis on this Score, Sir, that I cannot conclude, without publicly returning my Share of the Thanks that are due from the Fraternity to your Friend, the polite Author of the former Letter, who has done Justice to the Bar by his Remarks, which, in my humble Apprehension, are worthy of any Gentleman at it, either here or elsewhere.

I am your's, &c.

INDUS-BRITANNICUS.

XXIV. The Trial of JAMES ANNESLEY* and JOSEPH REDDING, at the Sessions-House, in the Old-Bailey, before the Right Hon. George Heathcote, Esq. Lord Mayor of the City of London, the Hon. Mr. Justice Parker, the Hon. Mr. Justice Wright, Sir John Strange, Knt. Recorder, Mr. Serjeant Urlin, and others of his Majesty's Justices of Oyer and Terminer for the City of London, and Justices of Gaol-Delivery of Newgate, holden for the said City, and County of Middlesex, on Thursday, the 15th of July, 1742, for the Murder of Thomas Egglestone.

ON Friday, the 4th Day of June, 1742, Mr. Annesley (being brought up by the Keeper of New-Prison), and Joseph Redding (having surrendered himself to take his Trial, pursuant to Notice given to the Prosecutor's Solicitor) were, upon Application to the Court, in respect of the Quality claimed by Mr. Annesley, set within the Bar.

Proclamation being made for Silence,

Clerk of the Assizes. James Annesley, hold up your Hand. (Which he did.) Joseph Redding, hold up your Hand. (Which he did.)

You stand indicted in the County of Middlesex, by the Names of James Annesley, late of Staines, in the County of Middlesex, Labourer, and Joseph Redding, late of the same, Labourer: For that you, not having God before your Eyes, but being moved and seduced by the Instigation of the Devil, on the first Day of May, in the fifteenth Year of his present Majesty's Reign, with Force and Arms at the Parish aforesaid, in the County aforesaid, in and upon one Thomas Egglestone, in the Peace of God, and our said Lord the King, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault; and that you the said James Annesley, with a certain Gun of the Value of five Shillings, then and there, being charged with Powder and Lead Shot, which Gun you the said James then and there had, and held in both your Hands to and against the said Thomas Egglestone, then and there, feloniously, wilfully, and of your Malice aforethought, did discharge and shoot off; you the said James Annesley, then and there, well knowing the said Gun to have been charged as aforesaid; and you the said James Annesley, with the Lead Shot aforesaid, then and there discharged and shot out of the said Gun, by Force of the Gunpowder as aforesaid, him the said Thomas Egglestone, in and upon the left Side of the Belly of the said Thomas, then and there, feloniously, wilfully, and of your Malice aforethought, did strike and penetrate, giving to him the said Thomas Egglestone then and there, with the said Lead Shot so as aforesaid discharged and shot, in and upon the left Side of the Belly of the said Thomas Egglestone one mortal Wound, of the Breadth of one Inch, and of the Depth of four Inches, of which said mortal Wound the aforesaid Thomas Egglestone then and there instantly died; and that you the said Joseph Redding, at the Time of committing of the Felony and Murder aforesaid, feloniously, wilfully, and of your Malice aforethought, was present, aiding, abetting, assisting, comforting, and maintaining the said James Annesley to kill and murder the aforesaid Thomas Egglestone in Form aforesaid; and so you the said James Annesley and Joseph Redding, him the aforesaid Thomas Egglestone in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our Lord the King, his Crown and Dignity.

How say you, James Annesley, are you guilty of this Felony and Murder whereof you stand indicted, or Not Guilty?

Mr. Annesley. My Lord, I observe that I am indicted by the Name of James Annesley, Labourer, the lowest Addition my Enemies could possibly make use of; but though I claim to be Earl of Anglesea, and a Peer of this Realm, I submit to plead Not Guilty to this Indictment, and put myself immediately upon my Country, conscious of my own Innocence, and impatient to be acquitted even of the Imputation of a Crime so unbecoming the Dignity I claim.

Clerk. How say you, Joseph Redding, are you Guilty of this Felony and Murder whereof you stand indicted, or Not Guilty?

Joseph Redding. Not Guilty.

Clerk. Culpit, how will you be tried?

Joseph Redding. By God and my Country.

Clerk. James Annesley, Hold up your Hand.

Joseph Redding, hold up your Hand; you stand likewise charged, upon the Coroner's Inquisition, by the Names of James Annesley, late of the Parish of Staines, in the County of Middlesex, Gent. and Joseph Redding, of the Parish and County aforesaid, Yeoman, for that you on the first Day of May, in the Year aforesaid, God not having before your Eyes, but being moved and seduced by the Instigation of the Devil, with Force and Arms, at the Parish aforesaid, in the County aforesaid, in and upon Thomas Egglestone, in the Peace of God, and our said Lord the King, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault; and that you the said James Annesley, a certain Gun, of the Value of 5s. then and there charged with Gunpowder and small Lead Shot, at and against the aforesaid Thomas Egglestone, feloniously, wilfully, and of your Malice aforethought, did discharge and shoot off, and him the said Thomas Egglestone with the said small Lead Shot out of the said Gun, by Force of the said Gunpowder discharged as aforesaid, in and upon the left Side of the Belly of him the said Thomas Egglestone, near the Hip-Bone, then and there feloniously, wilfully, and of your Malice aforethought did strike, giving unto him the said Thomas Egglestone, then and there, with the small Shot aforesaid, so as aforesaid discharged, in and upon the said left Side of the Belly of him the said Thomas Egglestone, near the Hip-Bone, one mortal Wound of the Breadth of two Inches, and the Depth of ten Inches, of which said mortal Wound he the said Thomas Egglestone then and there instantly died; and for that you the said Joseph Redding, at the Time of the Felony and Murder aforesaid, in Form aforesaid, did done and committed, feloniously, wilfully, and of your Malice aforethought, was present, aiding, abetting, assisting, comforting, and maintaining the said James Annesley, him the said Thomas Egglestone, in Form aforesaid, to kill and murder; and so you the said James Annesley and Joseph Redding, the said Thomas Egglestone, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity.

How say you, James Annesley, are you Guilty of this Felony and Murder, or Not Guilty?—James Annesley. Not Guilty.

Clerk. Culpit, how will you be tried?

James Annesley. By God and my Country.

Clerk. How say you, Joseph Redding, are you Guilty of the said Felony and Murder, or Not Guilty?

Joseph Redding. Not Guilty.

Clerk. Culpit, how will you be tried?

Joseph Redding. By God and my Country.

Clerk. James Annesley, hold up your Hand. You stand also indicted in the County of Middlesex, by the Name of James Annesley, late of the Parish of Staines, in the County of Middlesex, Labourer; for that you, not regarding the Laws and Statutes of this Realm, nor the Pains and Penalties therein contained, after the first Day of June, 1723, to wit, the first Day of May, in the fifteenth Year of the Reign of our Sovereign Lord George the Second, now King of Great-Britain, &c. with Force and Arms at the Parish aforesaid, in the County aforesaid, with a certain Gun loaded with Gunpowder and Lead Shot, which you in both your Hands, then and there had and held, wilfully, maliciously, and feloniously, did shoot at one Thomas Egglestone, against the Form of the Statute in such Case made and provided, and against the Peace of our Lord the King, his Crown and Dignity.

How say you, James Annesley, are you Guilty of this Felony whereof you stand indicted, or Not Guilty?—James Annesley. Not Guilty.

* This is the Person that claimed the Title and Estate of the Earl of Anglesea; and had the Trial in Ireland, relating to Part of the latter, in November, 1743, and recovered it.

Clark. Culprit, how will you be tried?
Jamesley. By God and my Country.
 Clerk. God send you a good Deliverance.

The Defendants being thus arraigned, the Court thought the Day too far spent to proceed to a Trial of so much Expectation, and therefore ordered it to come on the next Morning; but the Counsel for the Prosecution alledging they could not attend the next Day, and desiring to put off the Trial to this present Sessions, the Court were pleased to indulge them, upon their consenting that the Defendants should be admitted to Bail.

Whereupon Mr. *Annesley* was ordered to give four Sureties in 250*l.* each, and *Joseph Redding* four in 50*l.* each; and this being done in Court, they were both immediately set at Liberty.

On Wednesday the 14th Day of July, 1742, the Prosecutor's Counsel moved, that the Trial might come on the next Day, which, by Consent of the Defendant's Solicitor, was ordered accordingly; notwithstanding which, the next Day, when the two Defendants had surrendered themselves, and were ready with their Witnesses, the Prosecutor moved to put the Trial off for another Day; but not alledging any sufficient Reason for the Delay, the Court were pleased to direct the Trial to go on.

Accordingly the Defendants were again arraigned, and pleaded as at the last Sessions, and there being no Challenges to the Jury, The following Gentlemen were impanelled and sworn.

The Names of the Jury.

<i>Walter Lee,</i>	<i>Francis Rawlins,</i>	<i>William Boucher,</i>
<i>John Dischamps,</i>	<i>John Sandwiche,</i>	<i>Edmund Stowell,</i>
<i>John Reynolds,</i>	<i>Robert Harrop,</i>	<i>Thomas Whitehead,</i>
<i>William Lewis,</i>	<i>William Duck,</i>	<i>Francis Tredgold.</i>

Crier. If any one can inform my Lords the King's Justices, &c.
 Clerk. *James Annesley*, hold up your Hand:
Joseph Redding, hold up your Hand.

You of the Jury, look upon the Prisoners, and hearken to their Charge.

They stand indicted by the Names of *James Annesley*, late of *Staines*, in the County of *Middlesex*, Labourer, and *Joseph Redding* of the same, Labourer; for that they, &c. (as in the Indictments), and upon these Indictments they have been arraigned, and thereto pleaded Not Guilty; and for their Trial have put themselves upon their Country, which Country you are: Your Charge is to enquire, &c.

Mr. Brown. My Lords, and you Gentlemen of the Jury, this is an Indictment for Murder. The Indictment sets forth that *James Annesley* and *Joseph Redding* did make an Assault with a Gun on the Body of one *Thomas Egglestone*; and that the Prisoner *Annesley* did discharge the said Gun against the left Side of the said *Thomas Egglestone*, and did make a Wound on the left Side of the Belly of the said *Thomas Egglestone*, of which he instantly died; and that the said *Joseph Redding* was aiding and assisting the said *James Annesley* to murder the said *Thomas Egglestone*. Gentlemen, if we prove our Charge, I hope you will find the Prisoners guilty.

Mr. Serjeant Gapper. Gentlemen, the Prisoners stand indicted for the Murder of *Thomas Egglestone*; *James Annesley* was the Person who killed the said *Thomas Egglestone*, and *Joseph Redding* he was aiding, abetting, and assisting in the Murder, and so they are both guilty of Felony and Murder. And, Gentlemen, there is an Act of Parliament made in the ninth Year of his late Majesty King *George I.* that if any Person does wilfully shoot at another, it is Felony without Benefit of Clergy. Gentlemen, the Case is thus: On Saturday the First of May, *Thomas Egglestone*, the Deceased, and his Son were going to fish, at a Place called the *Moor*, near *Staines*; they had a Casting Net, and there was a String which belongs to the Net, and this String was about the Deceased's right Arm: They were fishing in a Meadow belonging to one *Sylvester*; and as they were fishing towards the North of the Enclosure, the Deceased, seeing the Prisoners, stopped, and went back again; and as they were going back again, instantly came up the Prisoner, *Joseph Redding*, and seized the Deceased by the Shoulder, and demanded the Net; but the Deceased cast the Net into the River, which was on his Right-hand; then came up the other Prisoner, *Annesley*, with a Gun in his Hand, and swore at the Deceased, and said, *Damn you, surrender, or you are a dead Man*: He pointed the Gun immediately towards his Side, before a Word of Reply, and shot him; the Force of the Powder drove the Shot and some of the Deceased's Coat into his Body; he clapped his Hand to his Side, and said, *You Rogue, what have you done?* dropped down, and died immediately: Then *John Egglestone*, the Son, took a Knife out of his Pocket to cut the String of the Net; upon which the Prisoner *Annesley* turned the Butt End of the Gun; and said to him, *You Rogue, I will knock your Head off*; to avoid which young *Egglestone* jumped into the Water, Breast-high, and cut the String of the Net, and dragged it to the other Side of the Water, and cried out his Father was murdered. There were three Persons, *Fisher*, *Bettesworth*, and *Bowles*, who could see what was done; they were on the other Side of the River, about an hundred and sixty Yards from the Place where the Accident happened; they heard a Gun fired, and the young Man cry out that his Father was killed; and when they came to the River-side, he had dragged the Net out of the River; upon this they crossed over, and found the Man dead, or so bad that he could not live, and thereupon directed the Son to go and fetch Mr. *Cole*, a Surgeon at *Staines*: He went accordingly to Mr. *Cole*, and desired him to come along with him, for his Father was shot, and he believed he was dead. *Why, says Mr. Cole, he is dead, it does not signify my coming; I can do him no good*: So then the young Man went to Mr. *Russel*, a Constable at *Staines*. But I should tell you, Gentlemen, that as soon as the Prisoners saw these three Persons, *Fisher*, *Bettesworth*, and *Bowles*, coming towards the River, they ran away. Afterwards *Russel*, the Constable, and some other Persons coming up, they sought proper to pursue the Murderers: Accordingly they went to Farm-House, where *Annesley* and *Redding* used sometimes to lodge, and there they found *Annesley*, and apprehended him, and sent him to the Round-House at *Staines*: *Redding* could never be found; but he has surrendered himself since, in order to take his Trial. The Prisoner *Annesley* was tried before a Justice of the Peace, I think Sir *Thomas Reynell*; he was tried to *Hounslow*, and from thence to *Laleham*; what that Examination was, I cannot tell. They made Application to this young Man to be favourable, and not to carry on the Prosecution: Says he, *Gentlemen, I will*

not sell my Father's Blood. This, Gentlemen, is the Nature of the Case; and if we prove our Charge, that they have been guilty of Murder, Gentlemen, you will find them Guilty.

(*John Egglestone swears.*)

Mr. Serj. Gapper. Give an Account of what you know of this Matter, and speak the Truth.

John Egglestone. An't please you, my Lord, on Saturday the First of May

Mr. Serj. Gap. Speak slow and deliberately, that the Court and the Jury may hear you.

John Eggle. An't please you, my Lord, on Saturday the first of May last, I and my Father were going up *Staines* River, to catch a Dish of Fish in *Staines* Moor; in the Parish of *Staines*, with a Casting-Net; we fished all the Way up, till we came to this Ground.

Mr. Serj. Gap. In whose Possession was the Ground?

John Eggle. It was one Mr. *Samuel Sylvester's* Meadow; we were turning back again, an't please you, my Lord, in order to go Home; my Father, he carried the Net upon his Arm, and the String was fastened to his Arm.

Mr. Serj. Gap. Well, as you were coming back from fishing, what happened then?

John Eggle. By that Time we had got half-way in the Meadow, we saw *Joseph Redding* and Mr. *Annesley* running, and *Joseph Redding* out-run Mr. *Annesley*, and came up to my Father first.

Mr. Serj. Gap. When they came up, what was the first Thing they did?

John Eggle. *Redding* took my Father by the Collar, and demanded the Net, and he refused to deliver the Net.

Court. Did you see him take him by the Collar?

John Eggle. Yes, my Lord.

Mr. Serj. Gap. What became of the Net afterwards?

John Eggle. My Father threw it into the River.

Mr. Serj. Gap. How far were you from the River then?

John Eggle. I was about two Yards from the River. After the Net was thrown into the River, *Annesley* came up with his Gun, and swore, *God damn your Blood, deliver your Net, or you are a dead Man*; and he fired off before he received any Answer from my Father.

Mr. Serj. Gap. In what Manner did *Annesley* hold his Gun?

John Eggle. In this Manner. [Pointing the Gun straight forward, holding it about Breast-high, sloping a little.]

Mr. Serj. Gap. How near was the Gun to your Father when he fired it?

John Eggle. It was close to my Father's Side; he put the Gun between *Redding* and my Father, and shot directly into his left Side, here, [holding his Hand to his Hip] he had a Plate Button there, which was bruised to Pieces; then my Father said, *You Rogue, what have you done? I am a dead Man*; and dropped immediately.

Mr. Serj. Gap. What did *Annesley* say before he fired?

John Eggle. He swore, if he did not deliver the Net, he was a dead Man; and then fired immediately.

Mr. Serj. Gap. What did you do after you heard your Father say he was a dead Man?

John Eggle. I took a Knife out of my Pocket, to cut the String of the Net; and *Annesley* said, *You Rogue, I will knock out your Brains*; and he held up the Butt End of his Gun; upon that I jumped into the Stream, and cut the String, and drew the Net over to the other Side of the River: Then says *Annesley*, *The Rogue has got the Net, let us go on the other Side after him*.

Mr. Serj. Gap. Who did you see when you came on the other Side of the River?

John Eggle. I saw *John Bettesworth*, *John Fisher*, and *John Bowles*; and when *Annesley* and *Redding* saw these three Men, they ran away directly.

Mr. Serj. Gap. How near were *Bettesworth*, *Fisher* and *Bowles* to you, the before *Annesley* and *Redding* ran away?

John Eggle. As soon as I got on the other Side of the River, they saw these three Men coming, and then they ran away; and *Bettesworth*, *Fisher*, and *Bowles*, came through the River to the Side where my Father lay dead; they came from one Side to the other.

Mr. Serj. Gap. What did you do then?

John Eggle. They bid me get a Surgeon; so I went to one *Charles Cole*, a Surgeon at *Staines*.

Mr. Serj. Gap. When you came to *Staines*, did you meet with *Cole*?

John Eggle. Yes; and I told him my Father was shot, and I believed he was dead, or dying; but he never came near my Father: Then I went to *Russel* the Constable, and he took some Towns-men with him, and went to old Mr. *Redding's* House at *Yewney* Farm, to search for the Man that killed my Father; we beset the House all round, and found *James Annesley* hid up in a Corner.

Mr. Serj. Gap. How long were you there before he was found?

John Eggle. I was there about a Quarter of an Hour, or a little more.

Mr. Serj. Gap. Was you present then?

John Eggle. Yes, I was there all the Time: Then, an't please you, my Lord, they pull'd him down.

Mr. Serj. Gap. Where was he hid?

John Eggle. He was hid in a Place which is five or six Foot from the Ground, where they put old Iron, and any Sort of Lumber: 'Tis a boarded Place or Room over the Wash-house; a Place where the Woman makes Medicines for sore Eyes.

Court. Was there a Chimney in it?—*John Eggle.* I do not know.

Mr. Serj. Gap. Was he standing up or lying down; or how was he, when he was found?

John Eggle. I do not know; for I did not see him till he was pulled down: He was carried in a Chair into the Yard, and sat there about a Quarter of an Hour, and then was put into the Cart that brought up my Father, and was carried to the Round-House at *Staines*.

Mr. Serj. Gap. This is all you know; is it not?

John Eggle. An't please you, my Lord, I can tell you a great deal more.

Mr. Serj. Gap. Who pulled him down?

John Eggle. I do not know.

Mr. Serj. Gap. Was this Wound the Occasion of your Father's Death?

John

John Egglestone. Yes, it was.

Mr. Serj. Gapper. Go on; you say you have other Things to say.

John Eg. He lay in the Round-House all Night; the next Day *Annesley*, the Prisoner, and I went in a Cart to a Justice at *Hanslope*; and there was one *Mac Ketcher* there, who said to me—

Court. What *Mac Ketcher* said is no Evidence against the Prisoners.

Mr. Serj. Gapper. We will let this alone a little.

Court. Can you prove he was any ways employed as an Agent by the Prisoner?—*Mr. Serj. Gapper.* I believe we can.

Foreman of the Jury. My Lord, please to ask him, whether there was no Quarrel, Bustle, or Struggling, between *Annesley*, *Redding*, and *Egglestone*, before the Gun went off.

John Eg. There was no Quarrel or Jostling; my Father never gave him an ill Word.

Court. Did your Father make no Resistance?

John Eg. No, no Resistance at all.

Q. Was there no Jostling, nor any Thing else passed?

John Eg. Yes: *Redding* took my Father by the Collar, and *Annesley* came up in the mean time.

Court. What happened between your Father and *Redding* before *Annesley* came up?—*John Eg.* He demanded his Net.

Court. I thought you said there was some Jostling?

John Eg. No other Jostling than laying his Hand upon my Father's Collar; but my Father never laid his Hand upon him.

Mr. Brown. How near were you when *Redding* laid his Hand upon your Father?—*John Eg.* About a Yard and an half off.

Mr. Brown. You say he shot off the Gun; I ask you what you mean by shooting off the Gun?

John Eg. Why he fired the Gun to shoot my Father.

Mr. Brown. What do you mean by shooting off the Gun?

John Eg. He came up directly, as if he was going to shoot a Dog.

Mr. Brown. Did you see him draw the Trigger of the Gun?

John Eg. No, I did not.

Mr. Brown. Was the Gun cocked before he came up?

John Eg. I do not know.

Q. Did not you say that it was?—*John Eg.* I do not know that I did.

Mr. Brown. Pray, was Anybody present at the Time?

John Eg. There was Nobody near but *Bettesworth*, *Fisher*, and *Bowles*; nor Nobody came up.

Mr. Brown. Did the Prisoner offer you any Money?

John Eg. Yes, he offered to settle 50 l. a-Year on me.

Mr. Brown. Where was this?

John Eg. When I was at *Laleham*, the next Day after my Father's Death.

Mr. Serj. Gapper. How came you there?

John Eg. We went to a Justice's at *Brentford*; but he not being at home, we put up at the *Red Lion* there; and while we were there, Sir *Tho. Reynell* came in, and ordered us to go to *Laleham*; accordingly we went to one Mr. *Lee's*, into a little Room, and there was *Jack Lane*, Mrs. *Chester*, and the Prisoner: Young *John Lane* offered me 100 l. a-Year; but the Prisoner said he could not settle 100 l. a-Year upon me, for he had more to do for; but he said he would settle 50 l. a-Year on me. This was said in the Presence of the Prisoner.

Mr. Brown. Did he mention what he would give you 50 l. a-Year for?

John Eg. Because I should not come in as an Evidence against him.

Mr. Serj. Gapper. What is the Reason you did not comply with this Offer?

John Eg. I told them, I would not sell my Father's Blood at any Rate. [The Counsel for the Prosecutor having done with this Witness, he was cross-examined as follows.]

Q. Pray, in what manner did Mr. *Annesley*, *Redding*, and your Father stand, when this Accident happened?

John Eg. *Redding* stood between *Annesley* and my Father, and had him hold by the Collar.

Q. Do you know *William Duffel*, and had not you some Talk with him about the Manner of your Father's Death?

John Eg. No, I never saw him, nor had any Talk with him.

Q. Had you any Conversation with one *John Dalton* at *Laleham*, where you say you was offered that Money?

John Eg. I came out of the Room to ask him, whether I should take the Money or not; for he said I had better take the Money, and not hang the Man.

Q. Then you said nothing at that Time about the Manner in which your Father was killed?—*John Eg.* No, Sir.

Q. You say you stood by, and saw Mr. *Annesley* point the Gun to your Father: Did you see him cock the Gun?

John Eg. I did not see him cock it; the Gun was cocked when he came up to my Father.

Q. Do you know one *Giffard*?—*John Eg.* Yes.

Q. When did you come to be first acquainted with him; before or since your Father's Death?

John Eg. After my Father was killed.

Q. Did not you meet with him at *Staines*?

John Eg. Yes, I believe I did.

Q. Did you ever see him there before?—*John Eg.* No, never.

Q. Did you give him any Orders or Authority to prosecute upon the Account of your Father's Death?—*John Eg.* No.

Q. Do you know one *Williams*?—*John Eg.* Yes.

Q. Where does he live?

John Eg. He keeps the *White Horse* in *Piccadilly*.

Q. How did you come acquainted with him?

John Eg. He came to *Staines*; and sent for me.

Q. What did he want with you, when he sent for you?

John Eg. I don't know; I went to live with him as a Servant.

Q. What Business was you of, when your Father died?

John Eg. I worked with my Father as a Carpenter.

Q. If you was brought up a Carpenter, how came *Williams* to send you out for a Servant?—*John Eg.* I can't tell.

Q. How long have you lived with him?

John Eg. Ever since my Father's Death, and I live with him now.

Q. Have you not seen my Lord *Angles* at *Williams's*?

[Here the Court interrupted, and said the Question was improper.]

Q. You say you are *Williams's* Servant; have you not dined with him at his Table?—*John Eg.* Yes.

Q. Do you dine at his Table now?—*John Eg.* No, I am his Servant.

Q. Do you know the Reason why you were sent from dining at his Table to draw Beer?—*John Eg.* No, Sir.

Q. Do you know one *Paul Keating*?—*John Eg.* Yes.

Q. Do you know any Thing of a Note he drew for you at the *Oxford Arms*?—*John Eg.* He did draw something of a Note, but I tore it.

Q. What made you tear the Note?

John Eg. Because I did not like his Proceedings.

Q. What were the Proceedings that you did not like?

John Eg. I do not know; I did not understand them.

Q. Why, did not you read the Note before you tore it?

John Eg. No, I did not.

Q. How came the Note to be wrote? Did he say nothing to you about writing of a Note before he wrote it?

John Eg. Nothing at all; but he desired me to copy it.

Q. What did he say to you when he desired you to copy the Note?

John Eg. Nothing; it lay upon the Table, and I tore it.

Q. What did you tear it for, if you had not read it?

John Eg. Because it was about Things that I did not know what they were.

Q. Did not he desire you to copy the Note?—*John Eg.* Yes.

Q. What did he say then?—*John Eg.* I cannot tell what he said.

Q. Was you ever at *New Prison* to see Mr. *Annesley*?

John Eg. Yes.

Q. What did you go for?—*John Eg.* I cannot tell.

Q. I ask you what you went for?

John Eg. I went for my own Fancy.

Q. Did you not send up Word to him, you was sure he would be glad to see you?—*John Eg.* I believe I might.

Q. What was the Reason for which you thought Mr. *Annesley* would be glad to see you?

John Eg. I cannot tell; I was willing to see him.

Q. Did you never, in speaking of your Father's Death, say that it was done accidentally?

John Eg. I do not know that I did.

Q. Did you never say to *Keating*, that you were to have 200 l. or had a Promise, or that you were to have Security, and from whom?

John Eg. No, Sir, I never did.

Q. Did you give the same Account, with respect to the holding of the Gun, as you do now, before the Coroner's Inquest, and before the Justice?—*John Eg.* Yes, I am sure I did.

Q. Did not you give two Accounts before the Coroner's Inquest; first at one time, and went out, and the Remainder when you came in again?

John Eg. No.

Q. Did you never say that the Butt End of the Gun was up to his Shoulder, and the Muzzle pointed downward?

John Eg. No, I did not.

Q. Did you never say any Thing to Anybody of the Manner of Mr. *Annesley's* drawing one of his Feet back?

John Eg. No, never.

Q. Can you tell which of his Legs he drew back?

John Eg. No, I cannot tell which he drew back.

Q. Did you never say which?—*John Eg.* No.

Q. To Nobody?—*John Eg.* No; never.

Mr. Serj. Gapper. You said you went to the *Oxford Arms* with *Keating*, and there was something talked of relating to a Note; was there any Offer made to you there?

John Eg. No, Sir.

Mr. Serj. Gapper. You talked of a Paper that was tore; do you know the Contents of it?—*John Eg.* No, Sir, I do not.

[*John Bettesworth* sworn.]

Mr. Serj. Gapper. Tell us what you know of this Matter, and when you were when you heard a Gun fired on the First of May?

Bettesworth. *Thomas Egglestone* and his Son were a-fishing; I was 10 Yards some odd Inches from the River, as near as I could measure.

Q. What Ground was it in?

Bettesworth. They were in the Ground called Mr. *Sylvester's* Rents.

Mr. Serj. Gapper. Are there many Hedges on the Side of the River where the Deceased was?

Bettesworth. There were a pretty many Willows, but any Body might see through them.

Mr. Serj. Gapper. What did you see?

Bettesworth. I saw *Joseph Redding* and Mr. *Annesley* come over the Hedge.

Mr. Serj. Gapper. What Hedge?

Bettesworth. The Hedge that parted Mr. *Sylvester's* Ground from Mr. *Redding's* Ground; I do not know whether one of them did not come over the Stile; then they both ran after *Egglestone* and his Son; young *Redding* came up first.

Mr. Serj. Gapper. Did he lay hold of *Egglestone*?

Bettesworth. Whether he laid his Hand upon his Collar, or what, I cannot tell; but the Boy ran away.

Q. Who was it laid hold of the Shoulder or Collar of the Deceased?

Bettesworth. *Redding*; I saw his Hand upon the Shoulder or Collar of the Deceased, but I cannot say positively whether he had him by the Shoulder or Collar.

Mr. Serj. Gapper. How long was it after that, that *Annesley* came up?

Bettesworth. The Boy was gone but a little way from his Father, when Mr. *Annesley* came up to his Father, he came back again.

Mr. Serj. Gapper. How near was he to his Father when this Accident happened?

Buttsworth. I cannot say how near he was to his Father, I believe two or three Yards off. — *Annesley* and *Redding* came up almost together, but *Annesley* came up after him, the Gun went off after he came up: I saw the Smoke and heard the Fire.

Mr. Serj. Gap. As you were 169 Yards off, how came you to come up?

Buttsworth. The Boy called to us, and said his Father was killed.

Mr. Serj. Gap. Who came along with you?

Buttsworth. *John Bowles*, and *John Fisher*, we came to the River just against the Place where Mr. *Egglestone* lay, and we could not get over there without being up thus high; (putting his Hand to his Middle) but we went over in a shallower Place a little farther.

Mr. Serj. Gap. Were *Annesley* and *Redding* there when you came over?

Buttsworth. No, they ran away before that.

Mr. Serj. Gap. Was *Egglestone* dead or alive when you came up?

Buttsworth. He was not dead, but he could not speak. I desired the Boy to go for a Surgeon, and he went away directly.

Mr. Serj. Gap. Who came first to the River? — Buttsworth. I do not know.

Mr. Serj. Gap. Did you all three come away together?

Buttsworth. Yes, I was coming rather before the Boy cried out, for I saw the Man drop, I could not see the Boy for a good while, for he was in the River, and he cut the Net from his Father's Arm, as he says, I did not see that; but I saw the Boy come cross the River, and when I came up, I saw that the Net was brought cross the River.

Mr. Serj. Gap. How did *Egglestone* lie?

Buttsworth. He lay upon his Face; I lifted up his Head, he groaned pretty much, but he could not speak: I sent the Boy for a Surgeon, but no Surgeon came.

Mr. Serj. Gap. Was you at the apprehending of the Prisoner?

Buttsworth. Yes, I was.

Mr. Serj. Gap. What Place was it that the Prisoner was in when he was taken?

Buttsworth. It was a Sort of a Wash-house, a Back-house: He was in a Place where they throw up Hoops and Iron, and any Sort of old Lumber; I saw him lie upon his Face.

Mr. Serj. Gap. Who took him down?

Buttsworth. I do not know.

Mr. Serj. Gap. What did they do with him then?

Buttsworth. They carried him to the Round-house at *Staines*.

Court. When you came to the Place where you say he had hid himself, did he come down of his own Accord? — Buttsworth. Yes, my Lord.

Mr. Brown. When you heard the Gun go off, whose Hand was it in?

Buttsworth. Mr. *Annesley*'s.

Mr. Brown. Do you know the Position of the Gun when it went off?

Buttsworth. No, I do not.

Mr. Brown. Did you observe any Struggle between *Annesley*, *Redding*, and the Deceased?

Buttsworth. No other than their striving to take the Net away.

Q. Do you remember any thing that passed in the Round-House? —

Buttsworth. Did the Prisoner say any thing there?

Buttsworth. Yes, the Prisoner said he desired to be killed out of the Way, for being accessory to such an innocent Man's Death.

Mr. Brown. What did he tell you besides?

Buttsworth. He said he would have gone Home for more Men, but *Joseph Redding* would not let him.

Mr. Brown. What did he want more Men for?

Buttsworth. To take away the Net.

Q. What Answer did he say *Redding* made him to that?

Buttsworth. I believe it was, that he said we can do it well enough.

[The Prosecutor's Counsel having done with this Witness, he was cross-examined as follows.]

Q. Did you see Mr. *Annesley* and *Redding* before they came up to the Deceased? — Buttsworth. Yes, I did.

Q. Did you observe Mr. *Annesley* making any Use of his Gun before he came up? — Buttsworth. I saw him offer to shoot at a Crow.

Court. How long was that before this Accident happened?

Buttsworth. I believe about half an Hour.

Q. Was the Crow flying or sitting? — Buttsworth. Flying.

Q. Did you observe whether he did shoot at the Crow?

Buttsworth. Not then, he did not.

Q. How far was you off then?

Buttsworth. About as far, I think, as when I saw the Man killed.

Q. What was the Position of the Gun when you saw him come up running?

Buttsworth. It was in this Manner, [holds it as if the Gun was with the Muzzle pointing a little slanting towards the Ground.]

Mr. Brown. You say you saw *Annesley* and *Redding* in the other Ground, before they came into that Ground which belongs to *Sylvester* — what were they doing there; were they standing, sitting, or what?

Buttsworth. They were sitting or lying under the Hedge, I cannot tell which.

Q. For what Purpose do you imagine they were sitting or lying there?

Buttsworth. I cannot say that, I may imagine they came to take the Net away, cannot imagine any thing else.

Q. Did you see the Boy go into the River?

Buttsworth. Yes, and it was just after his Father was shot.

[*John Fisher* sworn.]

Mr. Brown. Do you know the Prisoners at the Bar?

Fisher. I know Mr. *Redding*.

Q. Do you believe this to be the Person who was along with Mr. *Redding* at the Time that Mr. *Egglestone* was killed? — Look at Mr. *Annesley*'s Face, and see whether that is the Man.

Fisher. I see Mr. *Annesley*, but I cannot say that he is the Man; I saw no Men lie under the Hedge a considerable Time, and saw a Piece in one of their Hands.

Mr. Brown. In which Ground were they?

Fisher. I believe in Mr. *Redding*'s Ground.

Mr. Brown. In what Ground was *Egglestone*?

Fisher. He was in *Sylvester*'s Ground. *Bettesworth* called to me, and there is *Redding* running after *Egglestone*, and *Redding* laid hold of *Egglestone*, the Deceased, and then came up the other with a Piece; I cannot say whether he touched him or no.

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Court. In what Manner did *Redding* lay hold of him?

Fisher. I cannot say, I was at such a Distance; but I thought he laid hold of his Shoulder.

Mr. Brown. Did *Egglestone* make away from him?

Fisher. Yes; for he knew he was out of the Bounds that he ought to have been fishing in; and there was a Sort of a Struggle to take away the Net; and I thought that *Redding* and the other Person did both snatch at the Net, and then the Gun went off.

Mr. Brown. In whose Hand was the Gun?

Fisher. Not in *Redding*'s Hand, but in the Hand of the other Person.

Mr. Brown. Was not you attentive at that Time, to see in what Manner he carried the Gun?

Fisher. It may be this Way, or this Way, I cannot say whether he had the Gun against his Shoulder or no.

Mr. Brown. How near was he to the Deceased?

Fisher. Very nigh, I believe not above the Length of a Gun.

Mr. Serj. Gapper. Did you see *John Egglestone* by, when you first came up? — Fisher. He was near the River.

Mr. Brown. Did you hear the Boy cry out?

Fisher. Yes, he said his Father was killed; — he saw me, and called me by my Name, and said, My Father is killed, and I came directly cross the River.

Mr. Brown. What then became of *Annesley* and the other?

Fisher. They ran away; we hallooed after them, but I did not think the Man was shot, tho' I saw the Smoke and Fire of the Gun.

Q. Who went over the River first?

Fisher. We were all three together almost. I cannot tell who was over first, but I believe I was.

Q. What was said to the Boy then?

Fisher. Nothing; only to go and get a Surgeon.

Q. Who bid him go?

Fisher. Somebody did, I did not. I believe it was *Bettesworth*, and the Boy run away directly.

Q. Was there any Surgeon brought there? — Fisher. No.

Q. Who came there afterwards?

Fisher. Mr. *Sylvester*; he saw the Deceased lying upon the Ground, but he was not there when the Murder was committed.

Q. Was you in the House when he was taken? — Fisher. No.

Q. Was you with him before the Justice of Peace?

Fisher. I was examined, but I was not present when the other Witnesses were examined.

Mr. Brown. What Distance was there between you and the Deceased when the Gun went off?

Fisher. One Hundred and Sixty-nine Yards.

Q. Do you include the Breadth of the River? — Fisher. Yes, I do.

[Cross-examined.]

Q. You say you think that both *Redding* and *Annesley* snatch'd at the Net?

Fisher. I think they did.

Q. Do you think it was possible for you to hear what passed between them?

Fisher. I could not hear one Word.

Q. I would ask you, whether young *Egglestone*, before he was examined by Sir *Thomas Reynell*, did not say to you he believed the Gun did go off by Accident?

Fisher. He said he believed it was not done wilfully. I was called into a Room with *Chester* and *Lane*: He had Money offered him, in my hearing, by *John Lane*; he offered him 100l. a Year. — Mr. *Annesley* said, He could not give him 100l. but he would give him 50l. for he had others to do for: Then, said the Boy, I do not care to sell my Father's Blood; but I will do as my Friends direct me; I believe he was in Liquor.

Q. What did you say to him?

Fisher. I said, Your Father is dead; the Money will do you good; do not swear any thing against him, if you think it was done accidentally; he said, The Money will do me good if I had it; and then said, I believe the Gentleman did not do it wilfully.

Q. Had you not some Conversation together after his Examination before the Justice?

Fisher. I asked him, after he was examined, what he had done; and how he could swear against him, when he had said so and so to me; said he, I did not know what I said.

Q. That he did not know what he said, to who?

Fisher. I asked him, how he could swear against him when he knew what he said to me; said he, I do not know any Thing of the Matter; he did not remember what he had said to me.

Q. Do you know Mr. *Williams* the Clergyman? — Fisher. Yes.

Q. Did not you make a Declaration of this to him?

Fisher. Yes; and I told him what I now say, I mean what passed between us at the Time he went before the Justice: I said to Mr. *Williams*, that *Egglestone* told me he really believed that the Gentleman did not do it wilfully.

Q. Repeat all that you said to Mr. *Williams*.

Fisher. That the Boy said to me, Mr. *Annesley* had offered him 50l. a Year, that the Money would do him good if he had it, and that he believed the Gentleman did not do it wilfully.

Mr. Brown. Did not he say it was wilfully done, as you were going along to the Justice's?

Fisher. All the Way he went, he said he believed he did it wilfully, but after the Prisoner had been talking with him, he said he believed it was not done wilfully.

[*Samuel Sylvester* sworn.]

Mr. Serj. Gap. Did you see the Deceased after he was dead?

Sylvester. He lay dead on the Ground that I rent near the River Side, I think about the Middle of the Ground.

Mr. Serj. Gap. Do you know how he came by his Death?

Sylvester. I was going up to look after my Ground, to see if there was any Cattle in it, or any thing amiss. — I called at the Cock, and drank two Pints of Beer, and when I came within two hundred Yards, or thereabouts, of my Ground, I met three Men, who told me old *Egglestone* was killed; I did not believe it; they then pointed to my Ground, and said, There he lies; I saw several People there, upon which I thought there was something more than common, and so I went up, and saw *Tom Egglestone* lie dead in my Ground.

Mr. Serj. Gap. Do you know where the Prisoner *Annesley* was taken?

Sylvester.

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Sylvester. He was taken in a back Building belonging to Mr. Redding's House; I was searching the Rooms myself, and heard the People say, Here he is; and I saw Mr. Annesley, who is the Gentleman there, come down out of the Place.

Mr. Brown. What Sort of a Place was it he was found in?

Syl. It was a Place to put odd Things in: It was not boarded up to the Top.

Q. Did he come down voluntarily, or was he pulled down?

Syl. I do not know whether they pulled him down, or helped him down.

Mr. Brown. Did you hear him say any Thing at that Time?

Syl. I did not hear him say any Thing; I believe he was in a Fit, for he trembled and fell down behind the Door.

Mr. Brown. Did you see him at the Round-House?

Syl. No, I did not, for I was gone to search after the other Prisoner, Redding.

Mr. Serj. Gapper. Was you at Laleham before the Justice?

Syl. Yes, I was.

Mr. Serj. Gap. Had not the Boy been drinking, and did he not sleep before he went in to the Justice?

Syl. I believe he did, for about three Quarters of an Hour; I do believe he had been in Liquor, but he was refreshed afterwards.

[Upon the Cross-Examination.]

Q. Have you not received Money to pay the Witnesses for attending here on this Cause the last Sessions, and from whom?

Syl. Yes, I paid some of them, I think it was by Mr. Giffard's Direction, who subpoena'd me up; I asked him who was to pay me; he said, I should be paid Half a Crown a Day for my Time, which was as much as he thought I could earn at my Business.

Q. What Business is this Giffard's of?

Syl. He is a Stranger to me.

Q. Do you know who he said he was employed by?

Syl. He said he was concerned for the King.

Q. Did you send Notice of this Accident to any Body as soon as the Man was killed?—*Syl.* No.

Q. Do you know Mr. Williams?

Syl. Yes, I know him, but I never was in his Company upon this Occasion.

Q. What Business does young Egglestone follow?

Syl. I cannot say what Business he follows, I believe he draws Beer now.

Q. How long have you known him?

Syl. I have known him five or six Years.

Q. What Business was he bred to?

Syl. Sometimes he would be out at Service, and sometimes he would be with his Father in the Business of a Carpenter.

Q. Where does he draw Beer now?

Syl. I think it is at Mr. Williams's, at the White-Horse, in Piccadilly. But this is not the Williams I was speaking of before.

Q. Have you never been in Company with this Gentleman, and had some Conversation with him about this Affair?

Syl. I have been at the Gentleman's House in Piccadilly since this Business has been in hand, but never before; and I have been in Company with the Gentleman there, but never had any Talk with him about this Trial.

Q. Was not this Williams down before the Justice?—*Syl.* I do not know.

Q. Did you ever see him at Staines?

Syl. I saw him in the Town of Staines, I believe, about a Week after the Accident happened.

Q. Have you seen the Boy, Egglestone, there since?

Syl. I never saw him at Staines afterwards.

Q. What, he has lived with Williams ever since?—*Syl.* I cannot tell.

Q. I ask you whether you have not seen him at Williams's House every Time you have been there?—*Syl.* Yes, I believe I did.

Mr. Serj. Gapper then said, they would rest it here; and having observed upon the Evidence, concluded with saying, he hoped it had fully made out the Charge against the Prisoners; that the Ground where the Man was killed being the Property of Sylvester, the Prisoners were Trespassers by coming into it, and therefore answerable for the Consequences. That as to Mr. Annesley, there was not only implied, but express Malice proved upon him, for that after he had killed the Father, he was for beating out the Son's Brains, only because they would not let him and the other Prisoner run away with their Net.

Court. Mr. Annesley, you are indicted in a very unhappy Case, what have you to say for yourself?

Mr. Annesley. My Lord, I am very unable to make a proper Defence, having by the Cruelty of those, whose Duty it was to protect me, been deprived of the Advantages of an Education I was entitled to by my Birth.

All I know of the melancholy Accident in Question is, that on the unfortunate Day mentioned in the Indictment, I went out with my Gun, in Company with my innocent Fellow-Prisoner, to shoot Sparrows, as I usually did. As we were going along, Mr. Redding, who is Game-Keeper to the Lord of the Manour, saw some People a-poaching within the Royalty, upon which he proposed to go and seize their Nets. I followed him, the Deceased threw the Net into the River, and the Boy jumped in to pull it across, to prevent which I stooped to lay hold of one of the Ropes that trailed upon the Ground, and at the same Instant, the fatal Instrument I had in my other Hand, hanging by my Side, went off without my Knowledge, and to my great Grief as well as Surprise. My Behaviour, immediately after the Accident, was, I hope, inconsistent with a Temper that could murder a Man I had never seen before, without one Word of Provocation.

Whatever may be the Determination of your Lordship and the Jury, great as the Misfortunes of my Life have been, I shall always consider this unfortunate Accident as the greatest of them all.

Court. Mr. Redding, what have you to say for yourself?

Joseph Redding. My Lord, I am Game-Keeper to Sir John Dolben, Lord of the Manour of Yeoveney. On the first of May last, in the Afternoon, Mr. Annesley and I went out a-walking; we saw a Crow, and Mr. Annesley made an Offer to shoot at her, but I called to him not to fire, for that she was too far off: Soon after I saw Egglestone and his Son fishing with a Casting-Net, upon which I said to Mr. Annesley, I would go and endeavour

to take their Net away, as it was my Duty to do; accordingly I went up to the Deceased, and demanded the Net, which he refused to deliver to me, and threw it into the River, one End of the String being about his Arm; I then laid hold of the String, and pulled, whilst the Boy endeavoured to draw it across the River, and presently I heard the Gun go off (my Back being towards Mr. Annesley), and saw the Man fall down. I said to Mr. Annesley, I hoped he had not shot the Man; he said No, but turning up the Flap of his Coat, we saw he was shot; upon which Mr. Annesley cried out, What shall I do! and expressed so much Concern, that I am sure it was quite an accidental Thing.

Mr. Hume Campbell, of Counsel for the Prisoners, said, that although he knew by the Course of the Court at the Old-Bailey, he was not at Liberty to observe upon the Prosecutor's Evidence, yet he apprehended, that for the Ease of the Court, he might just open the Nature of the Defence, without making any Observations upon it.

That the Defence which the Prisoners insisted upon was, that the Gun went off merely by Accident; that Redding was Game-Keeper to Sir John Dolben, Lord of the Manour of Yeoveney, and had a proper and legal Deputation for seizing of Nets and other Engines, for destroying of Game. That the Deceased and his Son were poaching with a Casting-Net within the Manour; that Mr. Annesley went in Aid of the Game-Keeper; and therefore the Prisoners being about a lawful Act, were not so much as Trespassers, and the Death that was the accidental Consequence of that Act, would, in Point of Law, make Mr. Annesley guilty only of Chance-Medley.

[Mr. Thomas Staples sworn.]

Q. Do you know the Manour of Yeoveney?

Mr. Staples. Yes: I am Deputy to my Father, who is Steward to Sir John Dolben, as Lord of the Manour under the Dean and Chapter of Westminster.

Mr. Serj. Gap. How do you know this to be a Manour?

Mr. Staples. I have the Grant of the Manour from the Dean and Chapter in my Pocket.

Mr. Serj. Gap. Are there any Copy-Holders?

Mr. Staples. Yes, I have admitted some Copy-Holders; I know it to be a Manour, because I have held one Court there for my Father, and have seen him hold several.

Mr. Serj. Gap. Is there any Mansion-House belonging to this Manour?

Mr. Staples. There is a Mansion-house belonging to it, which I think is the House that Mr. Redding lives in.

Mr. Serj. Gap. What Court was it you held there?

Mr. Staples. A Court Baron.

[Mr. Thomas Burlingson sworn.]

Q. Mr. Burlingson, look upon this Deputation. Are you a subscribing Witness to it? If you are, did you see this executed, and by whom?

Mr. Bur. Yes, Sir, that is my Name; I saw Sir John Dolben execute it; this is his Hand and Seal.

Court. Was it executed at the Time it bears Date?

Mr. Bur. Yes; I believe on the very Day.

[Mr. James Edmonds sworn.]

Q. Mr. Edmonds, look upon that Endorsement, do you know whose Hand that is?

Mr. Edmonds. My Lord, I went to the Clerk of the Peace for the County of Middlesex, and heard him acknowledge this to be his Hand, and that it was entered according to the Act of Parliament.

Mr. Serj. Gap. Did you see any Entry of it?

Mr. Edmonds. He said it was entered, and acknowledged this to be his Hand, and told me that was sufficient.

Q. My Lord, we pray the Deputation may be read; we will send for the Clerk of the Peace to bring the Book itself where it is entered.

The Clerk reads. Signed J. Dolben, dated the 2d of July, 1741.

K NOW all Men by these Presents, that I Sir John Dolben, of Thingdon al. Findon in the County of Northampton, Baronet and Doctor of Divinity, Lord of the Manour of Yeoveney, in the Parish of Staines, in the County of Middlesex, by Virtue of the several Acts of Parliament lately made, for the Preservation of the Game, have made, nominated, authorized, constituted, and appointed, and by these Presents do make, nominate, authorize, constitute, and appoint, Joseph Redding, the Younger, of Yeoveney aforesaid, in the said Parish of Staines and County of Middlesex, Husbandman, to be my Game-Keeper of and within my Manour of Yeoveney aforesaid, of all and all Manner of Game, of what Kind or Nature soever, which now is, or hereafter shall be, upon or within the Bounds, Limits, or Precincts of the same, with full Power and Authority, according to the Directions of the Statute in that behalf made and provided, to kill any Hares, Partridges, Pheasants, Fish, or other Game whatsoever, upon or within my said Manour, and the Bounds, Limits, and Precincts of the same: And also to take and seize all such Guns, Grey-Hounds, Setting-Dogs, and other Dogs, Hare-pipes, Snares, Low-Bells, Ferrets, Tramels, Hays, Tunnels, or other Nets or Engines, for the taking, killing, or destroying of Hares, Partridges, Pheasants, Fish, or other Game, within my said Manour, and the Precincts thereof, that shall be kept or used by any Person or Persons, not legally qualified to do the same: And further to act and do all and every Thing and Things which belongs to the Office of a Game-Keeper, pursuant to the Directions of the said Act of Parliament. And lastly, I do direct that the Name of the said Joseph Redding be entered as such Game-Keeper of my said Manour, with the Clerk of the Peace for the said County of Middlesex, pursuant or according to the Act or Acts of Parliament in that behalf made and provided. In Witness whereof, I have hereunto set my Hand and Seal, the second Day of July, in the Year of our Lord 1741.

Sealed and Delivered, being first duly stamped, in the Presence of

JAMES AFFLICK,

THO. BURLINGSON.

Middlesex. These are to certify, that the Name of the within mentioned Joseph Redding is this Day entered in my Office, pursuant to the Statute in such Case made and provided. Dated this 2d Day of January, 1741.

P. WALTER, Clerk of the Peace, Middlesex.

[Joseph Redding the Elder sworn.]

Q. Do you know the Place where this unhappy Case happened?

Redding. Yes.

Q. Give an Account of what you know.

Red. I was in the next Field, called *Chantry Mead*. This, where the Accident happened, is called the *Hare Mead*.

Q. What Manour is it in?

Red. It is in *Yew-ney* Manour, which belongs to Sir John Dolben.

Q. Where were you when this happened?

Red. I was in *Chantry Mead*.

Q. How far were you off then?

Red. As near as I can guess, it is about forty Pole.

Q. What did you observe there?

Red. I saw my Son and Mr. *Annesley* coming up.—I did not know who they were till they came up.

Q. Did you see them immediately after the Accident happened?

Red. Yes, presently.

Q. How did they behave upon this Occasion?

Red. They were so troubled they could hardly wag or speak: My Son said he was afraid the Man was killed; and he said to Mr. *Annesley*, How did you do it? Mr. *Annesley* said, I did not think of the Gun's going off.

Q. You say you saw them coming up; did you observe them when the Accident happened?

Red. Yes, I looked at them all the while.

Q. How was the Gun carried when it went off?

Red. Just as I may hold this Sword. [Holding it in his Right Hand, hanging down near the Pocket a few Inches from his Body, almost upon a Level.] He had it in one Hand, as I have the Sword now.

Q. Did he express himself concerned?

Red. He was so concerned, that he did not run ten Pole before he fell down, and beat himself thus upon the Belly, and said, *What have I done?*

Q. Did you ever hear of any Quarrel between him and this Man?

Red. Never.

Mr. Serj. Gapper. [on the Cross-Examination.] Where did you stand when the Accident happened?—Redding. In *Chantry Mead*.Q. Is there not a Hedge between *Chantry Mead* and *Hare Mead*?

Red. Yes, I believe there is.

Q. How could you see through the Hedge?

Red. It is a new Hedge not above a Yard high, and I could see any Thing that was doing there as clear as I can see you.

Q. Was *Annesley* with his Face or his Back towards you?

Red. He was Side-ways to me.

Mr. Serj. Gapper. Why *Chantry Mead* is North of *Hare Mead*; then his Face could not be towards you?

Red. No, I say his Side was towards me.

Mr. Serj. Gapper. You were speaking as to this being a Manour; how do you know it to be a Manour?

Red. Because there have been Courts kept there.

Mr. Serj. Gapper. By whom?—Redding. By Sir John Dolben.

Q. What is *Sylvester*?—Redding. He occupies this Ground: I lett the Farm to *Sanders*, and *Sanders* lets it to him.Q. On which Side of *Hare Mead* does the River lie? Is it East, West, North, or South?—Redding. It is about South.

Q. Does not this River belong to another Person?—Redding. No.

Q. Has not Sir John granted the Fishery to any Body?

Red. I rent the Fishery; the Fishery belongs to me.

Q. Do you depute your Son to look after this?

Red. No, Sir John Dolben deposes him.

Q. How came Sir John Dolben to appoint your Son to be Game-keeper?

Red. Because they robbed me daily.

Q. Have you assigned that Fishery to any Body?

Red. No, I have not.

Q. Who owns the Land on the other Side?

Red. I believe my Lord *Dunmore* is the Landlord.

Q. Was you standing up when the Gun went off, or sitting?

Red. I was standing up.

[William Duffell sworn.]

Q. Do you know John Egglestone, the Son of Thomas Egglestone?

Duf. Yes.

Q. Have you ever had any Conversation with him about this Matter?

Duf. Yes: On this Occasion he was at my House; I desired him to tell the Truth: He said he would; and then told me, that as he and his Father were fishing, they saw the Prisoner, *Redding*, coming up; that he desired his Father to give him the Net; and he would run away with it, but his Father would not let him; that then *Redding* came up and demanded the Net; that *Thomas Egglestone* said he should not have it, and then threw the Net into the River; and in the mean time the other Gentleman came up, and shot him; that *John Egglestone* jumped into the River, and cut the Line of the Net, to pull it out on the other Side; and that when the Gun went off, and his Father dropped down, Mr. *Redding* said to the other Gentleman, Lord, Sir, *what have you done!* and then they both run home. Mr. *Abraham Egglestone*, who was present, asked him, if he saw Mr. *Annesley* pull the Trigger of the Gun; and *John Egglestone* answered, that he could not tell. I asked him, if there was any Quarrel or Words that had passed between them, and he said No.—I said it was very surprising to me, that this Gentleman should come and shoot his Father, and nothing more pass between them: I then asked him, in what manner he held the Gun; he had a Stick in his Hand, and shewed in what manner the Gun was held in his Hand, thus (in his Right-hand, the Arm hanging down near the Pocket, some Inches from his Body, and near upon a Level; which was the same Manner that old *Redding* said the Gun was held). I asked, if he thought he did it wilfully; he said he could not tell.

Q. How long was this Discourse after this Accident happened?

Duf. About four Hours.

Q. Did you ever see this John Egglestone before, for he says he knows nothing of you?

Duf. I have known him these eight Years, and he has been frequently at my House.

Q. What Character has he?—Duffell. I cannot say much in his Behalf; his Father could not manage him at all.

Q. What Business did he follow?

Duf. His Father was a Carpenter, and he worked with him.

Q. When did he leave *Staines*?

Duf. Soon after this Accident happened.

Q. Where has he been ever since?

Duf. I have seen him at the *White Horse* in *Piccadilly*; and I heard at *Staines* that he was sent for to *London*.Q. Did the Man at the *White Horse* come down for him to *Staines*?

Duf. I did not see him there.

Mr. Serj. Gapper. You say he was at your House; who gave you Directions about advising him to speak the Truth?

Duf. Nobody: Mr. *Abraham Egglestone* advised him the same Thing.

Q. Who was there?

Duf. Nobody but Mr. *Abraham Egglestone* and myself; I was desired to go and see how the Man came to be killed, and *John Egglestone* came to me about Eight o'Clock.

Mr. Serj. Gapper. You say he could not say it was wilfully done; so he did not say it was accidentally done.

Duf. No, he did not say it was.

Mr. Brown. Do you apprehend he had hold of the Gun by the Barrel, near the Lock?

Duf. I understood by *Egglestone's* manner of holding the Stick, that he meant that Mr. *Annesley* had hold of the Gun about the Middle of the Barrel.

[John Dalton sworn.]

Q. What Discourse had you with young *Egglestone*?Dalton. On the Sunday, when the Prisoner at the Bar was carried to *Laleham*, to be examined, I went there: The Company dined at the *Grey Hound* at *Laleham*; I staid and drank half a Pint of Wine there, and immediately afterwards *John Egglestone* came to the Door, and called me out of the Room, and said he wanted to speak with me. When I came out, he said he wanted to ask my Advice concerning this Accident: I said, I wonder you should ask my Advice, when you have Relations to advise with; he said, I thought fit to ask you, as you are my Master. While we were talking, *Samuel Sylvester* came out, and said I was persuading the Boy to sell his Father's Blood: The Boy said, What do you mean, you Fool you? My Master is persuading me to no such Thing. I then asked him, whether he thought it was accidentally done or not; he said, he believed it was accidental, rather than any other thing. I said to him, Well, if you think so, you will be examined when you come before Sir *Thomas Reynell*, I desire you would not forswear yourself, but be very careful what you say.

Q. What Character has the Boy?

Dalton. He was very irregular, and used to lie out.

Q. How do you know that?—Dalton. He was my Servant.

Q. What Trade are you?—Dalton. I am a Butcher.

Mr. Serj. Gapper. You say he has a bad Character; do you think he would forswear himself?

Dalton. I can say nothing to that.

Mr. Serj. Gapper. When was it you had this Discourse with him?

Dalton. On the Sunday, at the *Grey Hound* at *Laleham*.

Mr. Serj. Gapper. Was there any Talk of Money then?

Dalton. Yes, the Boy said he had been offered Money.

Q. But you say, he said he would not sell his Father's Blood?

Dalton. No; I said *Samuel Sylvester* came and said I was persuading him to sell his Father's Blood; and the Boy said, My Master did not persuade me to any such Thing.

Mr. Serj. Gapper. Are you sure that this is true?

Dalton. Yes, I am; I think I am in my Senses.

Mr. Serj. Gapper. What did you say to him afterwards?

Dalton. I told him, he had lost his Father, and had no Friend to take care of him, and he knew best what he had to do.

Q. Did not you say it was better to take Money, than hang the Man?

Dalton. No; I said, I thought, by what he told me, that the Man was in no danger of being hanged; and therefore he had better take Money than endeavour to hang a Man, that he thought did not do it designedly.

(Mr. Higgs, belonging to the Clerk of the Peace, being sworn, produced the Book wherein all the Game-keepers of all the Manours in the County of Middlesex are entered; (Reads) Sir John Dolben, of Northamptonshire, Baronet, to Joseph Redding the Younger, dated 2 July, 1741. Entered 29 January, 1741.)

[Mr. Richard Chester sworn.]

Q. Give us an Account of what you know of this Matter.

Chester. I drove the Chaise from my own House to the *Red Lyon* at *Brentford*, and then to the *Grey Hound* at *Laleham*; I went up to young *Egglestone*, and asked him, how this unfortunate Thing happened; whether it was done designedly, or happened by Accident.

Q. Where was this?

Chester. This was at *Laleham*: He said he believed it was accidental; for he did not believe any Gentleman in cool Blood would do any such Thing wilfully.

Q. Do you know any Thing with respect to the Net?

Chester. I think he said Mr. *Annesley* was stooping to the Net, in order to take it, and the Gun went off.Q. Did he say any Thing how Mr. *Annesley* held the Gun?Chester. I had the Chaise-whip in my Hand, and desired him to shew me how Mr. *Annesley* held the Gun; he took the Whip in his Hand, and held it so, (which was much the same Position as *Redding* and *Duffell* said he held it in) I think it was rather nearer the Handle than the Middle of the Whip that he held it.

Mr. Brown. Did you see the Wound? Where was the Wound?

Chester. I understood it was somewhere about the Hip.

Mr. Brown. I ask you, whether you think he could have shot him in the Hip, if he had held the Gun that Way?

Chester,

Chester. I think he could not have shot him there, if he had held it any other Way.

Mr. Brown. Pray do you know of any Money being offered by any Person in your Presence to young *Egglestone*? — *Chester.* No.

Mr. Brown. Nor any Reward of any Sort?

Chester. No. — My Lord, I had forgot to mention one Thing. After this, *Egglestone* spoke to *Mr. Annesley* the Prisoner, and shook Hands with him; and *Egglestone* said, he was very sorry for what had happened; but said, he did not think he did it designedly; and then drank a Glass of Wine to him.

Court. Did they shake Hands, or drink the Wine first?

Chester. Both at the same Time, as near as could be.

Mr. Serj. Gapper. Did you see this? — *Chester.* I did see it.

Mr. Brown. I ask you, whether the Prisoner at the Bar is not married to your Daughter-in-Law?

Chester. My Lord, if your Lordship thinks I ought to answer this Question, I will.

Court. The Relation is very small; but if they insist on their Question, you must answer it.

Chester. The Prisoner is married to my Daughter-in-Law.

Q. They ask this Question in hopes of its being of Service to them in another Affair, for it cannot be of any in this; though I hope he has got a very good Wife.

(*John Paterfon sworn.*)

Q. *Mr. Paterfon*, I think you did attend the Coroner's Inquest upon this Occasion; please to give an Account how *Egglestone* behaved then, and what he said.

Mr. Paterfon. My Lord, I will; but first beg Leave to make an Apology for appearing as a Witness on behalf of the unhappy Gentleman, for whom I am concerned as an Attorney: I do it because in an Affair of so great Consequence to him, I think he has a Right to my Evidence; and I do it with less Scruple, as I am his Attorney without Fee or Reward. My Lord, on the 4th of May I went to *Staines*, to attend the Coroner's Jury; though, as I had not Time to enquire into the Fact, and prepare for *Mr. Annesley's* Defence, I could do him but little Service, more than by cross-examining the Witnesses for the Crown, and making Observations on their Evidence; one of the Witnesses was *John Egglestone*, who has been examined here. —

Court. As to any Thing in his Behaviour, you may give Evidence; but not of any Thing that was reduced into Writing.

Mr. Paterfon. I can only speak as to what he said before the Coroner; and I admit the Depositions, taken at that Time, were reduced into Writing by the Coroner or his Clerk.

[*Mr. King, the Coroner, sworn, who produced his Minutes of the Depositions made before him.*]

Mr. Serj. Gapper. Were these drawn up when *Egglestone* was examined, or afterwards?

Mr. King. They were not drawn up afterwards; they were drawn up at the same Time.

Q. Read them as far as they relate to *John Egglestone*.

Mr. Serj. Gapper. Did *Egglestone* sign his Deposition?

Mr. King. He did not.

Mr. Serj. Gapper. As this Gentleman is Coroner, what he has taken down ought to be signed by the Deponent; and if it is not, I humbly apprehend it cannot be read.

Counsel for the Prisoner. The Gentlemen may chuse whether they will have the Minutes read, or whether we shall give parole Evidence, to prove what *Egglestone* said at that Time.

[*The Counsel for the Prosecutor preferring the Minutes, they were read, and are as follows:*]

May 4, 1742.

[*Depositions relating to the Death of Thomas Egglestone, who was shot in the Parish of Staines, in the County of Middlesex.*]

John Egglestone, Son of the Deceased, living at *Staines*, faith, That on Saturday, the 1st of May, he and his Father went a-fishing in one *Sylvester's* Grounds; and says, that one *Joseph Redding* came up, and laid hold of his Father, and demanded his Net; upon which his Father said he should not have it; then the Prisoner, *James Annesley*, came up, and said, *Damn your Blood, surrender your Net, or you are a dead Man*; and, upon his Refusal, the Prisoner held up his Piece to his Shoulder, and presented his Piece to the said *Egglestone*, near to the middle Part of his Body, on his Left Side, and shot the said *Egglestone*, who died presently after. Says, the Gun was cocked before he came, and that the Piece went off before his Father's Refusal to deliver the Net. He says, the Deceased clapped his Hand to his Side, and said, *You Rogue, you have shot me, I am a dead Man*. That after the Discharge of the Piece, his Father dropped instantly. Says, that when he saw his Father shot, he took his Knife and cut the String of the Net, and jumped into the River; upon which the Prisoner said, *He has got the Net*, and went to strike at him with the Butt End of the Gun; and said, *Let us go on the other Side of the River, and fetch it*. Says, That *Redding* had hold of the Deceased by the Collar, when the Piece went off. Says, he was not offered any Money by any Body.

Counsel for the Prisoner. This is the 4th of May, and he now says, that on the 2d of May he was offered Money at *Laleham*.

Mr. Serj. Gapper. Are these all the Minutes that you took?

Mr. King. My Clerk was there; these were all that he mentioned that he took: If I may say any Thing more from my Memory, I will do it.

Q. Then we will go upon the parole Evidence.

Mr. Serj. Gapper. When an Officer has taken Things down in Writing, it is of dangerous Consequence to admit parole Evidence to be given of the same Things.

Q. We do not insist upon it.

(*The Reverend Mr. Eusebius Williams sworn.*)

Q. Sir, do you know *John Fisher*? — *Williams.* Yes.

Q. Had you any Talk with him about *Egglestone's* being killed?

Williams. I happened to be at *Laleham*, and heard the Depositions that were made before *Sir Thomas Reynell*: *Fisher* said, if he was examined before the Justice, he would declare what *Egglestone* had said to him.

Q. What was that?

Williams. *Fisher* told me, that *Egglestone* said he did not believe the Gentleman killed his Father designedly; but that it was an Accident.

Q. Do you know how this young Man *Egglestone* came from *Staines* to *London*, and who has had the Keeping of him since?

Williams. I know nothing but by Hear-say.

Q. Was you never at the *White Horse* in *Piccadilly*?

Williams. I never was there since this Accident.

[*Mr. Bethune called.*]

Mr. Serj. Gapper. My Lord, this is another Person that is brought to contradict the Evidence of *Egglestone*, in what he said with respect to the Position of the Gun.

Prisoner's Counsel. *Egglestone* said the Gun was pointed downward. Now we shall shew you, from the Nature of the Wound, that it was morally impossible it should be so; for the Wound is slanting upwards.

[*James Bethune sworn.*]

Q. Sir, you are, I think, a Surgeon at *Brentford*: Did you see the Body of this *Egglestone* that was killed at *Staines*?

Mr. Bethune. On Sunday, after the Accident, my Lord, I happened to be at *Laleham*, and *Sir Thomas Reynell* gave me Leave to come in and hear the Depositions: I was afterwards sent for by *Mr. Perkins*, a Surgeon at *Staines*, to attend at the opening of the Body before the Coroner; there were several of the Coroner's Jury in the Room. I found the Wound on the Left Side, about an Inch and an Half below the Ridge of the Hip-bone: The Wound I apprehend to be about an Inch and an Half wide; I found it went into the Cavity of the Belly.

Q. Did the Wound go upwards or downwards into the Belly?

Bethune. When I found it went into the Cavity of the Belly, I remembered in what Manner *Egglestone* held the Gun when he was before *Sir Thomas Reynell*, to shew how *Mr. Annesley* held it when he fired: I remember very well he held it to his Shoulder, slanting downwards; I attempted to put my Probe into the Wound, in the same Direction as he described the Gun; but there was no Passage for it in that Position; it would not go in downwards: Then I put it in, in this Manner, cross the Belly, and it went in without Obstruction, and then upwards, and it went in with the same Ease, in this Manner. I observed several large Blisters, full of black Serum on the Right Side, opposite to the Place where the Shot went in; the Blisters, which were on the opposite Side, were three or four Inches higher than where the Wound was—the Wound was on the Left Side, and the Blisters on the Right: When I found this was so plain to me, I desired it might be as plain to the Jury, and every one there, as it was to myself, because this was a Matter of Fact, and not of Judgment; and I desired the Foreman to come and put the Probe in, and try; he did so, and found the Wound as I have described it: I was the more careful in this, because I had observed the Evidence that the Boy gave on the Sunday, and there was some Variation between that and the Nature of the Wound; therefore I desired them to take the more Notice of it; and said, *Gentlemen, I shall have Occasion to speak to this by and bye, and therefore I desire you would mind what I say to you.*

Q. What do you think those Blisters on the other Side were occasioned by?

Bethune. I apprehend they were occasioned by the Force of the Powder; and that if the Shot had gone through, it must have come out three or four Inches higher on the other Side than it went in.

Mr. Serj. Gapper. According to your Account, could he, holding the Muzzle of the Gun upwards, have made this Wound?

Bethune. He could not have made it with the Muzzle downward.

Q. Did you observe how the Wound was upon the Bone, and whether there were any Shot remaining in the Wound?

Bethune. No, Sir; but I found some Shot in the Cavity of the Belly.

Mr. Brown. Now the Question is, Whether the Shot, coming upon this Bone, might not be thrown upwards?

Bethune. No; for the Shot went through the Bone, so that the Gun must have been held obliquely, pointing upwards: The Shot could not have gone through in that Direction, if the Muzzle of the Gun had pointed downwards. This is not Matter of Judgment, but I have given you Demonstration of it.

Mr. Serj. Gapper. You say the Wound went from the Left Side to the Right, and that if the Muzzle of the Gun was downwards, the Wound would be in the same Manner?

Bethune. Certainly, Sir; if the Muzzle of the Gun is held downward, the Shot cannot go upward.

Foreman of the Jury. He makes it appear, that the Prisoner could not hold the Gun to his Shoulder, but that it was held horizontally; and that it was impossible for him to wound him in the Manner the Boy has described, if the Muzzle of the Gun had been pointed downward.

Bethune. I beg Leave to speak a few Words more to your Lordship. While I was giving in this Evidence before the Coroner and his Jury, if your Lordship remembers, I said I had shewed them how the Wound was; therefore I desired them to consider, how consistent it was with the Evidence that *Mr. Egglestone* had given: I believe I proved it to the Coroner's Jury, and others that were there, that it was impossible it could be done in that Manner, if the Gun was held, as he said, to his Shoulder; upon that he comes up again, and, says he, *The Gentleman stooped when he did it.*

Counsel for the Prisoner. This shews how he departed from what he had said; for he said first, that *Mr. Annesley* stood upright when he fired; and then that he stooped, in order to make his Evidence correspond with the Wound.

[*John Perkins, Surgeon, sworn.*]

Q. Did you see the Body of *Thomas Egglestone*?

Mr. Perkins. I opened the Body on the 4th of May, and, on Inspection, I found one Wound about an Inch and an Half Diameter; on the lower Part of the Left Side, it passed through the Spine of the *Os Ilium*, about an Inch and an Half below the Ridge of the Hip-bone; I put in my Probe seven or eight Inches, by which, and likewise upon Inspection, I found it run horizontal, a little upon the ascending. I put my two Fingers into the Cavity of the Bone, and shewed the Jury how it was; and observed on the contrary Side four or five Blisters, which I think to be occasioned by the Force of the Powder from the other Side; but the Shot did not go through the Skin.

Court. I ask you, whether these Blisters were higher or lower than the Wound?

Perkins. Four or five Inches higher, my Lord.
Mr. Brown. Do you think these Blisters were occasioned by the Shot?
Perkins. I apprehend they were, because there were no other Blisters on any other Part of the Body.

[Mr. King the Coroner called again.]

Q. Was any Application made to you, at any Time, to send Mr. Annesley a Prisoner to Newgate?

Mr. King. Yes, I think it was Mr. Giffard; he came along with another Gentleman, whose Name, I think, is Carrington.

Q. What, Captain Carrington?

King. I believe it was: I said, I think the Gentleman is secure enough (there was a Lord mentioned, but I cannot remember that he was named: Mr. Giffard wisely kept him from saying who it was): I thought it was too severe to send him to Newgate; and said, that Sir Thomas Reynolds was the Justice of Peace who committed him, and he had taken sufficient Care about it.

[Paul Keating sworn.]

Q. Do you know any thing of Egglestone?

Keating. Yes.

Q. Where did you come acquainted with him?

Keating. At the White Horse in Piccadilly.

Q. What Countryman are you?

Keating. I came from Ireland on board a Merchantman from Waterford: I was recommended to the Earl of Anglesea, to say what I know as a Witness about the Estate.

Q. How came you to the White Horse?

Keating. There was one Lawler, that came over in the same Ship. When I came to Town, I went and inquired for him at the Earl of Anglesea's, and he sent me to the White Horse in Piccadilly to live, and there I came acquainted with Egglestone.

Q. After your Acquaintance, do you remember any Conversation with him, about what he was to have for swearing in this Cause?

Keating. I do, my Lord, remember mighty well; a little Time after he came to the Inn, he and I got acquainted together, and went out a-walking to see the Town, and particularly on a Sunday Morning; the Sunday after he came to Piccadilly.

Q. What Month was that in?

Keating. In the Month of May: I believe it was the second Sunday in May. As we were walking abroad, I asked him how he came to live there; says he, I am here at the Expence of the Earl of Anglesea.

Court. This is not proper: If you can call any body to contradict Egglestone you may; but this is reflecting upon a noble Person's Character.

Q. Did he tell you how he came to be at that Inn?

Keating. He told me, that Mr. Williams, who keeps the White Horse, brought him from Staines; and that he should be very well provided for, if he would prosecute the Gentleman who is now in Custody for this Murder; and he desired I might contrive some way that he might get the Money secured; and I wrote two or three Drafts of Notes for 200 l. and he took Copies of them.

Q. How came he to take Copies of them?

Keating. Because I did not care my Hand should be known. I have a Copy of one of them in my Pocket. [Reads.]

I Promise to pay to Mr. Thomas Egglestone [that is his elder Brother] or his Order, at or upon the 10th Day of June next, the Sum of 200 l. Sterling, for Value received from his deceased Father and him in Carpenters Work, &c. Witness my Hand this 10th Day of May, 1742.

This was to be signed either by Williams, or my Lord Anglesea.

Q. Do you know of any Discourse with Patrick Lawler?

Keating. Yes; he is my Lord Anglesea's Servant.

Court. What Lawler said is not Evidence, unless to contradict him, and he has not been examined.

Q. Have you ever seen the Earl of Anglesea at the White Horse?

Keating. He is there often.

Q. What, has the Earl of Anglesea any Thing to do there?

Keating. His Coach and Horses are kept there.

Q. How long have they stood there?

Keating. They stand there constantly.

Mr. Serj. Gapper. What was that Note for?

Keating. It is only a Copy of what I wrote for Egglestone; for, as I told the Court before, I did not care that my Hand should be seen in any such Thing as Bribery and Corruption.

Mr. Serj. Gapper. Where was this Note signed?

Keating. I cannot say whether it was signed or not; he told me it was to be signed.

Q. Did not you put this into Egglestone's Head?

Keating. No, upon my Oath, I did not.

Mr. Brown. Did not you receive Money to go somewhere, and you and he went and spent the Money?

Keating. I received a Crown to go to Woolwich.

Q. How came you not to go to Woolwich?

Keating. I had not a mind to go.

Mr. Serj. Gapper. So you had a mind to make Egglestone drunk with this Crown?—Keating. That is a different Case.

Q. Did not you treat him?—Keating. Yes, I did.

Q. What Reason had you to treat him?

Keating. Because he had no Money of his own.

Mr. Serj. Gapper. So you had a Crown to go to Woolwich, and did not go?—Keating. I did not go, indeed.

The Evidence for the Prisoners being gone through,

Court. If the Jury should be of Opinion that the Gun went off by Accident, the Homicide must, in Point of Law, be either Manslaughter, or Chance-Medley: I should be glad, in that Case, to make it Chance-Medley; but, in order to that, it must appear, that what Mr. Annesley was doing was perfectly lawful, otherwise he will be guilty of Manslaughter.

The other Prisoner, Redding, had certainly, by virtue of his Deputation, and by force of the Acts of Parliament made for the Preservation of the Game, Authority to seize the Deceased, who was clearly acting in Violation of those Laws. But it is doubtful whether the Authority of a

Game-Keeper, being personal, the other Prisoner acted lawfully in assisting him.

The Substance of the Arguments by the Counsel for the Prisoners (viz. Mr. Hume Campbell, Mr. Serj. Hayward, Mr. Clarke, Mr. Wyrley, and Mr. Smith) was as follows.

My Lord, although a Game-Keeper's Authority be personal, we submit to your Lordship, that, as the Deceased was confessedly doing an unlawful Act, Mr. Annesley's catching at the String of the Net, which the Deceased had thrown away, and which might be only to prevent its falling into the Water, was not such a Trespass in him, as will alter the Nature of the Consequence, and make that Manslaughter, which appears to have been, in fact, a most unfortunate Accident.

We humbly apprehend, My Lord, that it is not necessary, that the Act Mr. Annesley was about, when the Accident happened, should be strictly legal; if it was an Act of an indifferent Nature, not an unlawful one, we hope it will be sufficient to excuse him from the Guilt of Manslaughter.

If a Man throws a Stone into a Place of publick Resort, and kills another, that will be Manslaughter, because the Act itself was unlawful, supposing that dismal Consequence had not followed it.

But if a Man is playing at Bowls, and undesignedly kills another, there, as the first Act was of an indifferent Nature, the Law will not impute the Accident consequential to it as a Crime.

As to Mr. Annesley's entering the Close that belonged to Sylvester, whatever it might be with regard to him, it was an Act of an indifferent Nature with respect to the Deceased, who claimed no Property in the Ground, and consequently had no more Right to be there than Mr. Annesley, unless you will suppose him to have had the Owner's Consent, which, as it was not proved, may and ought, with equal Justice, to be supposed in Favour of the Prisoner.

The young Man's Evidence being put out of the Case (and considering the Manner in which he contradicted himself, and has been contradicted by others, what he says, we apprehend, ought to stand for nothing), Mr. Annesley's Act appears to be no more than stooping to prevent the String of the Net from falling into the River; in doing of which, suppose a Pistol had gone off in his Pocket, would it not be the hardest Case in the World, to say that this Accident should make him guilty of Manslaughter?

But allowing it necessary that the Act Mr. Annesley was doing must be lawful, we hope to shew your Lordship, that Mr. Annesley's Interposition in this Case was so.

There are two Acts of Parliament relating to the Game applicable to this Case; the one made in the 22d and 23d Years of Charles II. Chap. 25. and the other in the 4th and 5th Years of William and Mary, Chap. 23.

The first recites, that divers disorderly Persons, laying aside their lawful Trades, betake themselves to the stealing of Conies, Hares, Pheasants, Partridges, and other Game, with Nets and other Engines.

For Remedy whereof it enacts, That all Lords of Manours may, by Writing under their Hands and Seals, authorize one or more Game-Keeper or Game-Keepers, within their Manours; who, being so authorized, may seize such Nets, or other Engines, as shall be used by any Person or Persons prohibited to keep or use the same.

Then it recites, that divers idle, disorderly, and mean People do betake themselves to the stealing of Fish out of Ponds, and other several Waters and Rivers, to the great Damage of the Owners thereof.

Therefore it enacts, That if any Person or Persons shall use a Casting-Net in any River, &c. without the Consent of the Lord or Owner of the said Water; and being thereof convicted before any Justice of the Peace, shall give the Owner such Satisfaction (not exceeding treble Damages) as the Justice shall appoint, or be committed to the House of Correction. And that it shall be lawful for the Justice to destroy all such Nets, or other Engines, wherewith such Offenders shall be taken or apprehended.

The other Act of Parliament recites, That divers good and necessary Laws had been made for Preservation of the Game; notwithstanding which, or for want of the due Execution thereof, the Game had been very much destroyed by many idle Persons, who afterwards betake themselves to Robberies, Burglaries, or other like Offences, and neglect their lawful Employments.

For Remedy whereof it enacts, That no Person or Persons shall have or keep any Net or Engine for taking of Fish, except the Owner or Occupier of a River or Fishery. And that it shall be lawful for such Owner or Occupier, and all and every other Person or Persons, by him or them for that Purpose appointed, to seize, detain, and keep, to his and their own Use and Uses, every Net or Engine which they shall find used, or in the Custody or Possession of any Person or Persons whatsoever, fishing in any River without the Consent of the Owner or Occupier.

Now the Question which your Lordship puts upon us to argue, is, Whether a Person duly authorized under these Acts of Parliament, being resisted in the Execution of his Office, can legally call any other Person to his Assistance?

Your Lordship will consider we are arguing in favour of Life, and therefore will construe these Laws in the most beneficial Manner for the Prisoner, and the rather, because such Construction will tend to put the Laws themselves in force, which were intended for securing Men in their Property from the Violation of idle and disorderly Persons.

These Acts suppose the Offenders to be desperate People; for it describes them to be such as afterwards betake themselves to Robberies and Burglaries; and likewise supposes (what is also true in fact) that they go in Numbers to destroy the Game.

That Circumstance seems to imply, that a Game-Keeper, or other Person duly appointed, may, in such Cases, call in other Persons to his Assistance.

To construe the Law otherwise, would render it ineffectual; for it is absurd to suppose, that every Lord of a Manour, or Owner of a Fishery, should appoint as many Game-Keepers as there may be Persons inclined to invade his Property. This would entirely tend to defeat the Security intended by the Law, and therefore can never be agreeable to the Meaning of the Legislators.

As these are late Acts of Parliament, it cannot be expected that we should produce Cases directly in Point, and Resolutions of the Judges, on the Construction of those Acts in this Question.

But suppose, upon some of the Acts of Parliament made against Smugglers, an Officer of the Revenue, or at the Common-Law a Constable,

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being resisted in the Execution of his Office, calls in other Persons in the Neighbourhood to his Assistance, and Mischief or Death ensues; might not those Persons avail themselves of the Authority vested in the Officer or Constable, so as to be justified in what they do, for the manifest Support and Execution of the Law?

A Man has undoubtedly a Right to drive away Cattle, which he finds *Damage faitant* in his Ground. Suppose then he should desire a Stranger to assist him, could the Owner of the Cattle maintain an Action against the Stranger for the Trespass, in driving his Cattle?

Suppose, in the present Case, the Deceased had not unfortunately been killed, and had brought an Action against the Prisoners for an Assault, might not the Defendants (one of which was Game-Keeper) have pleaded specially, and justified under the Act of Parliament? And surely, whatever in Pleading would have been a Justification in such a Case as this, will be a sufficient Excuse.

But we apprehend, that, in all Cases where the Law makes Offences punishable by Justices of the Peace, whoever sees a Person committing such an Offence, has a Right, without any special Authority, to take him up, and carry him, together with the Instrument of his Offence, before a Justice, in order to his Conviction; and that whatever is necessary for this Purpose is lawful.

If this was not Law, Offenders would, in most Cases, escape with Impunity; for, observing themselves to be discovered, they would hardly stay till the Observer could resort to a proper Authority; and, being mean and unknown Persons, might never afterwards be found.

Even the young Man, who was so very forward in giving his Evidence, admits that his Father and he were actually fishing; that is, committing an Offence against these Acts of Parliament; that *Redding*, who had a legal Authority, came up first to the Deceased, and demanded the Net; that the Deceased refused to deliver it; and that, whilst they were struggling for the Net, Mr. *Annesley* came up and snatched at it.

Upon the Whole, we hope Mr. *Annesley* was well warranted to go to *Redding's* Assistance; and that the unhappy Accident, that fell out at that Time, shall not be imputed to him as a Crime, but construed to be no more than Chance-Medley.

The Substance of the Arguments by the Counsel for the Prosecutor, viz. Mr. Serj. Gapper, Mr. Serj. Wynne, Mr. Brown, and Mr. Johnson, was as follows:

My Lord, the Counsel for the Prisoners have undertaken to justify under two Acts of Parliament.

As to the 22d and 23d of *Charles II.* we beg Leave to observe, that the Clause empowering Lords of Manours to appoint Game-Keepers, with Authority to seize Nets, does not extend to Fisheries. The Clause which relates to Fishing, only directs that the Offenders shall be punished, upon Conviction, before a Justice of Peace; but does not empower any one to seize either them or their Nets. The regular Way, undoubtedly, is to lay a Complaint before a Justice of the Peace, who is to grant his Warrant for apprehending the Offender, and then, upon Conviction, he may destroy the Net. Besides, it was sworn by old *Redding*, that this was his Fishery; if so, Sir *John Dolben* had no Authority at all to appoint a Game-Keeper to take care of it, and, consequently, even the Deputation itself is void.

But if it was not void, yet still the Power is personal, and cannot be delegated to another, and therefore cannot serve to excuse Mr. *Annesley*, who appears to have acted officiously, without being called upon by any Body.

As to the other Act of Parliament, the 4th and 5th of *William and Mary*, that no ways relates to Game-Keepers; but only impowers the Owners or Occupiers of Fisheries, or Persons by them for that Purpose appointed, to seize the Nets; so that this Power is confined to old *Redding* himself, and it does not appear he has appointed either of the Prisoners; and therefore, as they had no Authority at all, they were Trespassers, and must answer for the Consequences.

As to the liberal Construction of the Acts of Parliament, which the Gentlemen contend for, we say, that, at the Common Law, every Man had a Right to fish in Rivers; and consequently those Statutes are an Abridgment of the Common Law, and therefore to be strictly construed. By the same Rule of Construction, which they insist upon, any Man may claim a Right to come every Day, and search another's House for Nets and Engines for destroying of Game. But what Murders, besides other Inconveniences, must be the Consequence of such an unlimited Power, we leave all the World to judge.

We admit that this is a new Case, and therefore the Cases put of a Constable, whose Office is as ancient as any in the Kingdom, are by no means parallel. We insist, therefore, that the Prisoners, at least Mr. *Annesley*, having been Wrong-doers, must answer for the Consequence, which being the Death of one of his Majesty's Subjects, make them guilty of Manslaughter, supposing the Gun went off by Accident.

Then Mr. Hume Campbell said in Reply:

My Lord, I beg Leave to trouble you with a few Words, on Behalf of the unhappy Gentleman who stands charged before you with a Crime which affects his Life.

If that Consequence was the Motive for the Charge, he may rely upon the Justice of this Court as his Security; to your Justice he has surrendered himself, and equally trusts in that and his Innocence.

In arguing the Point now before the Court, I may take it for granted, that the Gun went off by Accident, without Mr. *Annesley's* knowing it; and only consider, whether his interposing to assist *Redding* was or was not lawful.

My Lord, I take it for a general Rule, that all Persons, on Request, not only may, but are bound by their Duty and Allegiance, to assist legal Officers in the Execution of their Duty.

I shall not repeat any of the Evidence; the Court will remember, that a Request of the Game-Keeper's, or what amounts to such, has been proved.

I mentioned the Case of a Constable, which the Gentlemen of the other Side endeavour to distinguish from that of a Game-Keeper, by saying, that his Power is great, and that his Office is very ancient. I admit both these Positions; but insist, that his Power does not arise from the Antiquity, but from the Legality of his Office.

A Game-Keeper is a legal Officer, particularly appointed under the Acts of Parliament for the Preservation of the Game: He is for that Purpose fully empowered to put the Laws, relating to the Game, in Execution; Nobody can legally resist him, and consequently the Deceased and his Son were doubly criminal; first, in breaking the Law, and then in resisting the legal Officer, who came to put that Law in force.

What did Mr. *Annesley* do in this Case? He stooped to take up the Net, which the Deceased had unlawfully thrown into the Water, to prevent the Game-Keeper from seizing it.

Egglesstone had abandoned it; and will any one maintain, that when a Trespasser throws away the Instrument of his Crime, it is unlawful in another Person to take it up? Nay, the Assistant of him to whom the Statute gives it?

They say a Man may as well go every Day into People's Houses, under Pretence of searching for Nets, &c. No, they cannot do that by Law; every Man's House is his Castle; and the Law has provided, that he shall not be molested there without a special Authority. Nor is there the same Reason for that, as there is for seizing Offenders in the actual Commission of the Offence. The very Case they put, implies the Offender may be found and come at by the ordinary Forms; but in the other, he may not be known, and will hardly stay till you apply for a Warrant to apprehend him.

So that the Necessity of the Thing makes that reasonable and lawful in the one Case, which, for Want of that Necessity, is not so in the other.

That a special Authority, my Lord, is not necessary in all Cases, will hardly be disputed; a Constable, if the Law is broke in his Presence, may, by Virtue of his general Power, take Cognizance of the Offence, and arrest the Offender.

In the present Case, the Game-Keeper, who is a legal Officer, and in Nature of a Constable for this particular Purpose, saw the Deceased fishing, and consequently had a Right, without any special Warrant, to seize him, and when resisted, to call Mr. *Annesley* to his Assistance.

It is said, the Acts of Parliament are an Abridgment of the Common Law, and therefore should be construed strictly. My Lord, no Man, by the Common Law, had a Right to fish in another's Property. It was an Offence at the Common Law; it is *Malum in se*; and the Statutes, that have been mentioned, only make that Offence punishable by a Justice of Peace; as they tend therefore to secure the Property which a Man had at the Common Law, they are an Addition to the Common Law, fixing a Punishment for the Breach of Law; and therefore to be so construed, as will best answer so salutary an End.

If it is a new Case, as the Gentlemen seem to lay a Stress upon it, let us consider what will be the Consequence of your Lordship's Determination, if it should be against us.

The Law, my Lord, I apprehend, will become vain and idle; for if Offenders get together in any Number, it will be impossible for a Game-Keeper to restrain them.

Nay, my Lord, the Law itself will become a Snare to all who have not the Act of Parliament in their Pocket, to tell them they must not interfere; for suppose a Person, legally appointed under an Act of Parliament, going to do his Duty, is resisted, can it be imagined that his Fellow-Servant, his Neighbour, or his Friend, would not think himself justified, nay bound to assist him, when he sees his Authority thus trampled upon?

At most, my Lord, it could be only an imprudent Act in Mr. *Annesley* to interpose; but we hope your Lordship will not construe it to be such an unlawful Act as will make him a Trespasser, and so guilty of Manslaughter.

Your Lordship will please to observe, that it depends intirely on the Credit of *Egglesstone*, whether this Gentleman did any Thing or not. Before your Lordship directs the Jury as to this, it is my Duty to acquaint your Lordship, that there is an Indictment on the Coroner's Inquest, and likewise an Indictment on the Black Act, against the Prisoner Mr. *Annesley*.

Court. That is for shooting maliciously: But there is no Evidence tending that Way.

Mr. Serj. *Gap.* My Lord, we desire to call some Evidence to support the Character of *John Egglesstone*.

Q. For what? We have called no Witness to impeach it.

Court. Have you not examined every Witness that has appeared to the Boy's Character? If you could have called more, it is to be supposed you would have done it.

[John Gardner sworn.]

Mr. Serj. *Wynne.* Do you know this young *Egglesstone*?---*Gard.* Yes.

Mr. Serj. *Wynne.* How long have you known him?

Gard. Seven or eight Years.

Mr. Serj. *Wynne.* What is he, as to his Honesty and Veracity?

Gard. He is like other Boys, sometimes good, sometimes indifferent.

Mr. Serj. *Wynne.* I do not mean as to a little Unluckiness: But do you think, from his general Behaviour, that he would forswear himself?

Gard. No, I do not think that he would.

[Thomas Sylvester sworn.]

Mr. Serj. *Wynne.* Do you know this *Egglesstone*?

Syl. Yes, I have known him about three Years; he lived by me at a Butcher's.

Mr. Serj. *Wynne.* What was he, as to his Character and Behaviour?

Syl. He was sometimes idle, and given to Play.

Mr. Serj. *Wynne.* Do you think he would forswear himself?

Syl. No, I do not think he would.

[Samuel Sylvester called.]

Mr. Serj. *Wynne.* How long have you known this Boy?

Samuel Syl. I have known this Boy a good while.

Mr. Serj. *Wynne.* What is his general Character; do you think he would forswear himself?---*Samuel Syl.* I have had no Conversation with him, so I do not know what he is.

[William Palmer sworn.]

Mr. Serj. *Wynne.* Do you know young *Egglesstone*?---*Palmer.* Yes.

Mr. Serj. *Wynne.* How long have you known him?

Palmer. I have known him as long as I have known any Person of his Age: He came of very honest Parents.

Mr. Serj. *Wynne.* Do you think he would forswear himself?

Palmer. I do not think he would forswear himself.

Q. Upon your Oath, do you not think he is much addicted to Lying?
Palmer.

Palmer. Why, that is not taking a false Oath.

[Patrick Lawler sworn.]

Mr. Serj. Wynne. Do you know Paul Keating?

Lawler. I have known him ever since the 18th of March last.

Q. What is his general Character?

Lawler. I do not know his general Character; but I know he has behaved very bad of late.

Q. Did you never offer him any Money to keep out of the Way, and not appear at this Trial?

Lawler. No, not I; but he said he would give them a Rowland for their Oliver.

Q. Do you know what he meant by that?

Lawler. No; only that he said if my Lord Anglesea did not give him Money, he would turn Evidence on the other Side.

Q. What did you think he meant, when he said, if my Lord Anglesea did not give him Money, he would turn Evidence on the other Side? Why surely my Lord is not concerned in this Prosecution! But pray, Sir, you have given a bad Account of Mr. Keating, how came you and he acquainted?

Lawler. This Keating and I came over together from Ireland in the same Ship; he told me, there were some Evidences on board that were coming over to swear away my Lord Anglesea's Estate: Said he, there are three Women and two Men, and I have discovered the whole Thing, how they are bribed to come here; and if I come to London, said he, I will give my Lord Anglesea an Account of it.

Q. Pray, Sir, tell us what became of Keating when he came to Town?

Lawler. Soon after he arrived he found me out, and so I told Mr. Jans I thought he might depend upon this Man, because I had seen him in Bristol; said I, I speak to you about this Man out of Charity; for he is very poor: Then says Mr. Jans, Let him go to the White-Horse in Piccadilly; and then he wanted Cloaths and Money; and, says he, If they do not give me Cloaths and Money, I will swear that the Earl of Anglesea was to give a Note to young Egglestone to swear upon this Trial.

Q. What do you think he meant by his giving a Rowland for an Oliver? Whether it respected this Cause, or related to my Lord Anglesea's Estate?

Lawler. I cannot tell what he meant.

Then the Court proceeded to sum up the Evidence as follows:

Gentlemen of the Jury, the Prisoners at the Bar, James Annesley and Joseph Redding, stand indicted for the wilful Murder of Thomas Egglestone, by giving him one Wound on the Left-side of the Belly, in the Parish of Staines, of which he instantly died: The Indictment sets forth, that Annesley fired the Gun, and gave the Wound, and that Redding was assisting and abetting him in the doing of it: And they stand a second time indicted on the Coroner's Inquest for the same Murder; and there is another Indictment against the Prisoner Annesley, for feloniously, wilfully, and maliciously shooting this Man, against the Statute of the Ninth of King George the First. The first Evidence that is called by the Prosecutor is John Egglestone; he says his Father and he went a-fishing up the River, till they came to Samuel Sylvester's Ground; that they had a Net, and the String of the Net was about his Father's Arm; that when they got about the Middle of the Field, they saw the Prisoners coming up; that Redding came up first, and went to lay hold of the Net, and his Father threw the Net into the River, about two Yards from him; and that Annesley then came up and said, *Damn your Blood, deliver your Net, or you are a dead Man*, and fired directly: and that he shot him near the Bottom of the Belly on the Left-side; that his Father said, *You Rogue, what have you done? I am a dead Man*; that he, the Witness, took a Knife out of his Pocket, to cut the String of the Net from his Father's Arm, and leaped into the River, and dragged the Net to the other Side of the River; and that Annesley said, *The Rogue has got his Net, let us go on the other Side*; that he saw Bettesworth, Fisher, and Bowles, on the other Side of the River, and told them he believed his Father was dead; that they came over the River, and advised him to get a Surgeon; upon which he went to one Charles Cole, but he did not come: that then he went for Ruffel the Constable, to search for the Prisoners, and says they found the Prisoner Annesley in a Place about five or six Foot above the Floor, in an Out-house, upon some Rubbish; that they carried him to the Round-House; that he staid there all Night, and the next Day they carried him to Hounslow: He says the Gun was cocked, but he cannot tell when he cocked it: He says Sir Thomas Reynell came into Hounslow while they were there; and that by his Order they went to the Grey-Hound at Laleham; and that one Lane, Chester's Son-in-Law, offered him 100*l.* a Year; that Mr. Annesley said he had not 100*l.* a Year; to give him, for he had more to provide for; but he might have 50*l.* a Year, if he would not come against him: He said he had no Conversation with one Duffell, but that he had with Dalton; he says, he has sometimes dined at Williams's Table; and that he did not tell Paul Keating he was to have 200*l.*

The next Witness that is produced is John Bettesworth: He says, that Egglestone and his Son were in Sylvester's Ground, on the other Side of the River, and he saw the Prisoners come out of Redding's Ground into Sylvester's, and when they were in the Middle of the Ground they ran after them: He says, Joseph Redding was too nimble for Egglestone's Father; but whether he had him by the Collar, he cannot say: He says, that the Gun went off soon after Mr. Annesley came up to old Egglestone: He says, he saw the Smoke and Fire of the Gun; and came up soon after Egglestone's Father was shot. He says, he and Fisher, and Bowles, crossed the Water; and that Annesley and Redding ran away; that Egglestone was not quite dead when he came over, but was not able to speak; and says, he saw the Net on the other Side of the River: He says, there was a Place in a Wash-house, about six Foot from the Ground, and there they found Mr. Annesley; that it is a Place where they put Hoops, and other Rubbish: He says, that when Mr. Annesley was taken, he said, he wished to be killed, for being instrumental in the taking away an innocent Man's Life. That about half an Hour before this Accident happened, he saw Mr. Annesley offer to shoot at a Crow.

John Fisher is called next; he says, he saw young Redding in the Ground with another Man; but cannot say that Annesley is the Man; and that he saw there, two Men running after Egglestone and his Son; that Redding laid his Hand, he thinks, on Egglestone's Shoulder; and there was a Sort of a Scuffle between them; and he that carried the Gun

carried it in a Form to shoot; and he that carried the Gun was very near Egglestone when the Gun went off: and he says, he saw Joseph Redding, and the other Man, go away; and he says, he was at this Time 169 Yards off. It seems the Ground has been measured, and that is the Reason they are so particular in it: he says, Egglestone had Money offered him in his hearing; he would have had a Hundred a Year; but Mr. Annesley said, he could not give him an Hundred a Year, for he had other People to do for: But he would give him Fifty; and that Egglestone afterwards said, he would not sell his Father's Blood; and he said, that Egglestone afterwards told him, he believed the Gentleman did not do it wilfully; but that the Boy, being afterwards asked how he could swear against the Gentleman, when he had said he believed he did not do it wilfully; he said, he did not remember any thing of what he had said to him; and he says he has been in the same Story ever since the Accident happened, excepting that one Time.

The next Witness, Gentlemen, is Samuel Sylvester; and he says, when Mr. Annesley came out of that Place where he was found, he trembled very much: he says, he rents this Land of one Sanders, who took it of Redding's Father: he says, Egglestone used to work sometimes with his Father in the Business of a Carpenter, but that he has lived some time at the White Horse, in Piccadilly.

This is the Substance of the Evidence for the Prosecutor.

The Prisoner Mr. Annesley, in his own Defence, says, that he is very sorry for the Accident that has happened; that these Persons were poaching in the Manour that belongs to Sir John Dolben; that they did go up to them, but that you cannot suppose he had any Spite against a Man he never saw in his Life; he says that he had a Gun in his Hand, and that the Gun went off by Accident. The other Prisoner Redding says, he is Game-keeper to Sir John Dolben; that he saw these Men fishing, and went to take the Net; that he heard the Gun go off, and saw the Man fall down, and then he said to Mr. Annesley, Lord bless me, I hope you have not killed the Man! and that it was done accidentally.

To prove their Case, they called the following Witnesses. The first is, Mr. Staples; he says, this is Sir John Dolben's Manour, and that he has held Courts there.

The next Witness, Gentlemen, was Thomas Burlingson, and he proves a Deputation of the second of July 1741, from Sir John Dolben to Joseph Redding the younger, and thereby he is appointed his Game-keeper, to seize the Nets, &c. of any Person who shall destroy any Game, or Fish, in his Manour; and in the Book which is kept for the Entry of these Things for the County of Middlesex, it appears that the Entry was made the 29th of January 1741, which was before the committing of this Fact.

Then Redding, the Father of Joseph Redding, is called, and he says, the Fishery belongs to Sir John Dolben, who is Lord of the Manour; that he lett the Ground called Hare Mead to Sanders; and that the same is now in the Possession of Sylvester. That he himself was in Chantry Mead (which is next to the Hare Mead) when this Accident happened: That when he came up to them, his Son said, he was afraid the Man was killed, and asked Annesley how he came to do it? To which Annesley answered, He did not think of the Gun's going off; he says, they seemed very much troubled and concerned: being asked the Position of the Gun when it went off, he says, Mr. Annesley held the Gun in one Hand, and that it hung down by his Side.

The next Witness, Gentlemen, is William Duffell; and he says, that some Hours after the Accident happened, John Egglestone came into his House; and the Man that brought him to his House, desired him to speak the Truth; and the Account the Boy gave at that Time was, that Redding came up to his Father, and demanded the Net, and that his Father said he should not have it, and threw it into the River; that then Mr. Annesley came up, and the Gun went off, and his Father was shot. He says, that Abraham Egglestone particularly asked the Boy whether he saw Mr. Annesley pull the Trigger of the Gun? and that he said he could not tell; that then he asked him if there were any Words between them? and he said, No; that then this Witness said, it was a strange Thing that Mr. Annesley should shoot his Father, and have no Words with him: That being asked in what manner the Gun was held, Egglestone, with a Stick which he had in his Hand, shewed them in what Manner Mr. Annesley held the Gun: He says the Stick was in his Hand, hanging down by his Side. He says, that Egglestone then was asked, if he thought Annesley did it wilfully, and that he said he could not tell. Being asked as to the Boy's Character; he says he has but an indifferent Character, that he cannot speak in the Praise of him, and has heard his Father often complain of him.

The next Evidence is John Dalton; and he says, that the next Day after the Accident, he went to Laleham, and there Egglestone told him, he believed it was an Accident, and not done designedly. He says the Boy has but an indifferent Character, but believes he would not forswear himself.

The next Witness is Richard Chester, and he says, that he asked the Boy at Laleham, whether it was accidental or wilful; and that he said he believed it was an Accident; for he did not believe any Gentleman, in cool Blood, would designedly shoot another; he says he had a Whip in his Hand, and desired Egglestone to shew him how Mr. Annesley held the Gun; that he took the Whip in his Hand, and shewed him; that he held it in his Hand, hanging down by his Side; and he says he saw Egglestone speak to Mr. Annesley; that he shook Hands with him, and drank a Glass of Wine, and said he did not think he did it designedly.

Mr. Paterson was then called to prove what the Boy said before the Coroner; but his Examination being taken down in writing, I did not think proper to allow of Parole Evidence.

Then Mr. King the Coroner was called; and he produced the Minutes of the Depositions, taken the 4th of May at Laleham, before the Inquest. The Minutes have been read, by which it appears that Egglestone deposed, that as his Father and he were fishing in Sylvester's Ground, Redding came up, and laid hold of his Father, and demanded his Net, which his Father refused; that then Annesley came up and said, "Damn your Blood, surrender your Net, or you are a dead Man;" that he held up his Piece against his Shoulder, and shot him directly: And his Father said, "You Rogue, you have shot me, I am a dead Man." And, Gentlemen, his Deposition before the Coroner likewise says, that when he saw his Father was shot, he took his Knife, and cut the String of the Net; and that

that then *Mr. Annesley* went to strike him on the Head, with the Butt End of the Gun. And he swears in his Deposition, that he was not offered any Money by any Body. Then they produced *Mr. Eusebius Williams*, and he says, *John Fisher* told him, that *John Egglestone* had said he did not believe *Mr. Annesley* killed his Father wilfully, but that it was done by Accident.

Then *James Bethune*, a Surgeon, is produced, and he says he saw the Body; that he examined and probed the Wound; and he says it was an Inch and an half below the Ridge of the Hip-bone, and an Inch and an half wide; and that when he put his Instrument downwards, it would not go in; but it would go in when the Probe was put upwards, or cross the Belly.

The next Witness is *John Perkins*, a Surgeon: he says he opened the Body the 4th of May, to be inspected by the Coroner's Inquest; and there was a Wound an Inch and a half Diameter. He put in his Probe seven or eight Inches, and found the Wound a little horizontal, about an Inch and an half below the Hip-bone; he says there were Blisters on the other Side of the Body, and they were four or five Inches higher than the Wound. *Mr. King* says, that *Mr. Giffard*, who is the Solicitor in this Prosecution, made Application to him to commit *Mr. Annesley* to Newgate; but he thought that was too severe, as *Sir Thomas Reynell* was a Justice of the Peace, and had taken sufficient Care of him.

Paul Keating says, he became acquainted with *Egglestone* at the *White Horse* in *Piccadilly*, which is kept by one *Williams*; and that he, at *Egglestone's* Desire, drew a Note of 200*l.* for him, and that the Boy, *Egglestone*, took a Copy of it.

Gentlemen, this is the Evidence given in Behalf of the Prisoners; and there has been Evidence given to support the Character of *John Egglestone*.

John Gardener, he says he has known him seven or eight Years,---that he is like other Boys, sometimes good, and sometimes indifferent, but he does not think he would forswear himself.

Sylvester was called again, to *Egglestone's* Character; he says he has known him about three Years, that he was sometimes given to play, but believes he would not forswear himself.

William Palmer says he has known him from a Child, and does not think he would forswear himself.

Patrick Lawler says, he has known *Paul Keating* since the 18th of March; that because he could not be supplied with Cloaths, as he expected, he was to swear, that the Earl of *Anglesea* was to give a Note to young *Egglestone*.

This is the State of the Evidence on both Sides.

Now, Gentlemen, you are to consider, whether the Fact is Murder, Manslaughter, or Chance-Medley: Murder, Gentlemen, in Point of Law, is, when a Person kills another with express Malice and Design, or with implied Malice, as when it is without any Offence or Provocation; but if there is a sudden Fray, and in that Fray and Heat of Blood, a Person is killed, that is Manslaughter; now there are several Things in the Course of the Evidence proper to come under your Consideration; you will observe that *Egglestone* swears *Mr. Annesley* said, "Damn your Blood, deliver your Net, or you are a dead Man," and that immediately the Gun went off, and the Man was shot; if he let the Gun off designedly, if this was the Case, though on a sudden, he can be guilty of no less than Manslaughter;

but then you will consider what different Things the Boy has said; he has declared several Times, he did not believe he did it designedly; and according to what the Surgeons say, it is not probable to me, that this Wound could be given in the Situation he says *Mr. Annesley* was in; for the Wound goes upwards; and if he held his Gun as the Boy has said, the Wound could not have been as it is: Besides that, he is expressly contradicted in the Fact itself by old *Redding*, who swears he saw the Gun go off, and that it was hanging by *Mr. Annesley's* Side. Gentlemen, as I said before, the Question you are to consider of, is, whether this is Manslaughter, or Chance-Medley in *Mr. Annesley*; for as to *Redding*, he must certainly be acquitted; and as to Murder, I cannot think there is any Evidence to make *Mr. Annesley* guilty of that; but as there was some Blood, there may be Reason to consider, whether it is not Manslaughter: On the other hand, if *Mr. Annesley* was carrying his Gun by his Side, and it went off accidentally, then it will be Chance-Medley.

[Then the Jury having considered of their Verdicts, without going out of Court.]

Clerk of the Arraignment. Gentlemen of the Jury, are you agreed in your Verdicts?---Jury. Yes.

Clerk. Who shall say for you?---Jury. Our Foreman.

Clerk. *James Annesley*, hold up your Hand.---*Joseph Redding*, hold up your Hand.---Gentlemen of the Jury, look upon the Prisoners. How say you, is *James Annesley* guilty of the Felony and Murder, whereof he stands indicted, or not guilty?

Foreman of the Jury. Not guilty of Murder, but guilty of Chance-Medley.

Clerk. How say you, is *Joseph Redding* guilty of the same Felony and Murder, whereof he stands indicted, or not guilty?

Foreman of the Jury. Not guilty of the Murder, but guilty of Chance-Medley.

Clerk. How say you, is the said *James Annesley* guilty of the Felony and Murder, wherewith he stands charged upon the Coroner's Inquisition, or not guilty?

Foreman of the Jury. Not guilty of the Murder, but guilty of Chance-Medley.

Clerk. How say you, is the said *Joseph Redding* guilty of the same Felony and Murder, wherewith he stands charged upon the Coroner's Inquisition, or not guilty?

Foreman of the Jury. Not guilty of the Murder, but guilty of Chance-Medley.

Clerk. How say you, is the said *James Annesley* guilty of wilfully shooting at *Thomas Egglestone*, against the Form of the Statute, or not guilty?

Foreman of the Jury. Not guilty.

Clerk. Gentlemen of the Jury, hearken to your Verdicts, as the Court has recorded them. You say that *James Annesley* is not guilty of the Felony and Murder whereof he stands indicted, but is guilty of Chance-Medley.

You say that *Joseph Redding* is not guilty of the same Felony and Murder whereof he stands indicted, but is guilty of Chance-Medley.

You say the same upon the Coroner's Inquisition.

You also say that the said *James Annesley* is not guilty of maliciously shooting at *Thomas Egglestone*, against the Form of the Statute. And you say All.

XXV. The Trial of the Right Honourable RICHARD Earl of ANGLESEA, FRANCIS ANNESLEY, Esq. and JOHN JANS, Gent. for an Assault on the Honourable JAMES ANNESLEY, DANIEL MAC KERCHER, and HUGH KENNEDY, Esquires, and WILLIAM GOOSTRY, Gent. before the Honourable Richard Mounteney, Esq. second Baron of his Majesty's Court of Exchequer, and St. George Caulfield, Esq. his Majesty's Attorney-General, Justices of Assize for the Leinster Circuit, on Friday, Aug. 3d, 1744, at Athy, in the County of Kildare in Ireland*.

The Court being set at Eleven o'Clock, the JURY were called over, and answered to their Names; of whom the following Twelve were sworn, to try the Issue joined between the Parties.

<i>John Digby</i> , Esq.	<i>Mr. George Bradford</i> .	<i>Mr. Edward Harman</i> .
<i>Henry Dickson</i> , Esq.	<i>Mr. William Leban</i> .	<i>Mr. James Tyrrell</i> .
<i>John Bagot</i> , Esq.	<i>Mr. John Berry</i> .	<i>Mr. Thomas Tyrrell</i> .
<i>Mr. Thomas Sherlock</i> .	<i>Mr. Samuel Mills</i> .	<i>Mr. Edward Ward</i> .

ANGUS BYRNE, one of the Persons indicted for the Assault, is called into Court, and appears.

Clerk of the Crown. You stand indicted, for assaulting *William Goostry*, Gent. on the 16th of September last, do you submit or traverse?

Angus Byrne. I do submit.

Clerk. You likewise stand indicted for assaulting *Hugh Kennedy*, Esq. do you submit or traverse?---Angus Byrne. I submit.

Clerk. You likewise stand indicted for assaulting *Daniel Mac Kercher*, Esq. do you submit or traverse?---Angus Byrne. Submit.

Clerk. You likewise stand indicted for assaulting *James Annesley*, Esq. do you submit or traverse?---Angus Byrne. Submit.

Court. The Gentlemen of the Jury must have Pen, Ink and Paper.

Clerk of the Crown reads the Indictment, which is as follows:

County of Kildare. THE Jurors for our Lord the King, upon their Oath say and present, that *Francis Annesley* of *Ballysax*, in the County of *Kildare*, Esq. the Right Honourable *Richard Earl of Anglesea*, *Joseph Lawson*, late of the City of *Dublin*, in the County of the City of *Dublin*, Yeoman, *John Jans*, late of the same, in the said County of the said City, Gent. *Angus Byrne*, otherwise called *Angus Byrne*, late of the same,

* Though this Trial was not till August 1744, after the Trial in Ejection, (in Ireland) between *Mr. Annesley* and the Earl of *Anglesea*, which began November 1743, Part of the *Anglesea* Estate) yet as THIS ASSAULT was in September 1743, previous to that Trial, we insert it here, as proper to follow *Mr. Annesley's* Trial, (in England) the Murder, and precede the other Trial in Ejection.

the Traversers by those Gentlemen. And though this, my Lord, upon the Face of the Record, appears to be but an ordinary and common Assault, yet, if these Examinations are true, it will appear, that, had not the Hand of Providence very signally interposed in Preservation of their Lives, instead of a common and sudden Affray, it would have been a Crime of another Nature, it would have been a Crime of the deepest Dye, for which the Traversers must have stood a Trial for their Lives. I do not mean, my Lord, when I say it would be a Crime of another Nature, by that to bring it home as such to all the Traversers; no, I believe there may be one of them who had not such a wicked Intention; but as to others, it will appear to be a concerted, premeditated Assault, not to be satisfied by Bloodshed and Battery, but to pursue the Prosecutor, Mr. Annesley, to Death. If these Examinations are true, this is but one of the many Attempts that Lord Anglesea—

Mr. Spring. My Lord, I must submit it to your Lordship's Judgment, how proper this Gentleman is at this Time in this very elaborate and affecting Harangue. The Offence for which the Traversers are indicted is an Assault, which arose from an ordinary and common Quarrel at a public Meeting; but this Gentleman tells your Lordship that there was an Intention in the Traversers, or some of them, to commit what they are not now charged with, something of another Nature, which he makes a Crime of the deepest Dye. Pray, my Lord, how does this appear? Or, what Right has he upon the present Occasion, to assert any such Thing? There is no Indictment for such an Intention, nor any Foundation for such an Assertion; and therefore I humbly pray your Lordship will order that Gentleman, in conducting this Prosecution, to confine himself to his Duty, and direct him to open Evidence that is proper, and no more.

Mr. Harward. My Lord, I am very unfortunate, to be so often taken down by Gentlemen of great Experience and Knowledge, and must apply for your Interposition, else I shall not know how to proceed.

Court. Go on, Mr. Harward.

Mr. Harward. I was going on, as I apprehended I had a Right to do, and as I have observed to be the constant Practice in all Cases of this Kind, not to confine myself to the bare Assault, but to shew it in all its concomitant Circumstances, that the whole Truth of the Fact may appear to the Court; and the Reason why Experience justifies every body to do this is, because the Fine which the Court is to impose is discretionary, and will be greater or less in proportion to the Nature of the Offence; and therefore every thing is proper to be laid before the Court, that may be an Ingredient in their Consideration for the imposing that Fine. I say, then, my Lord, that this Assault, when it comes to be considered upon its Circumstances, will not appear to be the Effect of a sudden Passion, but to have proceeded from an implacable Enmity, that has pursued this unfortunate Client of mine from his Age of nine or ten Years old to this Day. I choose rather to read, as to this, the very Words of the Examinations in my Hand, than to trust to my own Representation of the former Attempts on his Life—

Mr. Spring. My Lord, I must call upon that Gentleman again to confine himself to the Fact and the Circumstances relative thereto, and hope, if he continues to offer any Thing so extremely improper, your Lordship will take notice of it, and direct him not to proceed.

Court. I think you go too far back, Mr. Harward.

Mr. Harward. My Lord, to be sure I am in your Lordship's Judgment, and therefore it is, when I understand it, I shall pursue it.

Court. It is extremely proper to mention the Circumstances attending this Fact, and the Nature of the Case, for the Reason you mention, that it may have a due Consideration in the Sense of the Court.

Mr. Harward. I desire to know, my Lord, whether I have a Right to say any Circumstances before the Court and the Jury, to let them see whether this Assault was a premeditated Thing or not.

Court. Go on, Sir.

Mr. Harward. Now, my Lord, I can shew, out of these Examinations, that it was a premeditated Thing; for this Assault happened to be committed on the 16th. The first Day of the Meeting of Gentlemen on the Curragh of Kildare, to see the Diversion of the Races, was on the 14th of September; on the 14th and 15th there was no actual Assault committed; but there was a Behaviour, there was Language given, that was introductory, and pointed out most plainly what the Consequence would be, that in reality happened the third Day. I would be in your Lordship's Judgment, whether or no these two preceding Days are not connected with the following ones.

Court. Extremely proper.

Mr. Harward. Why then, I submit to your Lordship's Directions, and I shall not take the Liberty of mentioning of any of the former Attempts, or Injuries of the highest Nature, that my Client has suffered—

Mr. Spring. My Lord, this is for no other Purpose but to inflame the Minds of the jury, and to captivate the Populace. There is no Injury, no Attempt of any Kind, real or pretended, but that on the 16th, that is to be considered by the Jury.

Court. The Jury will be told, by and bye, that the single Point they are to consider is the Fact of the Assault only. Go on, Mr. Harward.

Mr. Harward. I did mention that I would not enter into a Narrative of the former Attempts, but confine myself to the Passages of this Day. This Gentleman, as Son and Heir to the late Lord Altham (I hope the Counsel will give me the Liberty of telling who he is)—

Mr. Spring. There is no Occasion for that neither, at this Time.

Court. Go on, Sir, in stating the Case.

Mr. Harward. I say then, that Mr. Annesley, along with these other Gentlemen (some of them Men of Profession), came into this Kingdom in the latter End of last Summer, in order to assert and sue for that, which he apprehended to be his Right, the Anglesea Estate in this Kingdom: Mr. Annesley had brought an Ejectment for Recovery of Part of it, lying in the County of Meath, which was then depending; and Lord Anglesea had Notice of this, and knew the Errand these Gentlemen came of, to assist Mr. Annesley in his Affairs. He met them on the 14th at the Curragh; and the first Thing (for I shall mention the Facts in order of Time, as they happened, from the first to the third Day of the Races), the first Person that my Lord did the Honour to take notice of, was Mr. MacKercher.

My Lord stood in a Circle of the Gentlemen of this Country, and of many of his own Attendants brought from another Country; and seeing this Gentleman, Mr. MacKercher, who came to attend Mr. Annesley's Affairs, the first Thing that he was pleased to do was, to point to Mr. MacKercher, and say, *See yonder that Rogue, that Scoundrel, and that Villain MacKercher: It is not above a Month ago, though he is now dressed up like a Gentleman, since I saw those very laced Cloaths hanging in Monmouth-street, in London.* Mr. MacKercher (who is a Gentleman, and will appear in the Course of this Trial to have Resolution of another Kind) took no Sort of Notice of this publick Insult, as it was not his Business to venture the Conduct and Success of his Friend's Affairs in a rash, hot Quarrel, but very prudently passed it calmly and quietly by. That Day, my Lord, nothing more, that was remarkable, did happen: This was upon a Wednesday, I think the 14th. On the 16th, as these Gentlemen, for whom I am Counsel, were all in a Knot, they and their few Friends kept close together upon this Curragh, which is of great Extent, many Miles over; but no Place whatever could serve my Lord Anglesea's Coachman, but to ride through and through them, to endeavour to trample down these Gentlemen and their Horses with his Coach-and-Six, and hunted them wherever they moved; and whenever he came near Mr. Annesley, this Coachman (you will guess easily by whose Directions) used to cry out, *There he is, there's the Sh-e-boy, black your Ball;* and some other opprobrious Language I can't now recollect. And by this repeated Insult of driving these Gentlemen wantonly from Place to Place, and calling out to them in that opprobrious Manner, this Man was determined, with his Coach and Six, to be upon the Back of them, wherever they removed to avoid him. My Lord, he is indicted also, but does not appear, though he still is the Coachman of Lord Anglesea; his Name is Joseph Lawson. My Clients, my Lord, observing this Behaviour, like prudent Men, they began to be more than ordinary upon their Guard, and to fear the worst. As they were but few, and Strangers in the Kingdom, they thought that sticking together would be the only Means left in their Power to preserve them: But all Precautions were in vain. My Lord observing, that neither abusive Language, Words which must have pierced to the Heart of the meanest Vassal, nor the Coachman's driving his Coach at them, could have raised these Gentlemen's Tempers to take any Notice of it, another Expedient occurred to my Lord, to put his Purposes in execution. Mr. MacKercher, upon these repeated Abuses of himself, and of Mr. Annesley, having waited upon Lord Anglesea, with all the Address and Good-Manners imaginable, told him (without making the least mention of what happened to himself the Day before) *That he was come to acquaint his Lordship with the Rudeness of a Coachman of his to a Gentleman in the Field, and hoped his Lordship would do in it what became a Nobleman and Gentleman.* Lord Anglesea asked, *Who the Gentleman was?* He is told, Mr. Annesley. Upon that, my Lord, instead of having any Feeling whatsoever for the Transgression of this Coachman of his, *A Gentleman, Sir,* says he, *a blackguard Shoe-boy! I won't turn off my Coachman for any Abuse either to him or to you; and you are a Rogue and a Villain, and he is a Bastard, the Son of Juggy Landy, by my Brother.* With this, one of the Traversers, Mr. Francis Annesley, a Relation to my Lord, without any Provocation, gave Mr. MacKercher a Stroke over the Head with his Whip. Then my Lord began to insult him in a higher and louder Tone, and made a Proclamation to the Company, getting up and resting himself on his Stirrups, that his Voice should reach them all, that this Mr. Annesley was a Bastard. *I do,* says he, *declare before you all, that that Fellow is no Gentleman, but a Bastard of Juggy Landy's, a Kitchen-maid;* and continued his Abuse of Mr. MacKercher with the most scurrilous Language. As soon as Mr. Francis Annesley saw that his Relation's Blood was a little up, he repeated the Blow, and with the Butt-End of his Whip struck Mr. MacKercher on the Forehead, which stunned him in some Measure. This Blow was followed by some others; but however, Mr. MacKercher did not consider his own Safety, but turned about to take care of that which concerned him more than any Misfortune that could have attended himself; and there having laid his Eye upon Mr. Annesley, Mr. Gosstry, and Mr. Kennedy, desired them to make the best of their Way off, or they would be murdered, and that he would follow; but before these Gentlemen could turn their Horses to gallop off, Mr. Francis Annesley was too nimble for them, and made a Stroke at Mr. Gosstry, which cut him to the Skull; and he, with many other Persons, repeated these Blows, until there was scarce a Part of him which did not feel the Weight of Mr. Annesley's Arm: He was stunned and knocked down by the first Blow, and continued under Cure of his Wound for a Month after. Mr. Kennedy, another of these Gentlemen, without the least Provocation, endeavouring to shift for himself, was most unmercifully beat by the Traversers, assisted by several other Persons unknown; and when stunned and knocked down, my Lord laid on him, until some of the People of the Country cried out to him, *For shame, for shame, for shame, don't kill him.* Mr. Jans, my Lord's Agent, I had like to have forgot, had not the least Hand in this Affray, but punctually observed his Lord's Orders, who cried out, *Knock them down, kill the Villains.* When they had thus levelled down Mr. Annesley's Friends, who were his Guard, my Lord then thought it the proper Time to look out for him, and called out, *Where is the Dog, where is the Son of a Whore? kill him.* Mr. Annesley, according to the Intimation given him by Mr. MacKercher, that he was to be murdered, set Spurs to his Horse, and got out of the Croud; but a Servant of my Lord Anglesea's, upon my Lord's Inquiry where Mr. James Annesley was, said he had galloped off. As soon as Lord Anglesea heard that Mr. Annesley had galloped away, who had no Hand in this Affray, or ever exchanged one Word with my Lord, I say, as soon as Lord Anglesea discovered that he had got safe out of the Croud, and that his Friends lay in the Condition I have now mentioned, he cried out to his Friends and Servants, *Follow the Rogue, pursue the Rascal, tear him Limb from Limb, and all that will support him.* He directed them, my Lord, to destroy not only him, but any who should have Humanity to endeavour to protect him. Then this noble Lord's Influence over this Croud will appear to be so absolute, that, to the Number of Forty or Fifty of them pursued this helpless Gentleman. He had a Horse, happily for him, of great Speed, and he made as good Use of it; he soon outstripped Mr. MacKercher, who followed him, and so got out of the Field, with this numerous Train of People, some with Sticks, some with Staves, others armed with Pistols and Hangers, pursuing of them both. Mr.

Mac Kercher was nearest to them, and overtaken by them; but however it will appear, that he was not intended to be the Victim of this Rabble that did pursue. I don't say that any of the Traversers did pursue, but I say of this Rabble that did pursue, as they understood *Mr. Mac Kercher* not to be the devoted Head, though they overtook him, and he was the only Man that could have given the Lord *Anglesea* the least Offence, they passed him by, but made all the Speed after *Mr. Annesley* they possibly could; and indeed, when he got into a Road that was leading to a neighbouring Town or Village, to *Newbridge*, where he lay the Night before, to seek for Protection, this enraged and furious Mob, thus armed and pursuing, came so close, as that he thought it would be safer, or at least more decent, to die with his Face toward them, than to be destroyed, behind his Back. He was called out to by some People, that had nothing to do with the Affair, that there were People with Pistols at his Back, ready to shoot him; upon this, he turned his Horse, and in the Turn the Horse's hind Feet fell into the Ditch, and the Horse fell upon this unfortunate Gentleman in the Ditch, and bruised him in a very terrible Manner. Whilst he lay speechless in this deplorable Condition, up came this Mob; and had it not been that one *Mr. Archbold*, who is a Gentleman of great Humanity, and well deserves the Influence he has in that Country, interposed and rescued him, half dead already in the Ditch, from their Violence, there had been a speedy End put to all this Gentleman's Right and Pretence to the *Annesley* Estate, by an End being put to his Life. My Lord, we will shew your Lordship the Condition that this unfortunate Gentleman was in; how he lay in the Ditch till he was taken away speechless and senseless to *Newbridge*, in a Chaise, being not able to ride or stand, and his Life despaired of, for some Months.

Now, my Lord, I have only one other principal Fact, concerning this Matter, to trouble you with, which I am instructed to charge Lord *Anglesea* with in the most express Terms; and that is, when the Mob had returned from the Pursuit into the Field where Lord *Anglesea* was, some of them seeing him impatient to know what was done, they cried out to him, *By G—d, my Lord, he is killed, he is dead.* I cannot, without Violence to myself, mention what is said to have dropped from that Lord upon the Occasion, and would be pleased I could mistrust the Truth of it; but I am instructed to say he could not conceal the Emotions of Joy which he felt on these glad Tidings, but cried out, *I am glad of it, then all is well.* So, my Lord, this that was intended to be the most tragical Scene, and came within a Hair's Breadth of it, I say, by the Interposition of Providence, falls out to be this Day but a finable Offence; therefore I shall not trouble your Lordship any further with the Circumstances of this Fact; they will come out more emphatically upon the Testimony of the Gentlemen, who have had more Reason to have felt them than I have. We shall examine but a few out of many Witnesses, and shall endeavour to lay this Matter before your Lordship, without taking up more of your Time than an Offence of this publick Nature can deserve from a Court of Justice.

Mr. Mac Manus. My Lord, as the Case has been stated to you, I shall trouble your Lordship but with a few Words; which are, that as the Circumstances of this Assault will be a great Aggravation of the Crime, so will they increase the Punishment: And this, my Lord, will, in Evidence, appear to you to be an Offence of as rude, angry, and revengeful a Nature, as ever appeared in a Court of Justice. We have the Happiness to have alive at this Day the Gentlemen thus assaulted, to shew your Lordship and the Jury the Danger and Violence of this Assault. I shall call one of the Gentlemen—*Mr. Mac Kercher*, who will tell you in what Manner and by whom he was assaulted, and (what will still more heighten this Offence) the Quality and Dignity of the Offenders, the Time and Place where committed. My Lord, the *Curragh* of *Kildare* was the Place where this Assault was made; the Time when it was given, when thousands of Persons were assembled at a public Horse-Race; one of the Offenders, a noble Peer of this Kingdom; and another of them in the Commission of the Peace; and the Manner of it, which he will tell you, will appear to you to be without any the least Provocation. This, Gentlemen of the Jury, will very particularly and very fully appear to you, from the Evidence which we shall lay before you.

Mr. Morgan. Here are four Persons, my Lord, concerned in the four several Indictments now depending, and they are all included in each Indictment; but, I hope, if it appears that any one or more of them is not affected by the Evidence that shall be given on Behalf of the Crown upon any one particular Indictment, such Person or Persons shall be allowed to give Testimony on Behalf of such of the Traversers as shall be affected by the Evidence given on Behalf of the Crown on such particular Indictment. Suppose, for the Purpose, it should appear, upon the Indictment for the Assault upon *Mr. Mac Kercher*, that one or more of the Gentlemen mentioned in that Indictment is not guilty of the Charge laid in that Indictment, it would be against Reason that such innocent Person should not be admitted as a competent Witness on that Indictment, and highly injurious to such of the Traversers (as may be affected by the Evidence on Behalf of the Crown) not to have the Benefit of that Person's Testimony, who, by the Evidence on Behalf of the Crown, has no Guilt imputed to him on that particular Indictment; and may, perhaps, be able to give as good an Account of the Matters charged in that Indictment as any Witness on Behalf of the Crown can pretend to give. For this Reason, and in as much as these several Indictments are but mere Accusations, I humbly conceive, that, after the Evidence for the Crown is given, the Jury should be sent out to consider of their Verdict, as to such of the Traversers separately, as we apprehend shall not be affected by the Evidence given on Behalf of the Crown on any one particular Indictment, and if they are acquitted, that we may be at Liberty to examine them as Witnesses for the other Traversers on that Indictment.

Court. This will be almost an Impossibility; it will be an impracticable Thing, as this Case is stated by *Mr. Harward*, to keep the Indictments separate; but, however, I don't see that the going on with them all together will affect you in this Point.

Mr. Morgan. If the Gentlemen concerned for the Crown shall not, in the Course of their Examination, particularize the Indictment to which they produce this or the other Witness, but examine each Witness to all the Indictments generally; from thence a Necessity arises, on our Part, to take Notice what Witness or Witnesses spoke to this or that Indictment, and to what Person or Persons mentioned in this or that Indictment; for otherwise, according to this Scheme of including four Persons in four se-

veral Indictments, a Man may lose the Benefit of the Testimony of most material Witnesses, nothing more being necessary to be done to him of that Benefit, than to have his Witnesses included in the same Indictment with himself, be they never so innocent of the Charge contained therein; the Consequences of which must be very fatal, if the Law has not prescribed some Method, whereby such Witnesses, notwithstanding such Indictment, are to be at Liberty to be examined; and I must leave to rely upon it, that such Method is known in Law, and is what I have before mentioned.

I say therefore, my Lord, if this Prosecution is to be managed and proceeded upon in that Manner, though any one or more of these Traversers should be guilty as to three of the Indictments, yet he or they can't be examined for any of the other Traversers upon all or any of those three Indictments; because all the Traversers being upon their Trial upon the four Indictments at one and the same Time, and the Examination on Behalf of the Crown being applied to all the four generally, such guilty Person as to three of the Indictments, being guilty as to the fourth, cannot be examined upon any of them, because by that means he may possibly set about swearing himself off of the Charge of the fourth Indictment, which perhaps by the Evidence on Behalf of the Crown might be brought Home to him. Suppose, for the Purpose, that *Mr. Jans* is innocent as to the Assault upon *Mr. Mac Kercher*, yet your Lordship will not suffer him to be examined upon that Indictment, because there is another Indictment upon which he is on his Trial at the same Time, and upon which he may possibly be found guilty.

Court. You won't be under any Difficulty at all by proceeding upon all the Indictments together; for suppose now, *Mr. Jans* shall be affected with Evidence given upon two of these Indictments, but with none upon the third; why then I shall tell the Jury, that to such an Indictment, and such an one, they are to receive Evidence against *Mr. Jans*; and to such not.

Mr. Harward. I apprehend this Course that we are proceeding in is the proper one, that the Court may be thoroughly satisfied of the Nature of the Fact.

1. *Daniel Mac Kercher, Esq.*

Mr. Malone. I desire, my Lord, that the Traverser, who has now submitted to the Indictments, may go out of Court, whilst the other Witnesses are examining.

Angus Pyne is ordered to withdraw.

Mr. Mac Manus. 2. *Mr. Mac Kercher*, were you assaulted at the Races of the *Curragh* by any and what Persons—and in what Manner? Tell the whole Affair.

Mr. Mac Kercher. As well as my Memory can suggest, after so great a Distance of Time, I will. Upon the 14th, the first Day of the Races, *Mr. Annesley*—

Court. 2. Of what Month?

A. Of September, my Lord—*Mr. Annesley*, several other Gentlemen, and I, came to the *Curragh*, for the Diversion of the Place.

Mr. Mac Manus. What, *Mr. Annesley*?—*A.* *Mr. James Annesley.*

D. Go on, Sir.

A. We had not been long there, when passing by a Tent where the noble Peer, who is one of the Traversers, stood with some other People—Raise your Voice.

My Lord, we had not been long upon the Race-Ground, when Lord *Anglesea*, who was standing at a Tent with several other People, called out to me in particular, (pointing to me) *That Mac Kercher, though he appears here like a Gentleman, is an arrant Scoundrel; and the Coat you see upon his Back, I saw not above a Month ago in Monmouth-street.* As I looked on this of too low a Nature to deserve Resentment, and as I came there with a firm Resolution not only of keeping the Peace myself, but had recommended it to all along with me, I took no Manner of Notice of this Insult. After the Diversion was over, we retired to *Newbridge*; and on the Friday, the last Day of the Races, we returned again to the *Curragh* with the same View as before, of seeing the Diversion of the Place only; we arrived there as the first Course was at an End; we were no sooner descried by Lord *Anglesea's* Coachman, than he immediately drove his Coach and Six full butt at us.

2. At whom, Sir?

A. At *Mr. Annesley*, the other Gentlemen of our Company, and myself.—This he repeated three or four different Times, which we often avoided; at length, when he found we could not be provoked by that Behaviour, he began in a gross and insolent Manner to insult *Mr. Annesley*.

2. Who did?

A. The Coachman.—Calling him *Shot-Black*, *Shoe-Boy*; when he found that *Mr. Annesley* did not seem to take any Notice of it—he repeated the Insult, and at length pointed out to him, *There he is, the Shoe-Boy.*

2. Who did he point to, Sir?

A. To *Mr. Annesley*, my Lord.—Though I thought this a very great Insolence, and scarce to be bore, yet I would not resent it upon the Fellow, as he was a Servant; but thought it more advisable to complain to Lord *Anglesea*, to the noble Peer his Master, and expected proper Redress from him. Accordingly I went to look for him, and it was some Time before I found him. At length I was told, that he was at the Winning Post, in the Middle of a great Circle of Gentlemen, and others, who had assembled there in relation to some Disputes that had happened about the Horses. I came up in the civillest Manner I could, and said, *My Lord, I leave to speak with your Lordship aside*; I was unwilling to expose the Fact before the Crowd, and for that Reason I called him aside, to acquaint him of it in a proper Manner; whether he misapprehended me or no, I can't tell; but he replied, *This is no Time nor Place; you see I have no Pistols before me.* I told him, for what I have to say to your Lordship, every Time and Place is proper; I come only with a Complaint against one of your Servants, who has insulted a Gentleman; and I should be glad to know, my Lord, whether it is your Orders or Approbation he behaveth so. My Lord asked me, who the Gentleman was that was insulted. I pointed out to *Mr. Annesley*, who was behind out of the Circle, and out of the Crowd, and said, *That is the Gentleman, my Lord.* To which he replied, *He a Gentleman! a Shoe-Boy, G—d, a Blackguard and a Thief.* One or two who stood by the noble Lord upon that, said, *What, my Lord, will you turn off your Servant for that Scoundrel?* I have omitted something, my Lord, I beg Pardon; I likewise

A. The Assault was very publick, it is proper the Satisfaction should also be so, therefore it is expected that you should strip your Servant, and turn him off in the Field.
 Mr. Baron Mauleverer here lets the Jury know what Mr. MacKercher had hitherto said; and then says, Repeat that again, that the Jury may bear the very Words.

Mr. MacKercher. I said, That as the Assault was very publick, that it was expected his Lordship should give adequate Satisfaction, which was, that he should strip the Servant of his Livery, and turn him off on the Ground; or Words to that Effect.

Mr. Harward. Are you positive that you explained yourself in such a Manner that he could not mistake you?—*A. I am satisfied I did.*

Court. Q. And after this it was some Gentlemen said, What, will you turn off your Servant for that Scoundrel?

A. It was after this that some Gentlemen interfering, said that.

Mr. MacManus. Q. Do you know who said that?

A. I can't be positive, but I think it was the same Person that struck me afterwards; I think it was Francis Annesley.

Q. Are you sure it was he?

A. I say, Sir, I can't be positive.—Lord Anglesea then said, No, by God, I won't; and you are a Villain, a Scoundrel, and a Thief; and a great deal more of the like decent Sort of Language he gave me.

Court. Q. Whom did my Lord apply to when he said that?

A. To me. You are a Villain, a Scoundrel, and a Thief; as near as I can recollect, those are the very Words. With that I believe I might say, in Return, That his Lordship lied, and that he durst not single himself out and tell me so. Whereupon five or six Persons, whom I don't know (but Mr. Jans was one of them) called out, My Lord, you shan't go fight such a Scoundrel; here are Abundance of People to go out with him. My Lord, I don't know whether it was precisely at that Point of Time or not, when a Gentleman came and struck me on the Head; but I think it was.

Mr. MacManus. Q. Who was that Gentleman?

A. It was Mr. Francis Annesley, of Ballyfax.

Q. Do you see him in Court?

A. That is the Gentleman.

Court. Q. With what did he strike you?

A. With the Butt End of a Whip; which Stroke occasioned a Contusion; and there was a little Bit of the Skin broke, which occasioned a Bleeding.

Q. What further passed, Sir?

A. I returned the Blow, my Lord, with the Lash End of my Whip. I had a Cafe of Pistols before me, but would not make use of them in the Crowd. Then Lord Anglesea, finding himself so well supported, raised himself up in his Stirrups, accosted the Populace, and all that were present there, and poured out a great deal of scurrilous Language against Mr. Annesley.

D. Go on, Sir.

A. Declared, That he was not his Brother's lawful Son, but a Bastard of Juggy Landy's, and a Shoe-Black. When I perceived Lord Anglesea attended by so great a Crowd, who seemed all to side with him, I began to be apprehensive that there might be some Danger of a Design against Mr. Annesley, and thereon I called to Mr. Gooltry and Mr. Kennedy, who were two of our Company, to come away. I myself turned about my Horse immediately, and went in Quest of Mr. Annesley. I had no sooner turned my Horse, but I heard Lord Anglesea (for I know his Voice very well) call out distinctly, There is one of the Villains, knock him down.

Mr. MacManus. Q. Did you see my Lord Anglesea when he said so?

A. I did not; but I know his Voice perfectly well.

Q. Are you positive you know his Voice?—*A. I am positive I know his Voice, if one Voice can be distinguished from another.*

Q. What were the Words?

A. There is one of the Villains, knock him down.

Q. Did you hear him name any Person's Name?

A. I heard him name Mr. Gooltry, and say, that That Gooltry is one of the greatest Villains, knock him down. And I apprehend that it was then that Mr. Gooltry was struck, though I did not see it.—I went in Quest of Mr. Annesley, and when I found him, carried him a little aside from the Crowd. We had not been there half a Minute, when one of my Servants and a Gentleman or two, Strangers to me, came up to us, and with great Emotion and Concern said, For God's Sake get away, get you gone as fast as you can, there is a Design to murder you all.

Q. Who were they that said so?

A. There was a Groom belonging to us; but I don't know the others.

Mr. Bagot. Was it the Groom or the Gentlemen that desired you to get away?

A. The Groom came first, and desired us to go off; I did not give Credit to what he said, being resolved to wait there till our Company joined us; but immediately there came up two Gentlemen, and said, For God's Sake, Gentlemen, get away as fast as you can, for there is a Design to murder you.

Court. Who was with you at this Time?

A. Mr. Annesley only.—The two Gentlemen varied in their Expression a little; for the one said, Go off, for there is a Design to murder Mr. Annesley and you; and the other said, For God's Sake go off, for you will all be murdered. Upon which I desired Mr. Annesley to put Spurs to his Horse, and we galloped away at a gentle Canter. We had not gone above fifty or sixty Yards, when we perceived People moving after us, which made us whip and spur our Horses; but Mr. Annesley was mounted on a Horse that had more Speed than mine, and he made a great deal of Way before me. There was a Gentleman passing by, one Mr. Hacket, mounted upon a good Horse, and I desired him to keep close to Mr. Annesley. After we had passed over the Sod, the Curragh Ground, and had entered into the Road, a Lane leading to Newbridge, a good Way up the Lane, there I found Mr. Annesley lying in a Ditch.

Q. Whereabouts was that?

A. A good Way up the Lane, leading from the Curragh to Newbridge, speechless and senseless, and, as I imagined, dead, my Lord. I found him with several People about him, to the Number of Nine or Ten.

Q. Do you know those Persons?

A. Why really there are two that I can now recollect; one Mr. Archbold, quite a Stranger to me at that Time, and a Gentleman, who is an Attorney in Dublin; I think his Name is Keravan, or Cocbran.

D. Go on, Sir, if you please.

A. There was a Surgeon called for.

Q. Do you know who the Surgeon was?

A. That Gentleman, Mr. Hacket, who I had spoke to, and who had passed me.—I don't know whether he had Lancets himself, or borrowed Lancets, but he attempted to bleed Mr. Annesley, and he could get no Blood. In this Condition Mr. Annesley continued for about three Quarters of an Hour, to the best of my Judgment; and there being no Carriage, nor he able to get on Horseback, I rode directly to the Inn, to order the Coach which had brought us from Dublin; but before the Coach was ready, he was brought to the Door of the Inn in a Chaise. I don't know whether I ought to go any further, or to relate what passed the next Day, which had still a darker and more wicked Complexion.

Court. Go on, Sir.

Mr. Morgan. I hope your Lordship will think, that as these Indictments are Indictments for Assaults committed upon the 16th of September, any Thing that happened after that Day is not proper to be given in Evidence, and more especially as they are not laid with a Continuando, and therefore submit it to you, whether it should not be given in Direction to the Gentlemen of the other Side not to travel into the Transactions of any subsequent Day. I think every Fact before that Day relative to the Fact laid in the Indictments is proper to go to the Jury; but any distinct Transactions of the following Day, no way relative to such Fact, are not proper to go to them, and therefore ought not to be admitted as Evidence, and more especially as the Traversers can't be supposed to be prepared in any Defence thereto, not being charged with any Thing but what was previous to the 17th. I apprehend that Mr. MacKercher is just about giving an Account of what happened on the 17th, which I conceive is no way material or relative to these Indictments, and therefore hope that the Evidence only that he can give to the very Facts laid in the Indictments will be admitted, and looked upon as proper Evidence, and no other permitted by your Lordship to go before the Jury.

Court. I hope you won't unnecessarily lose Time about Matters that are obvious, and need no Debate. To be sure, any thing not relative to the Fact is improper to be given in Evidence, or to come into the Consideration of the Jury; but any thing relative to the Fact, which can help to explain it, whether before or after it happened, is extremely material for the Consideration of the Court and the Jury. This Case, or Cases of the like Nature, I have heard practised a hundred and a hundred times; for I did, for three or four Years together, constantly attend in a Place where such Cases as this were carried on, and I found it always the Practice for every thing tending to shew and explain the Fact, whether it happened before or after the Committal of it, to be allowed as proper Evidence.

Mr. Spring. My Lord, I own it is very proper for every thing to be given in Evidence relative to the Fact; but nothing can relate to, or be the Occasion of this Fact, but what happened before it was committed; and therefore it is highly improper to take in any supplemental Transaction of the following Day, no way relative to the Fact for which the Traversers stand indicted, and which can only serve to inflame the Minds of People. I think it enough for us to have prepared ourselves for any Actions that happened before the 16th, and not be called upon to answer for any Thing that occurred after Indictments were laid, and no way relative to it. This has been the constant Practice, and I think it to be as clear as any thing in the whole Course of the Proceedings of the Law.

The Counsel for the Traversers were over-ruled in their Objection.

Mr. Maloni. I desire, since Mr. MacKercher is permitted to proceed, that he may be confined to the Transactions of the next Day, which are relative to the Fact only.

Court. I shall take care to confine him to such Evidence as is proper. Go on, Sir.

Mr. MacKercher. We went early to Bed, with a Design to get up in the Morning betimes, and return to Dublin; but before we could get out of our Beds in the Morning, we were alarmed by the Landlord of the House and his Servants, who acquainted us, that the Ways were beset all round the House with a great Number of People with all Sorts of Weapons; and that he apprehended it was with a wicked Design against the Life of Mr. Annesley, and the other Gentlemen; that some of them, he knew, belonged to Lord Anglesea, and others to Mr. Francis Annesley.

Court. What was that Man's Name?

A. Burchell.—We got out of our Beds, and expecting the worst, put ourselves in a Posture of Defence.

D. Go on, Sir.

A. This alarmed us a good Deal, my Lord, and we got out of Bed, and put ourselves in a Posture of Defence. The same Advices were repeated over and over again to us.

Q. By the same Persons, or by others?

A. By the same and other Persons.—Several Gentlemen that lodged in the same House that Night, who were not of our Company, were very much alarmed, got their Horses, and rode away.

Q. Do you know who they were?

A. I don't know, my Lord: Mr. Hacket and one Mr. Carrick stayed; perhaps they can give you some Account of them.—We were likewise told, before we could venture down Stairs, that the Passage was occupied by three, four, or more of Lord Anglesea's People, armed in a very extraordinary Manner.

Q. From whom had you that Information?

A. From the Landlord, from Burchell.—My Lord, as our Company was not very numerous, and consequently not able to defend ourselves long against such a Multitude, we fell upon a Stratagem, which was, to make the Landlord whisper among them, That we expected a Troop of Horse from Dublin. In a short Time after he acquainted us, that he had whispered it about, and he believed it would have the desired Effect, for some of them were frightened. I then ventured down Stairs; I no sooner came down, but I was seized upon by one Michael Lacy (attended by a Constable), who is a principal Agent of Lord Anglesea's, as I am informed. I asked the Constable at whose Instance I was arrested; Lacy answered me, it was at my Lord Anglesea's, and produced a Warrant from one Mr. Benjamin Fish, a Justice of Peace of that Part of the Country. I told Lacy, that my Lord Anglesea had no Occasion to bring all this Crowd together with Arms to seize upon Gentlemen, who were always ready to submit to the King's Orders wherever they appeared, unless he had some wicked Design to execute under that Colour. However, I desired him to walk up Stairs, that I would follow him, and give Bail.

Q. What

Q. What was the Warrant for?

A. For an Assault. Lord Anglesea had sworn Examinations against me, Mr. Gosfry, and Mr. Kennedy, for an Assault the preceding Day upon the Curragh, wherein he had sworn that he was in Fear and Danger of his Life, as I was told.

D. Go on, Sir.

A. Lacy walked up Stairs, and I shewed him Mr. Gosfry and Mr. Kennedy, the other Gentlemen that were charged with the Assault; they likewise submitted. We breakfasted, and ordered the Coach to be got ready to carry us before a Justice of Peace, to give Bail; they struggled hard to have us go back towards the Curragh to give Bail; but we told them, that, as we were going forward to Dublin, it was more reasonable we should give Bail to a Justice on the Way; in which we prevailed, and went into the Coach.

Q. Who went into the Coach?

A. Mr. Kennedy, and I, and Mr. Carrick, one of the Gentlemen that was to be our Bail. We would not so much as carry a Sword, or any Sort of Weapon, as we looked upon ourselves to be in the Condition of Prisoners, and respected the Laws. Mr. Annesley rode with Pistols, as he was not charged with any Assault; Mr. Gosfry, the Servants, and Mr. Hacket, rode along with him. We had not gone far from Newbridge, in our way towards Naas, when the Coach was stopped, and Mr. Gosfry came up and alarmed us.

Q. Who stopped the Coach?

A. Mr. Gosfry---and told us, that there was a Man there that was going to shoot Mr. Annesley, and desired we would take him into the Coach. I forgot to acquaint your Lordship, that Lacy followed us likewise, armed with Pistols.

Q. On Horseback?—A. On Horseback.

D. Go on, Sir.

A. When we were about half-way, we were met by several People from Naas, who had been informed of our Danger, and came to our Assistance; and in this Order we went to Naas, with all this Croud attending us.

Q. How many met you from Naas?

A. There were, I believe, about fourteen or fifteen People.—We sent for the Magistrate of the Place, one Mr. Bonner (who is now here in this Town), told him what had happened, and desired that one Angus Byrne, who at that Time called himself a Servant to Lord Anglesea, and carried a rifled-barrelled Piece, might be examined for what Purpose he carried it. Before the Magistrate would proceed to Examination, he would see whether the Piece was loaded or not. It was a Screw Barrel; the Barrel was unscrewed in the Presence of the Magistrate, as I was told by Mr. Hacket and Mr. Carrick, who unscrewed it, and they extracted eight Bullets. Then Angus Byrne was called into the Room, where there were nine or ten Gentlemen present, and examined. He was asked, *Whose Gun that was?* He answered, *It is my Lord Anglesea's. What were you to do with this Gun?* I was desired to pursue Mr. Lacy's Directions. *What Directions had Mr. Lacy?* To that he answered in general, *In case there had been a Rescue; without explaining himself any further.* Then he was asked, *In case of a Rescue, what was he to do with this Gun, loaded as it was with eight Bullets?* Lacy upon that came up, and told him, *Sir, answer no more Questions, you are not obliged to answer.* Then Lacy, pretending to be Lord Anglesea's Servant, and claiming the Gun as Lord Anglesea's, the Gun (indeed contrary to my Opinion) was delivered to him by the Advice of another Gentleman who was present. Mr. Bonner, not thinking himself sufficiently authorized to take Bail in a Case of so high a Nature where a Peer was concerned, referred us to Mr. John Bourke, a Gentleman in that Neighbourhood; from whence, after Bail given, we proceeded to Dublin. I have narrated the principal Facts, as near as I could recollect them, my Lord, and have nothing further that is material.

Mr. Harward. Mr. Mac Kercher, If I don't mistake it, you have mentioned that you were apprehensive, I think, upon the Information of a Servant, and two Gentlemen that you don't know, who came up to you upon the Curragh, to tell you to get away as well as you could; that you might be killed; you say, you were apprehensive that you and your Friends there would be murdered; what I desire is this, that you will satisfy the Court and the Jury, what your Reasons were for apprehending there was that Design?

A. Why really, Sir, I had several Intimations long before that Time, of Lord Anglesea's Designs, of which I could give many Instances, were it proper, on this Occasion; and I saw him that Day supported by a great Number of People, who bore no agreeable Countenances to Mr. Annesley, or any of our Company; these I thought Grounds sufficient for my Apprehensions.

Q. You gave an Account of a rifled-barrelled Gun the next Day; were there any other Arms when those People came to apprehend you, and who had them?

A. Yes, Sir, I perceived one Man, that belonged to Lord Anglesea, with a Pistol on each Side of his Breast. He was one of his Servants, as I perceived by the Livery.

Cross Examination.

Mr. Spring. You were pleased to say, that on the 14th, the first Day of the Curragh Races, you were insulted by Lord Anglesea?

A. Mr. Mac Kercher. Yes.

Q. Did not you go the first Day attended by a great Number of Gentlemen and Servants, all armed? The first Day, Sir?

A. I believe there were about three of the Gentlemen armed, and two Servants.

Q. Were they armed with Pistols and Back-swords, or with Pistols, Blunderbusses, and Carbines?

A. I can't recollect whether there were any Blunderbusses, or not.

Q. Were the Servants armed?—A. They were, and always were when we travelled in England, as well as there.

Q. Is it the Custom to go to Races armed?

A. I don't know that it is the Custom. Any Gentleman that pleases may carry Arms, if he will; I have known it the Custom in Scotland for Gentlemen to ride with Furniture and Pistols; and I saw some at the Curragh that Day.

Q. Is it the Custom in England or Ireland?—A. I believe not of late the general Usage; but any body may, if they please, ride in Furniture.

Q. You said just now, Sir, that you were insulted the first Day?

A. I did so.

Q. Can you take upon you to say, that it was Lord Anglesea called out, and gave you the opprobrious Language you mentioned?—A. I can take it upon me positively to say it was he, because I saw him and heard him.

Q. You saw him and heard him?—A. I did.

Q. Pray, Sir, had not you Reason from thence to conclude, that if you went thither, you should meet with the same Treatment the next Day?

A. I own, I might have Reason from Lord Anglesea's Behaviour, and Attempts before that Time, to apprehend every Thing that's evil; and it was for that Reason that we always went very well armed.

Q. You went therefore apprehensive of ill Treatment?

A. No, Sir, I did not say I was apprehensive of ill Treatment there more than at any other Place, because I looked upon us not only to be under the Protection of the Law, but also securer, where all the Gentlemen of a Country were assembled, who would not suffer us to be insulted.

Q. But I would know, had not you Reason to expect the like Treatment again?—A. I had all the Reason in the World to expect it from Lord Anglesea; but was determined to keep out of his Way, if possible.

Q. You'll recollect the Preparations you made the Night before, for any possible Event that might happen?

A. We made no extraordinary Preparations.

Q. Were there no fresh Chargings?—A. We always charge our Carbines, if we have any, and Pistols every Morning, when we ride.

Q. Were not your Servants Blunderbusses charged?

A. I know not that they had any.

Q. Pray, Sir, recollect the Directions you gave for their loading their Arms.

A. By your ensnaring Question, you seem to take for granted that I gave particular Directions; but I gave no particular Directions.

Q. Did you give any general Directions?

A. I always gave general Directions for having our Arms loaded, and in good Order, every Morning.

Q. Did any of your Company load any of those Arms?

A. I don't recollect that they did.

Q. Did not you load some of those Arms yourself?

A. I loaded none; I leave that to the Servants to be done every Morning.

Q. What! to load every Morning?—A. Not to load, but prime; to see that the Arms are tight, and in good Order.

Q. You say, that Friday you met my Lord Anglesea's Coachman; explain, did he drive round you, or at you?

A. He made several Pushes at us directly, so that if we had not avoided him, he must have run over us, and have done us Mischief. He made several Pushes at our Company within the Rails, which obliged us, in order to avoid him, to go without the Rails; and he followed us without the Rails, and made several Pushes at us there also.

Q. How far was Lord Anglesea from this Place?

A. I don't know where he was at that Time. I went in quest of him afterwards, and was a good while before I could find him, and in the end found him at the Winning-Post.

Q. How far was that from the Place where you were insulted by the Coachman?—A. He pursued us all over the Place.

Q. What Place?

A. The Place where the Company resort, by the Winning-Post; the other Side of the Winning-Post from Burchell's.

Q. But he could not drive at you, without driving at others at the same Time?—A. He drove at our Company directly, and followed us when we avoided him.

Q. You looked upon this Treatment as an Affront, and without Question resented it in such a Manner as Men of Honour would, not on the Servant, but on the Master, and went to look for Lord Anglesea, to get Satisfaction in the way usual among Men of Honour?

A. Quite the contrary, Sir; I went with a Resolution to keep the Peace.

Q. Had you no Directions from Mr. Annesley to go to call Lord Anglesea to Account?—A. I had no Directions.

Q. Then you did it of your own Head, I suppose?—A. I did.

Q. I say, you went to find out Lord Anglesea either by Directions, or of your own Head?—A. If you will let me know your Meaning, if you will speak so as to be understood, I shall give you an adequate Answer.

Q. Did you go up to Lord Anglesea of yourself?

A. I went of myself, Sir.

Q. Did not you know that my Lord Anglesea had not only at that Time insisted that Mr. Annesley was the Bastard Son of Juggy Landy, but knew your Errand into this Kingdom?

A. What if I did? what is that to the present Purpose?

Q. Answer the Question, Sir; Did not you believe that?

A. I heard he had; I believed it.

Q. Could you, Sir, then expect from Lord Anglesea in Reason, any kind of Apology, or Satisfaction, or Correction of his Servant, for saying of Mr. Annesley what Lord Anglesea himself always insisted he was?

A. I did, and ought to have expected it; and much more in the Case of Mr. Annesley than of any other, if my Lord Anglesea had acted properly.

Q. You were his Champion, I suppose, and must have Satisfaction for the Affront done him?

A. I did not turn Champion for him; a Man turns Champion for another that goes to fight his Battles; I did not go for that Purpose, but in order to avoid a Breach of the Peace.

Q. Could you expect that Lord Anglesea could submit to turning off his Servant for saying That, that he himself had said to all the World?

A. I have repeated it two or three Times, that I did, and had Reason to expect it, if Lord Anglesea had acted as a reasonable Man, and a Man of Honour.

Q. But you knew Lord Anglesea said, he was the Son of a Kitchen-Maid, could you then expect from him, consistently with his constant and repeated Declarations, that Lord Anglesea should strip his Coachman for an Affront offered to such a Person?

A. What Lord Anglesea said proves nothing, nor is it any Way pertinent to the present Purpose. I thought it not only consistent, but what Lord Anglesea of all Men in the World should have done. Nor did what Lord Anglesea thought or said, give his Servant or himself a Right to insult Mr. Annesley in so publick a Manner.

Q. Did you imagine it reasonable for any Person to strip his Coachman at such a Time and Place, and turn him out of his Box?

Q. I looked upon it to be as gentle a Chastisement as the Nature of the
 A. admitted of.
 Q. Must my Lord *Anglesea* have driven his Coach home himself?
 A. I saw Lord *Anglesea* on Horseback.
 Q. Was not your Intention, in case he refused, to tell him he must
 Mr. *Annesley* or you?
 A. No really; I had no such Intention.
 Q. Was it not to provoke him to a Quarrel?
 A. I do say it was not.
 Q. Yet you expected, when you went to make a Demand of this
 and, that he would have complied with this Request of yours?
 A. If I had been of that Disposition, I should have done it the first Day.
 Q. You mentioned the Words *Public Satisfaction*; had you no other
 than to receive it by his stripping his Servant?
 A. Sir, I have told you three or four Times I had not.
 Q. Did not you strike my Lord *Anglesea* that Day?—A. I did not.
 Q. Did not you break his Head, Sir?
 A. I did not, Sir; I heard Lord *Anglesea* swore I did.
 Q. Did you see any body else strike him?
 A. I did not; nor do I believe he was struck that Day.
 Q. Did not you come up in a very violent Manner, and force your
 way through a Crowd to come at him?
 A. I believe I might, I believe I did press through the Crowd.
 Q. Did not you apprehend that Lord *Anglesea* knew you were the
 friend of Mr. *Annesley*?—A. I am persuaded he did.
 Q. Did you not, upon some Conversation between Lord *Anglesea* and
 you, raise your Hand?
 A. Why really I do not know whether I did or not; for it is pretty
 common and habitual with me when I speak to raise my Hand in this
 manner.
 Q. And you do not know whether it was raised or not?
 A. I believe there is no Man that is obliged to stand like a Statue when
 he speaks.
 Q. Did not you say that *James Annesley* was Earl of *Anglesea*, and you
 Impostor?—A. I did not name the Earl of *Anglesea* that day.
 Q. You did not tell him that he was an Impostor?—A. I did not.
 Q. Did you turn your Whip in your Hand?
 A. I do not know how I held my Whip.
 Q. I ask you, Sir, whether during that Conversation with Lord
Anglesea, whether with or without Provocation, you did not tell him that
 he was an Impostor?
 A. I now recollect; I remember very well, when he called Mr. *An-*
nesley a *Shoe-black*, a *Barbador*, and a *Thief*; I told him, he lied, he was no
Barbador, he was the lawful Son of Lord *Altham*, that before two Months went
 out, it would appear to the World to be so; and in that I have the Satisfac-
 tion to think I have spoke prophetically.
 Mr. *Spring*. You are somewhat too early, you must wait further for
 the Completion of your Prophecy.
 A. And you, Sir, are too hasty in forming Conclusions.
 Q. Pray, Sir, you remember the next Day to have seen *Michael Lacy*?
 A. Yes, Sir.
 Q. Did not you thank that *Lacy* for his Civility to you?
 A. Why really I believe I did; I believe I might thank him for exe-
 cuting the Warrant peaceably, for I was persuaded, from the Apparatus I
 saw there, his Orders were otherwise; but even in that I cannot help say-
 ing that I was obliged to temporize so far.
 Q. Did not you thank him at *Naas*?
 A. No, not at all, it was at *Burchell's*, for putting the Warrant in
 execution as he did peaceably, for we expected worse Usage.
 Q. Do you recollect that you desired my Lord to turn aside with you?
 A. I believe it was the first Word I said to him.
 Q. Did not you say after, that he dared not?
 A. After he had called me a *Scoundrel*, a *Thief*, and *Villain*, I told him,
 that he durst not for the Soul of him single himself out and tell me so.
 Q. Was not that before you was struck, Sir?
 A. I believe it was before. I cannot well remember, but I think it was.
 Q. In what Manner was Lord *Anglesea* armed? What Arms had he?
 A. I saw none about him.
 Q. Did not you see his Pistols?—A. I saw none.
 Q. How was Mr. *Francis Annesley* armed?
 A. I did not observe him so particularly; I know he was armed
 with a Whip, which I felt the Weight of.
 Q. Did you see any of Lord *Anglesea's* Company armed?
 A. I saw some People armed that were of his Side, that were about
 him, and who seemed to take Part with him.
 Q. Are you sure they were of his Company?
 A. I concluded they were, as most of them seemed to side with him.
 Q. You mentioned something you apprehended from their Counte-
 nances that you withdrew yourself from thence, from Mischief; describe
 the terrible Faces?
 A. By their Countenances, I apprehended some Mischief might hap-
 pen; but I am not so good a Painter as to humour you in drawing the At-
 tendances they were in.
 Q. Who were the Persons who pursued Mr. *Annesley* and you?
 A. I can't tell you particularly who they were, being a Stranger; I
 saw there were a great many.
 Q. Did you know none of them?
 A. There were two Gentlemen I knew, whose Names I am sorry you
 do not mention, for I did not intend it, Sir *Kildare Barrowes* and Mr.
Erren that pursued Mr. *Annesley*.
 Q. Don't you believe that they pursued out of Curiosity?
 A. I don't know their Intent; but I know I was treated rudely by
 some of them.
 Q. Well! but you can't point out any of Lord *Anglesea's* Retinue or
 servants that pursued you at this Time?
 A. I can't, except Mr. *Jans*; he was one of the Company; I was a
 stranger, and did not know the rest.
 Q. Was he one of the Pursuers?
 A. I don't know; I did not observe him; he might be there for
 all I know.
 Q. Did you observe Mr. *Lacy* there?
 A. IX.

A. I did not observe him, yet he might be there for what I know.
 Q. But you concluded they were his People, because they pursued you?
 A. I concluded so, and do so still.
 Q. Mr. *Archbold* too, I suppose, was one of the Pursuers?
 A. I don't know whether he was, or not. I found him where Mr.
Annesley lay, and might, for aught I know, have come the contrary Way,
 from *Newbridge*.
 Q. When you came up to where Mr. *Annesley* was, you found some
 People attending him, did any body strike him?
 A. I did not see any strike him, nor would I tamely have seen it.
 Q. Did you see any Servant of Lord *Anglesea's* in Livery there?
 A. I did not see any of his Livery there, but I have been told since
 they were there.
 Q. You know *Angus Byrne*?—A. I do.
 Q. How long have you been acquainted with him?
 A. I have been acquainted with him ever since that Affair of the *Cur-*
ragh happened.
 Q. Did not you invite him into your Service?—A. I did not.
 Q. And he is not your Servant?—A. He is not.
 Q. Was not he in *England* with you?
 A. He was in *England*, but not a Servant.
 Q. How did he live there?
 A. He lived upon my Bounty there, but not a Servant.
 Q. Did not you invite him into *England*?
 A. I never invited him there, but received him when he came.
 Q. Did not you bring him over again?—A. I did.
 Q. Did not you give him some Advice about submitting to these In-
 dictments?—A. I did not.
 Q. Did he never complain to you that Lord *Anglesea* had used him ill?
 A. He never did.
 Q. Did not he tell you that Lord *Anglesea* had sent him to *Gaol*?
 A. He did not; he only told me that Lord *Anglesea* owed him his
 Wages.
 Q. Had you ever *Angus Byrne* at your House on *College-Green*?
 A. Yes, Sir, since we came last into this Kingdom.
 Q. He was there?—A. He was.
 Q. Did you never threaten to send him to *Gaol*, if he did not do as
 he was directed?
 A. I gave him no Directions; but did at first, immediately after the
 Assault, and before he made his Declaration, threaten to send him to *Gaol*.
 Q. What do you mean by his Declaration?
 A. A Declaration that he made in *Dublin*, when he first turned Evi-
 dence for the Crown.
 Q. Did you take any Declaration in Writing from him?
 A. I did not.
 Q. Did you know whether Mr. *Livingstone* did or not?
 A. I do not know.
 Q. Did he take down in Writing, in your Presence, any Thing this
 Man had to swear?—A. I do not know that he did.
 Q. Do not you believe he did?
 A. I cannot frame any Belief about it.
 Q. Is Mr. *Livingstone* an Agent of Mr. *Annesley's*?
 A. He is a Friend of his, but no Agent.
 Q. Is he not an Assistant in his Affairs?
 A. He has a Share of the Trouble of his Affairs.
 Q. Did not he take in Writing what that Man had to say? Recollect.
 A. I cannot recollect he did.
 Q. Were these People, that you call Servants of Lord *Anglesea*, that
 surrounded the House, in the Livery or not?
 A. I understood *Lacy* to be his Servant and chief Agent, but I saw
 none in his Livery, save one.
 Q. Did you see any in his Livery on the *Curragh*?
 A. I saw one in a Livery, that I took to be his Livery.
 Q. Did *Burchell* tell you that any of Mr. *Francis Annesley's* Servants
 were at the Inn in Arms?
 A. I do not recollect whether they were Servants or not, he said his
 People were in and about it.
 Court. Is it your Belief or Opinion, that if you had not made the Ap-
 plication to Lord *Anglesea*, whether this Pursuit, and every Thing that
 happened after, would have happened?
 A. I could then frame no Judgment about it, my Lord; I have since,
 indeed, in my own Mind, from what I have seen, been thoroughly per-
 suaded that something of the Nature would have happened; and that the
 Provocations given us, were intended on set Purpose to draw us in.
 Q. You are asked to your present Opinion?
 A. I am of Opinion now that it would have happened some Way or
 other, I was not then.
 Mr. *Spring* concludes from thence that Mr. *MacKercher* solicited it.
 Court. The Jury desire to know whether your Pistols, when you were
 upon the *Curragh*, were charged and primed, or not?
 A. I believe they were.
 Q. Whether when you and my Lord were discoursing together you put
 your Hand to your Pistols?
 A. I do not remember I did, and I am positive I did not.

2. HUGH KENNEDY, Esquire.

Mr. *Callaghan*. Where were you upon the 16th of September last?
 Mr. *Kennedy*. Upon the *Curragh of Kildare*.
 Q. Inform the Court and the Jury of the Transactions of that Day;
 tell what happened to Mr. *Annesley*, Mr. *MacKercher*, and yourself.
 A. When we came first upon the *Curragh*, we were told there was a
 rising Ground upon the other Side of the Field, from which we might
 better see the Diversions; accordingly we made towards it; in our Way
 we were insulted by the Coachman of my Lord *Anglesea*, who drove at us,
 pointing to Mr. *Annesley*, and calling him *Shoe-black*. Mr. *MacKercher* per-
 ceived him sooner than I did; he asked me if I had seen him? I told him I
 had. Immediately after that we perceived him making up to us with his
 Coach, which he drove again at us, and repeated it several Times. Perceiving
 he continued still to drive at us, Mr. *MacKercher* then said, he would see
 where Lord *Anglesea* was, to complain of the Abuse of his Coachman: Ac-
 cordingly,

diggly, we went in search of him, and were for some time before we could find him. We found him at the Winning-Post, where Mr. MacKercher went up, and in the mildest Manner possible told him, he wanted to speak to his Lordship. All the Words they had together I cannot distinctly repeat; but thus much I heard, that when Mr. MacKercher told him he wanted to speak to him, he said, *It was not a proper Place.* Mr. MacKercher told him, *Every Place was proper for what he had to say to his Lordship, which was, to complain of the Insolence of his Coachman, and to desire he would give Satisfaction for the Affront he had given a Gentleman on the Field.* Lord Anglesea asked, *What Gentleman was affronted?* Mr. MacKercher pointed to Mr. Annesley, and told him that Gentleman. Upon which Words arose between them, which I cannot distinctly repeat at this time; but in consequence of those Words, soon after I saw Mr. Francis Annesley of Ballyfax strike Mr. MacKercher over the Head, so that the Blood came. Lord Anglesea, quickly after that happened, raised himself in his Stirrups, and made use of the Language already repeated, *That Mr. Annesley was not his Brother's lawful Son, but the Bastard of Juggy Landy, a Shoe-Black, and to that Effect.* Soon after which Mr. MacKercher desired Mr. Goofry and me to retire; as soon as we heard him desire that, we turned our Horses to follow him. Immediately on the Turn of my Horse, Lord Anglesea struck me a violent Blow on the Head, so as to stun me.

Court. With what?—*A.* With the Handle of his Whip, my Lord.

Q. During what Part of the Transaction was this?

A. Immediately after the Language that passed between him and Mr. MacKercher.

Q. Did he say any thing before he struck you?

A. I believe he might say, *There is one of the Villains.*

Q. Did he name any Man?

A. I believe Mr. Goofry, *There is that Villain Goofry, or to that Effect.*

Q. Was it at the same time that he struck you that he said those Words?

A. A very short time before I was struck he said those Words.

Q. Describe the Stroke you got.

A. The Stroke I got was on the back Part of my Head with the Butt End of his Whip.

Q. Did it do you any Hurt?

A. It stunned me to that Degree that I almost fell upon my Horse's Neck.

Q. What was the Consequence of that Stroke?

A. There was a very great Effusion of Blood followed.

Q. What ensued upon that?

A. Immediately after that Blow, it was followed by a Number more from other People which knocked me down on my Horse, so that I should have fallen to the Ground, if I had not been supported by the People on each Side of me.

Q. Who gave those Blows?

A. I cannot tell, my Lord, I was knocked down in a good Measure, by the Blow Lord Anglesea gave me.

Mr. Callaghan. Tell what you remember happened after you recovered yourself.

A. As soon as I recovered and sat strait on my Horse again, Lord Anglesea came from the Company he was with, and struck me seven or eight Times running over the Head.

Court. With what?—*A.* With his Whip.

Q. Which End of his Whip?

A. It was the Lash End the last Time he struck, but he repeated his Blows so long that the People cried out *Shame*, saying, *'Tis a Shame to abuse a Gentleman so, or to that Effect; and soon after that he had done, and I rode off the Sod.*

Mr. Callaghan. Was there any Conversation between my Lord Anglesea and you before you got that Stroke from him?

A. I never spoke to Lord Anglesea in my Life, Sir.

Q. Had he spoke to you before he gave you the Blow?

A. I do not know that he did.

Q. Did you give him any Provocation to strike?

A. I gave him no Provocation at all.

Q. I think you said you saw Mr. Francis Annesley strike Somebody; who was it he struck?—*A.* I did, I saw him strike Mr. MacKercher.

Q. With what, Sir?—*A.* With the Butt End of his Whip.

Q. Was that Stroke a moderate Stroke, or given with such Violence as carried an Intent of doing Mischief?—*A.* His Forehead immediately swelled pretty big, and a little Blood came from it.

Q. Before Mr. Annesley gave the Stroke, did you see Mr. MacKercher give him any Provocation to strike him?—*A.* I saw no Provocation that Mr. MacKercher gave, for I believe he did not speak to him at all.

Q. Do you believe that Mr. MacKercher could have given him Provocation without your seeing it?—*A.* I think not, for I was pretty near him, and must have observed it, if any had been given.

Q. Tell what passed after the People cried *Shame*, and you got off the Sod.

A. My Finger was almost broke by one of the Blows, and that occasioned my Whip to fall from my Hand.

Court. Explain yourself, Sir.

A. Immediately after my Lord Anglesea struck me, I was struck by a Number of other People whom I did not know, and among them I got this Wound on my Finger, which occasioned me to lose my Whip.

Mr. Callaghan. What became of you after this?

A. As soon as I could, I rode down the Hill in quest of Mr. Annesley and Mr. MacKercher; I found Mr. MacKercher just by where Mr. Annesley lay; I did not stay to speak to him, but went on to Mr. Annesley, whom I found fallen in the Ditch, lying senseless, speechless, and pale.

Court. What Number of People were about him in the Ditch?

A. Ten or a Dozen.

Q. Did they appear to be Friends, or any of the People you apprehended he was in Danger from?

A. I cannot say who they were, or what their Intention might be, I was a Stranger, and could not distinguish.

Q. Was it at that Time in the Power of any body to do him Mischief?

A. He had been so long in the Ditch when I came up, that they had got a Surgeon to bleed him.

Q. But do you think it was in the Power of those People to hurt him?
A. I believe they might if they had a mind, had not Mr. MacKercher and others of Mr. Annesley's Friends come up.

Mr. MacManus to Mr. Kennedy.

Mr. Kennedy. Where did you leave Mr. Goofry?—*A.* I left him, I believe, upon the Curragh; I cannot say, I did not see him after I was struck.

Q. Was he assaulted by any one?

A. He was wounded at the instant of Time I was.

Q. Did you see any Body strike him?—*A.* I cannot say distinctly that I did, but he was wounded about the same Time.

Q. After you took Mr. Annesley to Newbridge that Night, did you observe any thing on the Saturday after?

A. Yes, we were alarmed very early that Morning before we were up, the Landlord and others coming to tell us that the House was beset by a Number of People, who, they said, they believed had evil Intentions; upon which we got up, and did the best we could to make our Defence in case they attacked us. This continued for some Time, till at last Mr. MacKercher went down Stairs, to see if what we had been told was true; when he found it according to the Information he had received from the People of the House, that there was a Number of People armed about the House. Mr. MacKercher returned very suddenly, and with him one Lacy and a Constable, and told us, that there was an Action brought against him at the Suit of Lord Anglesea—

Mr. Callaghan. What do you mean by an Action?

A. A Warrant granted by a Justice of Peace.—The Person then told me he had the same against me and Mr. Goofry. What for, Sir? we asked him: He told us, on my Lord Anglesea's Affidavit that he was assaulted by us, and put in Fear of his Life.

Q. When Mr. MacKercher, and Lacy, and the Constable came up with the Warrant, what happened then?

A. Lacy told me and Mr. Goofry that he had a Warrant against us.

Q. And what did you do upon that?

A. We submitted directly. Soon after we had breakfasted, we disarmed ourselves, and went into the Coach, and were carried to Naas.

Q. Who went into the Coach?

A. Mr. MacKercher, Mr. Carrick, and myself.

Q. Did Mr. Annesley go into the Coach on the Road?—*A.* He did.

Q. How came that?—*A.* Mr. Goofry called out to us to take him in, for it was not safe for him to be there.

Q. Did Mr. Goofry give any Reason for his saying that?

A. He gave it as a Reason for taking him into the Coach, that it was not safe for him to ride, for that one of those Fellows was going to shoot him.

Q. When you came to Naas, what happened then?

A. We sent for the Sovereign of Naas to give in Bail, and there this Mr. Lacy, who came along with us, followed us into the Room, when this Person that appeared here, Byrne, was questioned in regard to his Gun.

Q. What kind of a Gun was it?

A. The Gun was a screw-barrell'd Gun, such as Game-keepers use.

Q. Who questioned him about it?

A. He was questioned by Mr. MacKercher what he was to do with it. He answered, to follow Lacy's Directions; and soon after Lacy stopp'd him, and bid him answer no more Questions.

Q. Was that Gun charged?

A. The Gun was unfcrewed before us in the Room, and from it taken eight Bullets.

Q. In your Presence?—*A.* I was present.

Q. Did any body claim that Gun back again?—*A.* Yes, Sir.

Q. How many Bullets were there?

A. There were eight, Sir, said by all the Gentlemen in the Room. I did not count them, but I believe there was that Number.

Q. By whom was the Gun claimed?—*A.* By Lacy, as Lord Anglesea said.

Q. Had Mr. Lacy any Arms?

A. I cannot say as to that; I do not remember; I think he had.

Cross-Examination.

Mr. Morgan. Pray, Sir, was you at the Curragh the 14th of September?

Mr. Kennedy. I was, Sir.

Q. Did you see Lord Anglesea there?—*A.* I did.

Q. Was he in a Coach, or on Horseback?

A. I think he was in a Tent.

Q. On the 14th?—*A.* Yes, Sir.

Q. Recollect yourself whether you saw him in a Coach at any Time that Day?—*A.* I did not, to the best of my Memory.

Q. Do you know his Coach?—*A.* I can't say I did then.

Q. Why then, how can you take upon you to say that the Coach—Six which haunted you was his?

A. I had particular Reason to know it then, from hearing from the Coach-box the Man's Insults to Mr. Annesley.

Q. On the 16th you knew it, but not on the 14th?—*A.* I did, Sir.

Q. Did you see Lord Anglesea more than once on the 14th?

A. But once.

Q. Recollect whether you saw his Coach driving more than once the 14th?—*A.* I did not see it more than once.

Q. Now I ask you whether any Violence, or Attempt of Violence was made on the 14th?—*A.* There was none that I was privy to.

Q. How long, how many Hours was you on the Curragh?

A. I can't be precise as to the Time.

Q. Was you one Hour?—*A.* Yes, Sir.

Q. Was you two?—*A.* Yes, I believe we were there or thereabouts.

Q. Where did you lie the Night before the 14th, on Tuesday Night?

A. In Dublin, Sir.

Q. What Hour did you come to the Curragh on the 14th?

A. I can't call to mind exactly.

Q. Where do you say you were the Night before the 14th?

A. We came from Dublin to the New-Inn the 14th.

Q. Did you lie at the New-Inn the Night before you went to the Curragh?

A. We did not.

Q. Did you inquire, or any of your Friends inquire, whether my Lord Anglesea was to be at the Curragh or not?

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A. I do not remember that the Question was put by any of us.
 Q. Did you converse with any Body in relation to his being at the Curragh?—A. I remember none.
 Q. Had you at any Time after any Conversation about him?
 A. Yes, undoubtedly, having so many Remembrances of him with our Blows and broken Heads.
 Q. Had you any particular Conversation of him between the 14th and 16th?—A. We had not that I remember.
 Mr. Spring. Q. Now, Sir, I would ask you, whether any Body prevented Mr. Mac Kercher's going up to my Lord Anglesea, when he came to the Croud where my Lord stood?
 A. I can't say I saw any body prevent him.
 Q. Do you know one Chapman?—A. No really, I don't.
 Q. How near was you to Mr. Mac Kercher when he had the Conversation with my Lord Anglesea?—A. Not so far as I am now from you.
 Q. I ask you, Sir, whether the Words that pass'd between them were not loud Words?
 A. They were not loud of Mr. Mac Kercher's Side, because his Words were intended for nothing but to be peaceable and quiet; the Words became louder afterwards; Lord Anglesea was particularly loud enough.
 Q. I ask whether Mr. Mac Kercher did not challenge my Lord to fight?
 A. Mr. Mac Kercher's Words I can't distinctly repeat.
 Q. Well, but I ask whether he did not challenge my Lord to fight?
 A. After many Insults that Mr. Mac Kercher had met with, I believe he might say, *That he dared not single himself out*, and tell him so.
 Q. But did he not challenge him in direct Words?
 A. I do not apprehend he made use of any Words that imported a Challenge to Lord Anglesea.
 Q. You say you heard part of the Words that passed, did you hear Mr. Mac Kercher give my Lord the Lye before he was struck?
 A. I really cannot say whether it was before or after; I rather believe it was before he was struck. I cannot say positively, but it was after my Lord had given him abusive Language.
 Q. You mentioned your going to Newbridge after you had received your Abuse?—A. I did, Sir.
 Q. Now I ask you, Whether you saw any, and what Number of People riding to Newbridge, as if in Pursuit of any Body?
 A. When I came to the Place where Mr. Annesley was lying, I saw Forty or Fifty People, Horse-men and Foot, who I suppose had pursued.
 Q. Did Mr. Mac Kercher and you ride to the Place where Mr. Annesley lay, together?—A. We did not.
 Q. How far distant might you be?
 A. I did not see Mr. Mac Kercher till I came up to where Mr. Annesley was, and the Distance between Mr. Mac Kercher and Mr. Annesley was about the Length of this Court, or better.
 Q. Did you see any and what Number of People pass by you, that seem'd to be in pursuit of any Body?
 A. I cannot say; a good many People rode past, but I could not tell with what Intent.
 Q. What did you apprehend they rode for?—A. I really do not know.
 Q. Now do you imagine they, or any of them, were riding in pursuit of Mr. Annesley?
 A. I do not know. I rather believe they were the Pursuers, otherwise what should make them go after him?
 Q. You said at first that you saw some Forty or Fifty People, on Horseback and Foot, round the Place where Mr. Annesley was; who do you imagine they were, Friends or Enemies?
 A. For aught I know they might be the Pursuers, I cannot say.
 Q. Did you see any one of them offer Violence?—A. I did not then.
 Q. Did you see any Body lay hold of him, other than in a friendly Manner to assist him?—A. I cannot say I did.
 Q. Did you inquire of Mr. Annesley if any Body had hurt him?
 A. Mr. Annesley was not capable of speaking.
 Q. But when he came to himself, did you ask him how he came by any Hurt?—A. I did.
 Q. What did he then tell you was the Occasion of that Hurt?—A. The principal Occasion was the Fall of his Horse into the Ditch upon him.
 Q. And what occasioned his Horse to fall into the Ditch?
 A. The Occasion of his Horse's falling was that of his being close pursued; and when he perceived that, he pulled the Horse back, in order to defend himself, and he fell into the Ditch upon him.
 Q. Before Mr. Mac Kercher and you went up towards my Lord Anglesea, to complain of the Coachman, were you cautioned not to do it, for fear of entangling yourselves in a Quarrel?
 A. I cannot say that I had any particular Caution from any Body.
 Q. Did you hear any such Caution given to Mr. Mac Kercher?
 A. When I came down the Hill, I was advised by some People to go off the Ground, or else I should be murdered.
 Q. I ask again, did you or Mr. Mac Kercher receive any Caution not to go to Lord Anglesea?—A. No, I did not; nor do I know that he did.
 Q. Do you know one Abraham Robinson?—A. I do.
 Q. Recollect whether he caution'd you or Mr. Mac Kercher not to go?
 A. He gave me none.
 Q. Did he Mr. Mac Kercher?
 A. I know not, I did not hear him say any thing to him.
 Q. Now then I ask you, whether at any Time during this Affray you struck any Body, and who?—A. I know not, indeed, Sir.
 Q. But did you strike any Body?
 A. The Blow I received made me incapable of striking any Body?
 Q. Did you strike any, and what Person before you received that Stroke?
 A. I cannot say, in the Hurry particularly, whether I did or no: I know this, I never altered the Position of my Whip: If I happened to hit any Body, it was with the Lash of my Whip.
 Q. How can you be particular concerning what Mr. Mac Kercher did, and cannot recollect what you did yourself?
 A. That was some Time before the Confusion happened, so that I could better judge then than afterwards.
 Q. Was not the Time that Mr. Francis Annesley struck Mr. Mac Kercher a Time of Hurry and Confusion?

A. There was no Hurry and Confusion till that Blow, which occasioned it all.
 Q. Did you, or did you not, strike any Body, before you were struck yourself?
 A. I cannot really say; but after my Friend was struck, perhaps I might.
 Q. Do you not believe you struck, before you were struck?
 A. Yes, I believe I might, when I saw Mr. Mac Kercher struck.
 Q. Who was it you did strike?—A. Why, Sir, I cannot tell.
 Q. Did not you strike Lord Anglesea?—A. I did not.
 Q. Can you be certain you did not?
 A. I am positive I could not, for he was rather behind me than otherwise.
 Q. You say, you believe after your Friend was struck you did strike; can you recollect who you struck?
 A. Why really I cannot positively say, I struck one of those who struck Mr. Mac Kercher.
 Q. And yet you are positive you did not strike Lord Anglesea?
 A. I can be positive I did not strike Lord Anglesea before he struck me.
 Q. Endeavour to recollect who it was you struck?
 A. I cannot recollect who the Person was I did strike, for in a Minute's Time we were all in Confusion. I am sure it was not Lord Anglesea I struck, I knew him.
 Q. Might you not have struck Lord Anglesea then, as well as another?
 A. It was impossible, for he was behind, and his Blow prevented me from striking any Body.
 Q. Did not you strike Mr. Francis Annesley?
 A. I cannot tell; more probably him than another, as he struck Mr. Mac Kercher.
 Q. You know Mr. Goofry?—A. I do, Sir.
 Q. Did you see him strike any Body?—A. I believe I did.
 Q. Who?
 A. I believe I saw him strike Mr. Francis Annesley, after he had struck Mr. Mac Kercher.
 Q. Are you positive it was not before?—A. No; it was not before.
 Q. Had Mr. Goofry received any Blow before that?
 A. He received a violent Blow, and I cannot say whether before or after.
 Q. Did you see any of Lord Anglesea's Servants upon the Ground that Day?—A. I think I did.
 Q. Do you know his Livery?
 A. I cannot be positive as to that, I know what is deemed his Livery.
 Q. How were your Servants armed that Day?
 A. As they are when we travel.
 Q. How is that?—A. One or two of them had Pistols before them.
 Q. Do you believe they all had?
 A. I really cannot say positively whether they all had or not.
 Q. You can say whether you believe they had or not?
 A. I believe they had not all.
 Q. Had any of them a Blunderbuss?—A. Not that I know of.
 Q. A Musquet or a Gun?—A. No.
 Q. Had not every one of them Back-Swords?
 A. I cannot call to mind; I believe not.
 Q. Do you travel with Back-Swords?—A. No.
 Q. Tell how the Servants were armed.
 A. They were armed so far as to have Pistols before them, but I believe they had no Blunderbusses nor Back-Swords; to the best of my Memory and Belief they had not.
 Q. *Jury by the Court.* Did you see Mr. James Annesley ride off the Curragh? Was he in your View?
 A. He was in my View when Mr. Mac Kercher called to Mr. Goofry and me to come away, he was just by us, but he was quickly lost to me, because on my coming away I received the Blow that stunn'd me.
 Q. What might be the Space of Time between his going off the Ground and his lying in the Ditch?—A. About ten Minutes.
 Q. Can you tell what was the Space of Ground from the Place you saw him in the Ditch?—A. A Quarter of a Mile.
 Q. What Time might a Man ride that in?
 A. A Man might gallop it in five or six Minutes,
 Mr. Malone to Mr. Mac Kercher.
 Q. After those Words of the Coachman that you went to complain of, was you, or was you not advised not to go to Lord Anglesea?
 Mr. Mac Kercher. I believe I might.
 Q. By whom?
 A. Who the Person was I cannot really recollect; but my particular Reasons for going, notwithstanding that Caution, was, that I saw the Insult was continued, and not to be discontinued, unless my Lord Anglesea gave Directions to his Coachman to desist.
 Q. Was there any new Insult offered after you received the Caution?
 A. Yes, while I was in search of Lord Anglesea.
 Q. What Distance was you from Lord Anglesea when you received the Caution?
 A. I do not know where Lord Anglesea was at that Time that I was in quest of him.
 Q. But at what Distance did you find Lord Anglesea from the Place where you were cautioned not to go to him?
 A. I cannot tell that; I had occasion to traverse the Ground several Times after I had received that Caution before I could find him.
 Court to Mr. Kennedy.
 Q. Did you see any Persons pursue Mr. Annesley?
 Mr. Kennedy. I cannot say I did see any Persons pursue him, for soon after I received my Blow.
 Q. Did you see any People riding that Way?
 A. I saw a great many People galloping down the Hill, which they told me was after Mr. Annesley.
 Q. Did you ride in Arms that Day?
 A. I had no Arms that Day, I rode a hunting Saddle.
 3. JOHN KIRWAN.
 Mr. Morton. Where were you on the 16th of September last?
 Mr. Kirwan. I was upon the Curragh.
 Q. Whereabouts on the Curragh?

A. A good Piece this Side of the Winning-Post.
 Q. What Winning-Post?—A. On the Curragh.
 Q. What Part of the Curragh?—A. Upon the high Ground.
 Q. Tell what you observed to pass there that Day.
 A. What I observed was my Lord Anglesea was talking to the Gentlemen about him.
 Q. Do you know any of the Gentlemen?
 A. I do not know their Names.
 Q. What did you hear my Lord Anglesea say?
 A. I heard him telling, That this young Gentleman was only a Bastard got by the Kitchen-Maid. And with that two or three came up and told him that he was gone off the Sod, and with that he bade them follow him, and tear him Limb from Limb, and every one that takes his Part.
 Q. Who did he say this to?—A. I took one of them to be his Servant.
 Q. Why so?—A. Because he wore his Livery.
 Q. Are you sure he was his Servant?
 A. I could not swear that he was his Servant, but I took him to be so. But he came back and told him that he was killed. That's well enough, says my Lord.
 Q. Go on, and tell your Story.
 A. That's all that I heard, and I have no Benefit to tell any more than what I saw, and it is against my Will that I came here at all,—for I had no Mind to meddle, but I was brought to it.

Cross-Examination.

Mr. Malone. Where do you live?—Mr. Kirwan. I live at Newbridge.
 Q. What do you follow?—A. I follow Dealing.
 Q. What Dealing?—A. In Linen Cloths.
 Q. Are you a married Man?—A. I am.
 Q. What Family have you?—A. I have two.
 Q. Two what?—A. Children.
 Q. Do you hold any Land?—A. I do.
 Q. From whom?—A. From Mr. Brown.
 Q. How much?—A. Not much.
 Q. Tell how much?—A. Only three Acres.
 Q. What Rent do you pay?—A. Three Pounds a Year.
 Q. Do you owe any Rent?—A. I owe no Rent.
 Q. What Day was it you were at the Curragh?
 A. It was the 16th of September I was at the Curragh, as I understand.
 Q. How come you to understand it to be the 16th?
 A. Because I took Notice of it.
 Q. Can you write?—A. I cannot write.
 Q. Did you make any Memorandum of it?
 A. I made no Memorandum of it then.
 Q. How do you know then it was the 16th?
 A. Because I am sure of it. Are not you sure that you have that Paper in your Hand?
 Q. Suppose I am, that is nothing to the Purpose; upon your Oath, Sir, what Day of the Week was the 21st of September?
 A. I do not know that.
 Q. Were you at the Curragh the 14th?—A. I was.
 Q. Was you on the 15th?—A. The 15th and 16th too.
 Q. Did you see the Horses run?—A. I did.
 Q. How many were there?
 A. Four, and sometimes three; that's nothing to the Purpose, Sir.
 Q. Yes, but it is, Sir; I ask you how many Horses ran that Day?
 A. I do not know, I remember that there were many running.
 Q. But I ask you how many?
 A. I do not know, but I believe there was three.
 Q. What Colour were they?—A. Some of them were bay.
 Q. Was there any white Horse ran?—A. No.
 Q. Any grey Horse?—A. No.
 Q. Did you make any Betts?
 A. I made no Bett, I drank my Belly-full.
 Q. Had you drank your Belly-full that Morning?
 A. I did not drink much that Morning.
 Q. What Time of the Day was it that you heard Lord Anglesea say those Words?
 A. I had not my Watch about me; about the Time we drive the Cows home.
 Q. What Time is that? About duskish?—A. Thereabouts, Sir.
 Q. How long before it was duskish?—A. I cannot tell.
 Q. Was it two Hours?
 A. Indeed, Sir, I had not my Watch about me.
 Q. Have you a Watch, Sir?—A. No, Sir.
 Q. What Time of the Day was it that you heard my Lord Anglesea say he was a Bastard?—A. I cannot tell.
 Q. But you must tell; Recollect.
 A. About the Time of the Cows driving home.
 Q. Did you stay upon the Sod after that?—A. I did, a good while.
 Q. Was there any Race after?
 A. No, no Horses ran, not as far as I can understand.
 Q. What did you do after that?
 A. I went into a Tent to take a Glass of Ale after.
 Q. Do you know Lord Anglesea's Livery?—A. Yes.
 Q. What Colour is it?—A. He gives red.
 Q. Red! Why Man, he that you saw in red might have been a Soldier for what you know?
 A. I do not know but the Man that I saw was a Soldier, but he had his Livery on him.
 Q. Was the Man that you took for his Servant dressed in red?
 A. I did not take him to be his Servant then, but I took him to wear his Livery.
 Q. You said he wore my Lord's Livery?—A. I did.
 Q. Did you at that Time understand that he was his Servant?
 A. I took him to be his Servant.
 Q. Why?—A. Because he wore his Livery.
 Q. What Livery?—A. Facing with red.
 Q. What Colour was the Outside?
 A. Blue, Sir, and was faced with red; and this was red. [Pointing to his Vest.]
 Q. Red Inside? What the Lining?
 A. No, the Facing. [Pointing at the same Time to the Cuff of the Sleeve and the Vest.]

Q. Was there any Lace upon the Livery?
 A. I believe there was; I did not take sharp Notice.
 Q. Had you ever seen any of his Servants before?
 A. I saw several of his Servants before.
 Q. Are you sure you know his Livery?
 A. I know his Livery pretty well.
 Q. Had you seen that Man before that Time that you took to be his Servant?
 A. I do not know whether I saw that Man's Face before that Day.
 Q. You live at Newbridge?—A. I do.
 Q. Does any Gentleman there keep a Servant in blue Livery?
 A. I cannot tell whether there be or not.
 Q. Did you at that Time understand the Man to be a Servant to Lord Anglesea?
 A. I took him to be his Servant, because he wore his Livery.
 Q. What Cloaths did my Lord wear that Day?
 A. My Lord wore brown that Day, a brown Coat.
 Q. What Sort of Hat had he?—A. He had a laced Hat.
 Q. Had he Lace upon his brown Coat?—A. I do not remember.
 Q. I ask you if he had Lace on his Coat?
 A. I do not know; I believe he had.
 Q. What Sort of Lace?
 A. I do not know whether Silver or Gold Lace.
 Q. Was he in his Coach, or on Horseback?
 A. He was on Horseback, riding a bay Mare.
 Q. Do you know any of the Company that was about him?
 A. I cannot tell any Man that was about him.
 Q. Do not you live near that Place?
 A. I live within a Mile or two of it.
 Q. And yet you did not know any of the Gentlemen?
 A. I did not know one of them.
 Q. Can you name any one Man that was present when my Lord made that Declaration?—A. I cannot, I did not take Notice.
 Q. Did my Lord ever speak to you before that Time?—A. He did.
 Q. Did he ever eat or drink with you?
 A. I never drank or eat with him, he would not be so great with the like of me.
 Q. Do you know Mr. Francis Annesley of Ballysax?
 A. I did hear of him.
 Q. Do you know him?—A. I know him.
 Q. Was you ever at his House?—A. I was at his House.
 Q. Do you know his Servants?—A. I do not.
 Q. Nor his Livery?—A. No.
 Q. Do you know Mr. Steel?—A. I do.
 Q. How far does he live from you?
 A. He lives about three Miles from where I live.
 Q. Was you ever at his House?—A. I was.
 Q. Do you know his Livery?—A. No.
 Q. Nor Mr. Francis Annesley's Livery?—A. No.
 Q. Can you name the Livery of any Man that lives near you?
 A. I cannot, Sir.

4. Mr. JOHN ARCHBOLD.

Mr. Callaghan. Where was you on the 16th of September last?
 Mr. Archbold. At the Race of the Curragh.
 Q. Did you see any Thing particular that happened that Day between Lord Anglesea and any other Gentlemen?—A. I did.
 Q. Give an Account of it; tell your own Story?
 A. I will, Sir. I was drinking, my Lord, in a Tent, on the 16th of September at the Curragh, and I heard some People cry out, Knock that Son of a Whore Kennedy down. With that I thought it was a Friend of mine that had been at the Curragh that Day, that was in danger; upon which I immediately got on Horseback, and saw Mr. Jans and Lord Anglesea beating this Mr. Kennedy, and Kennedy had his Head down in this Manner, and they were fleaking him, beating him, my Lord, very severely: And seeing this, I went up to Jans, and laid my Hand upon his Arm, and said, I wonder you would be guilty of beating a Man in this inhuman Manner, and whatever the Fact is you beat him for, he cries out, I have nothing to say to it; that ought to satisfy you. I myself did not understand what the Quarrel was about; but after I had spoke to Jans, he went to my Lord Anglesea, and he said, My Lord, it is not worth your while to beat him, let him alone. With that my Lord desisted, and I went to Mr. Kennedy, and told him, You had better get off in the best Manner you can, for you'll be murdered if you stay here. Mr. Kennedy said, he could not go for his Friends, he could not leave them. With that the Mob said, Mr. Annesley is gone off the Field: And with that Lord Anglesea said, Follow the Son of a Whore, and knock his Brains out. With that the People rode off after him, and we rode after the Crowd from the Place where we stood, towards the Turnpike-Road to Newbridge; and by the Time I came up, Mr. Annesley was fallen into the Ditch with his Horse, and some Gentlemen came up, and were for striking him as he lay there; and I said, I believe he is dead already, and there is no need to kill him again. And with that I alighted, cherished him, and opened his Stock, and the Surgeon came to bleed him, but could get no Blood; and I got a Chair, and sent him to Newbridge, and within an Hour or two after I went to see him.
 Q. Did you think, when you saw him in the Ditch, that he was dead?
 A. I did believe he was so hurt, that he would not recover in a good while.
 Q. Did you hear any Directions given by Lord Anglesea to any Persons?
 A. I only heard him say what I have said already.
 Q. Repeat that again.
 A. When the Mob cried out Mr. Annesley's gone off; my Lord Anglesea said, Follow the Son of a Whore, and knock his Brains out.
 Q. Did any Body pursue upon that?
 A. I cannot say whether it was upon his saying it or no that they followed him, but there was a great many People followed him upon his saying so.
 Q. Do you know who those Gentlemen were that would have struck him, if you had not prevented them?—A. I do.
 Q. Who? Name them.—A. Mr. William Warren of Grangebagg.
 Q. Did any body strike him?
 A. No, not one; I believe I prevented that pretty much.
 Q. Do you believe any body would have struck him, if you had not been there?

A. Upon my Word, I believe some would have struck, if I had not prevented it; for Mr. Warren was alighting in order to strike him; and I told him, *Do not strike him, for he is killed already, I believe; and you are a Gentleman of Fortune and Figure in this Country, and not proper to be seen in such a Riot as this.*

Cross-Examination.

Mr. Green. Did you see any other People pursue Mr. Annesley besides Mr. Warren?—A. I saw several.

Q. Did you see any in Lord Anglesea's Livery?

A. I cannot tell; I did not take Notice whether any in Livery pursued him, or not.

Q. Did you stand by him for any time after you came to the Ditch?

A. I did, till I put him into the Chair.

Q. Did you see any of Lord Anglesea's Servants there?

A. I did not observe if any Servant of Lord Anglesea's was present, or not.

Q. Recollect who you found at the Ditch.

A. I found Sir Kildare Borrowes, Mr. William Warren there; and so was Dillon, Ash—and a good many Acquaintance.

Q. How soon after his Fall into the Ditch did you come up?

A. He was some time down, I believe, for the Horse had got up before I came.

Q. Did you see Mr. Annesley soon after this at Newbridge?

A. I turned back at that Time when I put him in the Chair, and saw the other Heat at the Curragh, and after that went to Newbridge.

Q. Had he no Bruise, or Cut, or Stroke with a Whip, that you perceived?—A. He had not, that I perceived; nor did I look.

Q. Was he in his Senses when you put him into the Chair?

A. He was not.

Q. Did he tell you then, that he got ever a Stroke from any body?

A. He did not tell me that he got ever a Stroke. How could he tell me then, when he was senseless?

Q. There was a Heat, you say, after he fell?

A. There was, Sir; I went back to see the Heat.

Mr. Digby. Did you see any body pursue him before he fell down?

A. When I came up he was in the Ditch; there were a great many running that Way.

Q. Did you know any of them?—A. I knew Mr. William Warren, and Sir Kildare Borrowes, and spoke to Mr. Warren not to strike him.

Q. Did you see Mr. William Warren's Horse run away with him that Day?—A. I did not observe his Horse run away with him.

Mr. Malone. Do you think the People you saw there intended to do him any Harm?—A. God knows whether they intended him Harm, or no.

Q. Do you believe all the People you saw there were bent to do him Mischief?

A. I believe there were several, among such a Concourse of People, that did not: Sure, if they were all bent to murder him, he would have lost his Life indeed!

Court. You said, that you heard Lord Anglesea say, *Follow-the Son of a Whore, and knock out his Brains*?—A. Yes, I did.

Q. Give your Opinion, whether any Pursuit happened in consequence of those Words?

A. My Opinion of the Matter is this, that I saw them pursue him as soon as Lord Anglesea spoke; but I do not know whether they followed him out of Curiosity, or by my Lord Anglesea's Means; how can I know their Intention?

Mr. Spring. Was it not usual for a Crowd to follow him wherever he appeared?

A. Why, I cannot tell; I never saw him till the Race-day before.

Q. Was he not followed to whatever Part of the Ground he went the first Day?

A. I only saw him come on the Ground from the Turnpike-Road with his Servants, and I was shewed him there, and do not think I saw him after, that Day.

Q. When you came up, did you see Mr. Warren attempt to hurt Mr. Annesley?

A. Mr. Warren was alighting when I came up, and said some Words that made me think he meant to hurt him in that Manner; and what Reason should I have to speak to him, to beg he would not hurt him, if he did not attempt it?

Q. What was it he did say, that made you imagine he intended to hurt him?

A. I think that he called out to Sir Kildare Borrowes; I was in such a Hurry of Spirits, that I cannot tell well what happened, but I think, by the Words Mr. Warren said, they were something tending to hurt Mr. Annesley; upon which I begged of him not to alight; and he did not, nor did not strike.

Q. Did you observe Lord Anglesea's Dress that Day? Had he a plain or a laced Coat on?

A. I cannot tell you; I do not remember whether it was a plain or a laced Coat, but I know he was on Horseback, and Jans went up to him, and bid him give over beating Mr. Kennedy.

Q. Did you ever see Lord Anglesea before?

A. I have seen him very often.

Q. Are you acquainted with him?—A. I know him by Eye-sight, but have not the Honour of being acquainted with his Lordship.

Q. At the Time you heard Lord Anglesea make use of the Words you mention, how far was you from him?—A. No farther than I am from you.

Q. Was there not a great Crowd about him?

A. The Crowd was dispersed pretty much upon Mr. Annesley's going off.

Q. Can you judge whether they followed Mr. Annesley thro' Curiosity, or at my Lord's Instigation?

A. I could not judge whether through Curiosity, or at his Instigation; they followed as soon as he ordered them.

Q. You said, that the Crowd went away and followed Mr. Annesley?

A. I do not say all; but a great many followed him.

Q. Do not you believe they attended him out of Curiosity?

A. I told you before, that I could not tell whether out of Curiosity, or at my Lord's Instigation.

Q. Did you know any other Person present to have heard those Words?

A. I did not stay to look about me, but rode off directly.

Q. But do you know any body that was there present?

A. Upon

A. I do not know any body that was by, for I did not stay to examine who was by.

Q. When you came up to him in the Ditch, would any Gentleman have done him Hurt, but for your Interposition?

A. If I had not thought Mr. Warren had a Design to do him Hurt, I should not have said the Words I said to him.

5. Mr. WILLIAM HACKET.

Mr. Morton. Where were you on the 14th and 16th of September last?

Mr. Hacket. On the 14th I was in Dublin, and the 16th I was at the Curragh.

Q. Do you know what happened the 16th between Mr. Mac Kercher, Mr. Annesley, and my Lord Anglesea?

A. I was in a Tent drinking a Bottle of Wine with some Gentlemen, and a Boy came in and said, *The young Earl was killed.* Immediately on hearing that, I ran out, got my Horse, and followed them. There was a cry out, *He's gone that Way, pursue him, pursue him!* Upon which I followed as fast as I could, and came up to Mr. Mac Kercher, and said, *Why don't you go on faster, Sir?* He said, *My Horse has no Speed. Pray, Sir, do you follow Mr. Annesley, and keep close to him till I come up, for he will be murdered.* Upon that I followed as fast as possible, but he was fallen in the Ditch, and many about him before I got to him. I saw he was very much hurt, upon which I attempted to bleed him; he was quite senseless and speechless, and though I made two Punctures in his Arm, he would not bleed, and after that he was sent off to Newbridge.

Q. Was he recovered before he was sent to Newbridge?

A. He was not recovered.

Q. Did he say any Thing?—A. He did not speak a Word.

Q. When did you see him after this?—A. I saw him that Night after.

Q. In what Condition did you find him then?

A. He had recovered his Senses.

Q. Did you stay any Time with him?—A. I lay there that Night.

Q. Do you remember any thing remarkable to have happened further?

A. The next Morning I got up early, and went out to look at my Horse. And Mr. Mac Kercher was apprehensive of some Danger, and said over-Night they would go away very early. I went into the House again after I had seen my Horse, and a Boy came in and said, *The House was surrounded, and that the Gentlemen in the House were way-laid.* I told Mr. Mac Kercher what the Boy said, upon which he and some more went down Stairs to see if it was true, and then they were assured of it.

Q. How do you know that?

A. I went out with them to the Ditch of the Garden to see if we could perceive any People, and then we saw them plainly. We came in again, and then the Landlord told them the same Thing.

Q. What followed after this?

A. Some time after that, Mr. Mac Kercher was taken up on a Warrant by one Lacy and a Constable, and they came up Stairs together, and then he took Mr. Goofry and Mr. Kennedy. Then we got ready, and were going to Naas to give in Bail there; and when we were a good Way from Newbridge, one Angus Byrne came up in full Gallop with a Gun in his Hand; Mr. Annesley was then on one Side of me, and Mr. Goofry on the other; and he laid his Gun upon his Thigh when he came up, and he immediately turned about and gave his Whip to a Countryman, came close to me, and laid his Hand upon the Cock of the Gun. I cannot say positively I heard it snap, but he made a Noise as if he cocked the Gun.

Court. How was the Gun directed?

A. The Muzzle was directed towards Mr. Annesley, cross the Pommel of the Saddle.

Q. Did you perceive him touch the Cock of the Gun?

A. I saw him put his Thumb upon the Top of it.

Q. Can you say that he cocked it?

A. I cannot be positive; I did not see it cocked, but I heard it snap: upon which I made Mr. Annesley alight; I called out to the Coach to stop and take him in, and Mr. Goofry came up to us.

Q. What kind of a Noise was it you heard?

A. It was the Sound of a Gun cocking.

Q. Did Mr. Annesley alight and go into the Coach?—A. He did.

Q. Who advised him to go into the Coach?

A. I did, and I believe Mr. Goofry did.

Q. Why so?—A. Because I thought that the Man intended to shoot him, Mr. Mac Manus. You said Byrne gave his Whip away?—A. I did.

Q. With what Intention did he do that?—A. I cannot say.

Q. Was it in order to be the more ready to shoot?

A. I suppose it must be so, Sir; it looks as if it was.

Q. Did you say any thing when he gave away his Whip?

A. Not a Word.

Q. In what Manner did he give it away?

A. He rode up in a Hurry, gave his Whip to the Man, and turned back immediately.

Q. What further happened after this?

A. After that we met some People on the Road, who came from Naas to meet us, and they conducted us to Naas.

Q. What became of Byrne?

A. He turned back immediately after Mr. Annesley got into the Coach.

Q. How soon after this Man had given away the Whip, and put his Hand to the Gun, did Mr. Annesley go into the Coach?—A. Immediately.

Q. Did you see him take his Whip again?—A. I did not.

Q. Did he go with you to Naas?

A. He came up to us again, and went there with us.

Q. What happened after you got to Naas?

A. When we were going to give in Bail for the Gentlemen; Byrne came in and laid down the Gun upon a Bed in the Room where the Gentleman that took the Gentlemen in Custody from the Constable was; I think he was Sovereign of Naas. I went in, Mr. Carrick and that Gentleman was there, and we were desirous to see if the Gun was loaded; and it being a Screw-barrelled Gun, immediately I unscrewed it, and took out eight Bullets.

Court. Who unloaded the Gun?

A. I unloaded it myself; unscrewed it, and took out the Shot.

Q. What kind of Shot.—A. Large Swan-Shot.

Q. How many of them?

Z z

A. There

A. There were eight; I brought them in to the Gentlemen.
 Q. How big were they?—A. They were very large.
 Q. How large? Describe them.
 A. They were thus big. [The Witness describes them to be as big as the tip of his little Finger.]

Mr. Bagot. Were they cast in a Mould, or were they rough and uneven?
 A. They were quite round.

Mr. MacManus. Tell what happened after that.
 A. Then the Sovereign took the Gun, and Byrne was examined with what Intent he carried the Gun, and whose it was? He said, It belonged to my Lord Anglesea, and he was to follow the Directions of Mr. Lacy, in order, if there was any Rescue intended, to prevent it. They then asked him what he was to do with it in case of a Rescue? He was going to answer, when Lacy stopped him, and said, You have answered it already, and answer no more Questions.

Q. Had Lacy any Arms?
 A. When the Men from Naas were coming up, Lacy took out a Pistol upon the Road, and I said to him, Sir, Mr. MacKercher told you before we came out, that we expected a Guard from Dublin or Naas, and you need not fear any Rescue.

Q. What kind of a Pistol was it?—A. It was a Pocket Pistol.
 Mr. Bagot. Did you observe Lord Anglesea's Coach driving at any Person on the Curragh?—A. Really, Sir, I did not mind, I was in a Tent drinking a Glass of Wine.

Cross-Examination.

Mr. Morgan. You say when you heard this Noise of the Gun, that the Muzzle was presented to Mr. Annesley?—A. Yes, the Gun lay upon the Pommel of the Saddle with the Muzzle towards him.

Q. Which Side of you was Byrne on?—A. The Left.
 Q. And where was Mr. Annesley?—A. On the Right.
 Q. You rode then between Mr. Annesley and Byrne, when Byrne came up?
 A. I did.

Q. At the Time you heard this Noise of the Cocking, would not the Gun have shot you, or your Horse, if it had gone off?
 A. I believe it possible it might.

Q. Describe the Position of yourself.
 A. I had Mr. Annesley on the right Hand, and Byrne drove upon the left Side of me, and I got close to Mr. Annesley.

Q. In which Hand had Byrne the Gun?
 A. He had the Gun in his left Hand, and the Bridle in his right.
 Q. You said it was pointed to Mr. Annesley?
 A. It was lying on the Pommel of the Saddle, across the Horse's Neck, with the Mouth towards him.

Q. Could he have shot him before he got into the Coach, if he had had a mind?
 A. To be sure he might, if he pleased; but it would not have been possible for him to have escaped if he had shot.

Q. If the Gun had gone off, must it have shot Mr. Annesley?
 A. If it had gone off instantly as he came up, it might have shot me.

Q. What happened after Byrne came up?
 A. Mr. Annesley alighted, and Mr. Goostrey came up, we called to the Coach to stop, and he went in, and then Byrne turned about and went back again.

Q. Do not you believe that Byrne carried that Gun to prevent a Rescue, and for no other Purpose?—A. How can I tell?
 Q. What do you believe?—A. I protest, I cannot tell what to believe.

Q. Had the Gentlemen any Arms in the Coach?—A. They had not.
 Q. How many Servants attended Mr. MacKercher and his Company at Naas?—A. I know there was the Groom, and a Footman, and I really cannot recollect any more.

Q. Were there not five?—A. I cannot recollect any more.
 Q. Were the Servants armed there?—A. I know the Groom was.

Q. What did the People that came from Naas say when they came up?
 A. I cannot tell; some went on one Side of the Coach, some on the other, some on Horseback, and some on Foot.

Q. Did not you hear it rumoured by them, that we will attempt a Rescue?—A. I did not.
 Q. Did not you hear them cautioned not to attempt a Rescue?
 A. I did not indeed.

Q. Lacy took out a Pistol, you say?
 A. He had a Pistol in his Hand when the Men came up.

Q. Did the Men say any thing to him about his having his Pistol in his Hand?—A. They did not.
 Q. Did Lacy give any Reason for having that Pistol in his Hand?
 A. He gave me no Reason for it.

Q. Did you hear him give a Reason to any Body?
 A. I did not hear him give any Reason.

Q. Did not you hear him say that he took it out to prevent a Rescue?
 A. I did not.

Q. What did you say to him?
 A. I told him Mr. MacKercher said, before we came out, that we expected People from Naas, and that there will be no Rescue.

Q. What did he say when you told him there would be no Rescue?
 A. He made me no Answer to that.

Court. Before Byrne came up with the Gun, how were you and Mr. Annesley riding?
 A. Mr. Annesley was first, a little Distance before me; immediately upon Byrne's coming up and giving the Whip to the Man, I got up to Mr. Annesley.

Q. Was Byrne nearer than you to Mr. Annesley at any Time?
 A. I was nearer all the Time.

Q. How near was Byrne to you?—A. He was within a Yard of me.
 Q. If the Gun had gone off, could it have shot Mr. Annesley or you?
 A. It might as well have shot him as me; I believe it possible it might have shot me.

Q. On what Side of Mr. Annesley was you?
 A. I was on the left Hand Side of him after I joined him.

Q. In what Position had Byrne the Gun at his coming up?

A. It was upon his Thigh, and immediately upon his coming up he laid it across the Pommel of the Saddle.

Mr. Spring. At the Time that the Gun was pointed towards you, where was Byrne's Right Hand?—A. I cannot tell.

Q. Did not you say that his Right Hand was upon the Bridle?
 A. At his coming up he had the Gun upon his Thigh in the left Hand, and the Whip and Reins in the other Hand; he gave his Whip away, and then held the Gun across the Pommel with his left Hand.

Q. In what Position was the Gun at his coming up?
 A. The Gun was pointed up into the Air at his coming up.

Q. Was the Bridle in his Right Hand then?—A. It must have been in the Right Hand, because the Gun was in the Left.

Q. Was the Time Byrne came up any considerable Time before you met the People coming from Naas?—A. Yes, it was.

Q. How long?—A. I cannot tell.
 Q. Was it ten Minutes?—A. Yes, it was, and more.

Q. A Quarter of an Hour?—A. I cannot tell exactly.
 Q. What was it Byrne did after he came up?
 A. He immediately gave the Whip away, and came up close to us, and immediately upon Mr. Annesley's alighting and going into the Coach, he turned back.

Q. Did you ever see Byrne before?
 A. I never saw him in my Life before.

Q. Did he say any thing to you?—A. He did not speak to me.
 Q. Did he know you at that Time?—A. He did not appear to know me.

Q. Did you know him?
 A. I did not know his Name till we came to Naas.

Q. How long after Byrne turned back was it that he followed you to Naas?—A. A good while.

Q. Was it an Hour?—A. I cannot say.
 Q. Half an Hour?—A. To the best of my Knowledge it was thereabout.

Q. Was it after the People met you?
 A. I believe it was, I cannot be positive.

Q. How long after?—A. I cannot tell exactly how long it was.

6. Mr. WILLIAM GOOSTREY.

Mr. MacManus. Were you at the Curragh last September?
 Mr. Goostrey. I was there the first and last Day of the Races.

Q. Give an Account of what happened there; tell the whole Affair.
 A. The 14th of September last we went to the Curragh, and there was but one Horse to run that Day, and there being no great Diversion, we rode a little up and down the Course that Day, and came off again.

Q. From what Place did you go to the Curragh?
 A. We went from Dublin to Newbridge Inn, and from thence to the Curragh.

Q. Did any thing remarkable happen to you on the 14th?
 A. We saw Lord Anglesea and other Gentlemen standing at a Tent as we rode up the Curragh, and when we were coming back again from the Course, just before we came to the End of it, Lord Anglesea said, See that Secondel MacKercher, though he now looks like a Gentleman, that Coat he has upon his Back I saw not a Month ago in Monmouth-Street. Mr. MacKercher said, Do not let us take any Notice of it, it is not worth while; so we rode off the Ground, and went to Newbridge; that was all that happened that Day. The next Day was Thursday; there was no Race that Day; and we went to Gentlemen's Houses in the Neighbourhood, where Mr. Annesley was known when he was young. On Friday we went to the Race again, and just as the first Heat was over, we came upon the Curragh, and went up to the Company. After some little Stay there, we left that, and rode on further; and as we were riding, the Coachman of Lord Anglesea came full gallop through the Middle of us; we got out of his Way as fast as we could; he turned short about again, drove at us, and we got on the other Side of the Rail to avoid him, and he came there with his Whip, and pointed to Mr. Annesley, crying, Shoe-boy, that's he, Shoe-black. Presently he came to us again.

Court. Which Side of the Rail?
 A. The Outside of the Rail, my Lord—and drove at us there. Mr. MacKercher then said, There is no bearing of this, we must either go out of the Course, or else speak to my Lord to chastize him.

Q. Were there other People on the other Side of the Rail besides you?
 A. There were other People there besides us, but very few.

D. Go on.
 A. Mr. MacKercher went up and down to find my Lord Anglesea, and we went up along with him to the Winning-Post, and there my Lord and others were standing; and Mr. Annesley was rather behind, out of the Crowd; five or six Horse Lengths behind he might be: So Mr. MacKercher said, with a low Voice, I want to speak with your Lordship. My Lord said, I have no Pistols, and was startled, and changed Colour a little, I thought, This was no Time and Place, he said further; to talk thus, I have no Pistols.

Mr. MacKercher said, For what I have to say to your Lordship, every Time and Place is proper; for all that I have to say, is against one of your Servants that used a Gentleman ill, or Words to that Effect. My Lord asked, Who the Gentleman was? Mr. MacKercher said, That's the Gentleman, Mr. Annesley. My Lord hesitated a little, and said, he was no Gentleman, but that he was a Bastard. Mr. MacKercher said further, We expect your Lordship will turn your Servant away on the Field, as it is a public Affront. My Lord then flew into a Passion, and called Mr. MacKercher a great many opprobrious Names; and Mr. MacKercher told him, he lied; with that Mr. MacKercher said, Your Lordship durst not single yourself out, and tell me so. With that Mr. Francis Annesley up with his Whip and struck Mr. MacKercher on his Forehead, and with that a little Blood came, and his Forehead swelled very much. Immediately upon that, I had a little Whip in my Hand, and I struck Mr. Annesley. Upon this it was over, and Mr. MacKercher said, Come, we will go away. There were some other Words passed afterwards between Lord Anglesea and Mr. MacKercher, and Mr. MacKercher said, turning to go away, Come along, Goostrey and Kennedy, it is not worth while to talk to a Man who dare affront a Gentleman, and refuseth him Satisfaction. I could not get away readily, being in a Crowd of People; and I believe a Minute or two elapsed before any thing further happened at all. When I was turning my Head

to ride off, There's Gooltry, says my Lord, another of the Regent, as great a Regent as any in Ireland, knock him down. Upon which Mr. Francis Annesley struck me again, and a great many more struck me. I was stunned with the first Blow, and bled so prodigiously, that I was all over Blood. I got a Blow here [on his Wrist] that swelled as big as an Egg; and I had fallen off my Horse, if I had not been supported by a Crowd on each Side, who were so near me that I could not fall.

Q. What Distance of Time was there between the first Blow and the second, given by Mr. Francis Annesley?

A. It was two Minutes after the first Stroke, that Mr. Annesley struck again.

Q. Did he strike you of himself, or by any Directions from any Body?

A. He did not strike me till Lord Anglesea ordered him.

Q. Did you leave the Curragh immediately upon that?

A. I did not; I thought the Quarrel had been over, and had a Mind to stay to see the Sport. There were some English Horses to run, and I clapped my Handkerchief to my Wound, that I might stay and see the Diversion. I rode forward on the Ground, and immediately I heard the Pretender, as they called Mr. Annesley, was killed. Thinks I, I'll go down to the Starting-Post to see what is the Matter, and there I heard that Mr. Annesley was in the Lane leading to Newbridge; I rode after him, and when I came about half Way down the Lane, I saw a great Crowd of People about him, and found him lying senseless, his Arm stripped up in order to bleed him, but he would not bleed. I got a Chaise that was coming by, put him into it, and got a Man to go with him to hold him in the Chaise that he should not fall out of it, and so carried him to Newbridge. The next Morning we were to go early to Dublin; Mr. MacKercher said, it was very prudent to get to Dublin as early as we could. But before we were up, we were alarmed by the People of the House saying, That the House was beset, and that there were a hundred Men, fifty one Way, and fifty another, and that there were Men in the Entry that had Fire-Arms. We immediately got up, and had nothing but Pistols to defend ourselves: We thought them not sufficient to defend us against such a Number of Men, and sent to the Landlord to get us more Arms, if he could; who brought up a Case of Pistols and a Gun; and we were determined not to stir till we could get some Assistance. Mr. MacKercher and Mr. Kennedy went out to see if they could discover what Number of People there were in Arms; they returned immediately, and told us, They saw a great Number of People; so we were determined to secure ourselves in the Room till we should get Assistance. Some time after it was Day-Light, an Hour or two after, Mr. Kennedy went out into the Garden to try if he could see any Body; and when he returned, said, He saw none: I went down into the Garden, came back, and was told there was a Warrant granted by a Justice of Peace, on the Complaint of Lord Anglesea against Mr. MacKercher, and Mr. Kennedy, and myself. I asked Lacy, who came up Stairs to execute the Warrant, if he was a Constable; he said he was my Lord Anglesea's Steward; the Constable was hard by.

Q. Where was this?

A. In the House; they came up Stairs, and shewed the Warrant: Says I, What Occasion for all these People to execute a Warrant? Whose Complaint is this upon? I looked, and found it was a Complaint of Lord Anglesea's. Upon this Lacy said, We must go back to the Gentleman that had granted the Warrant, to give in Security. I said, No, we did not care for that, we have got enough of this Country, I am all over Blood, I don't like it so well to go into it again, and you see the Dress I am in, and I'll go to Dublin; and thinking there was some Dirt in my Wound, I had a Mind to go where I might have it searched and dressed, for there were two Gentlemen there that offered to bail us. Lacy would not go towards Dublin, but insisted on our going to the Justice that granted the Warrant. This occasioned us to dispute about it till the Constable whispered us, Naas is the County Gaol, Gentlemen, and if you say you will go to that Gaol, I must carry you there, whether they will or no. Upon this we told Lacy, That we insisted to go there, and if we did not give Bail, we would be secured there. There being so much Noise, and the Landlord cautioning us, that there might be Danger of going the Road, we sent for some People from Naas to come and meet us; so we got ready, and Mr. Annesley and I would not go into the Coach.

Q. Who went in the Coach?

A. Mr. Kennedy, Mr. MacKercher, and Mr. Carrick, went into the Coach; Mr. Annesley, Mr. Hacket, and I, rode on Horseback; when we had gone a little Way, riding almost all three a-breast, I saw several People follow, and a Fellow came galloping after us: I heard the Horse coming, and I looked, and saw a Fellow coming up with a Gun in his Hand, in a green Coat, and a luffy Man. I said, I wondered what that Man's coming after us in that Manner could mean. So I drops behind Mr. Hacket and Mr. Annesley a little, and let the Fellow come between us; he came close up to Mr. Annesley, and just as he was dropping back, I got up. Immediately I heard the Gun cock, as I thought, and I instantly dropped betwixt him and Mr. Annesley, and then Mr. Hacket and I called out, Mr. Annesley, you'll be shot; get into the Coach this Minute, or this Fellow will fire at you. Mr. Annesley upon that alighted, and got into the Coach, and the Fellow said he was going to Dublin. I spoke to the Servants to bid them not let the Fellow come between them and the Coach, and said to Mr. Hacket, Let us keep between him and the Coach to prevent any Mischief. When the Fellow saw that, he turned back again.

Q. Was he so near as to hear you give those Directions?

A. It was impossible he could avoid it.

Mr. MacManus. Were there any others that had Arms besides that Man?

A. There was a Country Fellow by, that had a Pistol, and Lacy had a Pistol too.

Q. What happened after that?

A. As soon as we had secured the Coach, the Fellow turned back, and Lacy kept behind, and just as they saw the Naas People coming, they galloped up again, and they went with us to Naas.

Q. What happened when you came to Naas? Tell what you observed there.

A. Then we came to examine the Man that had the Gun, and sent for the Sovereign, and desired him to examine that Man; so he was asked, Whose Gun that was? He said, Lord Anglesea's. He then was asked, What was he to do with it? He said, To follow Lacy's Directions. He then was asked, What Directions? He said, He fancied, in Case of Rescue, he was

to make use of it. We asked, If Lacy gave him any Directions? He said, Yes. We asked then, What Directions? Before he could answer, Lacy stepped in, and bade him not answer any other Question.

Q. Did you give in Security there?

A. No; we went before the Justice of Peace, and gave in Bail.

Mr. Digby. You said that Mr. Francis Annesley struck Mr. MacKercher?—A. Yes.

Q. Did Mr. MacKercher, or any Body else, strike Mr. Annesley before he struck him?—A. He did not, nor Nobody else.

Q. Did you strike him?

A. I struck him after he struck Mr. MacKercher.

Q. With what?—A. With a Whip, upon his striking Mr. MacKercher.

Q. Did you apprehend the Quarrel a continued one, or that it was ceased?—A. The Beginning of the Quarrel was, Mr. MacKercher and Lord Anglesea's speaking together; and after Mr. Francis Annesley struck, it ceased for about two Minutes.

(Cross-Examination.)

Mr. Spring. Pray, Sir, do you recollect the particular Words Lord Anglesea made use of to Mr. Francis Annesley before he struck you?

Mr. Gooltry. I did not know Mr. Annesley at that Time, but a Gentleman said, that it was he that struck me.

Q. When Lord Anglesea used the opprobrious Language you mentioned, did not he say to Mr. Annesley, There is he that struck you?

A. I cannot say that I did hear him say that.

Q. Were not you near him?—A. We were Side by Side; Mr. Francis Annesley and I faced Mr. MacKercher.

A. Might not he have received a Blow from you without knowing who gave him that Blow?—A. Yes, I believe he might; and did not know, I believe, that I struck him; I dare say he did not see me, because he rode forwards to strike Mr. MacKercher.

Q. Do you believe he might have asked my Lord who struck him?

A. I can't tell.

Q. Was not he struck by Mr. Kennedy at the same Time?

A. He was not.

Q. Did not Mr. MacKercher lift his Hand in this Manner with his Whip, upon his talking to my Lord Anglesea?

A. No, Sir, he had his Whip in one Hand, and Bridle in the other, and spoke as coolly as any Man in the World could; and before he went up, said, He would have no Quarrel.

Q. Did not he lift up the Butt End of his Whip?

A. He did not lift it up.

Q. Did not Mr. MacKercher speak to my Lord Anglesea in such Manner as tended to a Breach of the Peace?

A. He did not, to my Knowledge.

Q. Did not he tell him, He dared not come aside with him, after he had given him the Lye?

A. He did not, until my Lord Anglesea had abused him, and called him Names.

Q. Were not you cautioned by Somebody not to go to my Lord Anglesea?

A. No Person cautioned us not to go up to him, that I heard of.

Q. Did you yourself caution Mr. MacKercher not to go?—A. I did not.

Q. Did not Somebody, in your hearing, tell Mr. MacKercher, It was your own Fault, if you had taken my Advice, this would not have happened?—A. No Person told him that, that I know of.

Q. Do you know Abraham Robinson?

A. I do. It was his Chaise carried Mr. Annesley to Newbridge.

Mr. Harward. We have a vast Number of other Testimonies of the Gentlemen of this Country to examine as to the Assault, and what happened at the Curragh, which we shall not trouble your Lordship with, for we have now taken up six Hours of your Time; and the only further Evidence that we shall lay before you to conclude this Scene, is to introduce the Person, who shall account for the premeditated Contrivance of this black Scheme; who the Persons were that were employed to execute it; whose Directions they were to have obeyed; and all the preparatory Steps taken in order to come at this Gentleman's Life. We shall trouble you but with this one Witness; and, as it is a Matter of great Concernment to the Publick to have detected, and to my Clients in particular, we shall crave your Indulgence and Patience to hear this Witness.

7. ANGUS BYRNE.

Mr. Harward. Mr. Byrne, begin to give an Account of what you know, and what Directions you received, and what Conversation passed between you and any other Persons at Killcullen-Bridge. Do you know the Earl of Anglesea?—A. Yes.

Q. Were you Huntsman to any Person, and who?

A. I was to the Earl of Anglesea last.

Q. Do you know Mr. Jans?—A. I do.

Q. When were you Huntsman to Lord Anglesea?

A. I parted from him the twenty-fourth of March last, Easter-Saturday was the Day, at his own House at Bray.

Q. How long have you known Mr. Jans?

A. Six Years, or thereabouts.

Q. What is he to Lord Anglesea?—A. I always found him in the Nature of an Agent, or a Man to take Care of his Business.

Q. You know Michael Lacy?—A. I do.

Q. What has he been to Lord Anglesea during the Time you knew him?

A. In the Nature of a House-Steward, and to sell my Lord's Woods.

Q. Do you remember any Races in September last?—A. I do.

Q. Where?—A. At the Curragh.

Q. Now give an Account, whether you saw the Earl of Anglesea, Mr. Jans and Lacy, before the Races at the Curragh, at Killcullen-Bridge, or any Place?—A. I did.

Q. Begin, where you first saw them, and tell gradually, from Time to Time, Day after Day, and Night after Night, what passed from the Time you first saw them, until you came to Naas.

A. I will, Sir. Wednesday, being the first Day of the Running, I came to Killcullen-Bridge, about Ten or Eleven o'Clock, and, as I was going to the Stable, my Lord and Mr. Jans were standing at Cavenagh's Door, as I passed by them to put up my Horse. In some time after Jans came to me to the Stable, and asked me, Where I had been? I told him, I came from the County of Wexford. He asked me, Had I left Mr. Colclough? I told him, I had. He then asked me, For what Reason? I told him,

On

On account of a sore Leg that I had, and was not able to do any thing. Upon that, he said, I am sure you must know a great deal of this Affair (meaning the Pretender, as they called him). It would do great Service to tell us what you know of it. I said, I know nothing of it, at present, I give my Word. Says he, You can be of Service to my Lord, if you please; you must have heard a great deal of it. I told him, I did not hear a Word of it, but only talking about Blifs, Mr. Colclough asked me, if I knew where he was, and I told him I did not. And then Lacy came up, and Mr. Jans went out; and Lacy came to me, and ask'd me, How I did? I told him, Very well; and with that I walked out of the Stable. Mr. Jans desired Lacy to fetch me in, and make me drink; accordingly I went in, got a Drink, and we came to the Curragh that Day.

Court. Who came to the Curragh?

A. Michael Lacy and I together, and saw the Running that Day. There was no great Sport, and then I came back to Cavenagh's, and lay there that Night. And, lying there, I got up in the Morning, and went into the Entry, and Lord Anglesea saw me; he was standing in the Back-side. So, Byrne, says he, how are you? Very well, my Lord, says I. I was a little angry with you, says he, I heard in England you swore some Things against me, about that Woman called Lady Anglesea, and I find they are Lies, and am sorry I was so long angry with you. You are come from Wexford, what News there? I told him, None strange. Says he, You shall go back to Camolin again; there are a good Pack of Hounds for you, but your favourite Hound Forrester is dead. You can be of great Service to me; I shall pay you what I owe you, and double the Quantity, and you shall stay a little, and Michael Lacy will stay two or three Days, for he has some Business with you. What is it, my Lord, says I? Lacy will tell you, says he, follow his Directions. So that was very well; my Lord went to Mr. Annesley's to Dinner at Ballyfax.

Mr. Harward. Were there any Promises made you at that Time by any Body?

A. My Lord told me, he would pay me what Money he owed me.

Q. Did he say nothing further?

A. He said, He would pay me what he owed me, and double the Quantity, and I should never want.

D. Go on.

A. So then my Lord went to Dinner at Mr. Annesley's, and some of the rest of the Gentlemen, I do not know how many; but Mr. Lacy, and one Cavenagh, a Dancing-master, staid at the Bridge; and Lacy, and Cavenagh, and Esquire Berkeley dined together.

Court. What Day was this?—A. Thursday, my Lord.

D. Well, go on.

A. Then Lacy ordered me to get my Dinner, and after I had dined, there was a Sneaker of Punch, and Bob Meakins brought it in.

Q. Who?

A. The Drawer.—And after that Mr. Lacy called me into the Parlour, and made me drink Wine.

Q. Who did?

A. Mr. Lacy and Mr. Berkeley of the County of Carlow; they gave me several Glasses of Wine each of them.—Lacy and I went to the Curragh on Friday, and we were at the Curragh a good while before the Running; and after the first Heat was over, and the Horses were starting the second Heat, Mr. Lacy and I were standing at the Starting-post; says he, G—d, I'll hold you a Crown that yonder is Mac Kercher and the Pretender. Where, says I? There, says he. So they passed up till they came almost facing the Starting-post, and turned off to the Right towards the Winning-post. Lacy said, he would shew them to me. With all my Heart, said I: So we rode after them and crossed them, and says he, That's Mac Kercher, and that's the Pretender; Would you know them again? I would, to be sure, says I. Take notice, says he, that you know them again. So we crossed them again; we came to the Starting-post, and the Horses being started I rode to the round Hill to see the Heat, and when the Heat was over, I went into a Tent and drank a Pot of Beer.

Mr. Har. When Lacy desired you to take notice of them, and asked whether you would not know them again, was there any Talk between any Persons about bloody Noses?

A. Yes. He said, They will have good Luck if they have not broken Heads and bloody Noses before they leave this Ground.

Q. Was that before, or after he desired you to take Notice of them?

A. It was after.

D. Now, go on.

A. So then, I tell you, we came to the Starting-post, and went round the Course; and I went into a Tent to drink, and while I was there I heard there was a Quarrel; and hearing that, I got up, and saw People galloping down towards Ballymanny; and when the Race was over, I went to Cavenagh's that Night again: So, coming there, I did put up my Horse, and had him turned out to Grass; and my Lord Antrim's Keeper, Arthur Cook, met me: We went in and called for a Bowl of Punch; we drank about the third Part of it, and Mr. Lacy came in. So, Angus! says he. Your Servant, Mr. Lacy, Will you sit down, says I, and take a Glass of Punch? I came in, says he, with Design to drink with you. So we drank till the Bowl was out, and I called to the Drawer to get another. Says Mr. Lacy, Angus, you shall drink no more, for you shall go to bed, I shall want you in the Morning upon earnest Business. So he went up Stairs and saw me go to bed.

Q. Pray, do you know of any Pistols or Fire-Arms that were a-charging that Night?—A. I will tell you by and bye.

D. Well, go on.

A. Then, Sir, when I went to bed I lay there till in the Morning Lacy came and called me up betwixt One and Two o'Clock; I got up and I dressed myself, and he waited till I dressed myself.

Court. What Time did you go to bed?

A. I went to bed between Ten and Eleven o'Clock, I believe; I got up, he brought me down Stairs into the Kitchen, where Mr. Jans was, and several other Gentlemen, and they were charging and priming Arms when I came into the Kitchen.

Q. Who were they?

A. There was Mr. Jans, Cavenagh the Dancing-master, one Williams of Piccadilly, a Gentleman they called Capt. Stewart, and my Lord's Nephew.

Q. What were they doing?

A. They were charging and priming of Arms.

Q. What Arms?—A. Pistols and small Pieces.

Q. What Pieces?—A. A Fuzee, travelling Pieces.

D. Well, go on.

A. Mr. Jans asked me, Would I drink? I told him, I would; To the Drawer brought a Mug of Ale, and Mr. Jans afterwards gave me a Case of Pistols. What am I to do with these? says I. You are to go along, says he, with Mr. Lacy, and you are to take his Directions; he'll tell you what to do. Then I told him, My Horse is at Grass, I must send out for him before I can go. Mr. Jans said, You must ride my Horse. I then called for my Surcoat-Coat. He said, I must not ride in it, but go as I was, it will be cumbersome to you.

Q. For what Reason?

A. I cannot tell.—So, with that, the Groom went out, and saddled Mr. Jans's Horse, and the other Horses, and Mr. Chapman, my Lord's Gentleman, and Michael Doyle the Groom, and Mr. Lacy, and I went out. I got Mr. Jans's Horse, and mounted him in the Road at the End of the Stable; and they all got on Horseback; and as we got to the Door, there was a Number of Fellows with Pitch-forks and Staves, I believe Twenty of them; and we turned along the Road towards Kinnah; and when we came as far as Caffle-martin, then I asked Lacy, Where we were going? He said, to Newbridge, to take Mr. Mac Kercher, Mr. Gooltry, and Mr. Kennedy, for the Assault at the Curragh, for striking Mr. Francis Annesley and my Lord. I said, I'm sorry you did not tell me this before, for I am sorry to have any Hand in it. Sure, said Lacy, you are not afraid; you need not fear, what are they to you? What are you to expect from them? If you wanted me to go with you, I'd go farther than this with you. So we went forward to Newbridge, and when we came near the House, the Signal was given, that none of the Fellows should go to the House but one Brennan, a Tenant of Mr. Annesley's of Ballyfax, as I heard after, the Constable, Mr. Lacy, and I.

Q. What was the Constable's Name?

A. I cannot tell his Name.—So when we went in, Lacy went into a little Room on the Left-hand-side of the Door, called for White-wine, asked me to come in, and we drank it together; and Brennan and the Constable went into a Room on the Right-hand as you go up Stairs, and got Ale, and they were there for a while; and by-and-bye comes down Stairs Mr. Mac Kercher, about half an Hour after we were there; and he came down, and that Time I pointed at the Constable, that That was Mr. Mac Kercher, and the Constable came up, and I said, That's he, that's your Prisoner, take him. So the Constable came up and said, You are the King's Prisoner. With that Lacy came out and told him he had a Warrant against him for an Assault on Lord Anglesea; and Lacy and the Constable went up Stairs with him; I did not. And the other Gentlemen above Stairs were taken. In about an Hour Mr. Lacy sent Chapman and the Groom to my Lord, to let him know that they were taken; and Doyle, the Groom, left the Gun and the Pistol he had behind, by Lacy's Directions. So, in some time after, I believe an Hour, the Gentlemen got into the Coach, and Brennan got Doyle's Pistol and put it in his Bosom; Mr. Lacy had his Case in his Pockets, and took the Gun in his Hand, and a Quarter of a Mile beyond the Bridge gave me the Gun.

Q. How near the Inn was this Bridge?

A. As near as from this to the Market-house.—So, a little while after, as I said, he gave me the Gun: Here's this Gun for you, says he, your Bread is baked, you shall be provided for while you live; and, says he, you are to use this Thing, fire at the Pretender, be sure do not miss him; we have Horses to carry us off, and never fear, if we are taken, we'll make a Rescue of it, we have People enough here to prove it for us.

D. Repeat those Words that he said to you.

A. Angus, says he, you shall be provided for, your Bread is baked, fire at him, and never fear, we have good Horses to carry us off, and if we are taken, we'll make it a Rescue; we have People to prove it for us, and there is none that can prove it against us.

Mr. Harward. When he gave you the Gun, what did he desire you to do?

A. He desired me to fire at Mr. Annesley.—I will not, says I, nor have any hand in it for all the World.

Q. What followed after that?

A. I believe we went about as far as Morrisstown, when there was a Mob met us in the Road. As soon as Mr. Lacy saw them, They are coming, says he, to rescue Mr. Annesley; Now is your Time, there is no fear, we can make it a fair Rescue, and go you on one Side of the Coach, and I'll go on the other, and if you miss him, I'll hit him. With that he took my Pistol out of my Holster. What do you take my Pistol for, said I? He said, You have another Pistol, and we'll have three Shots a-piece, says he. I have it not, for Brennan has it, says I, and I'll have no hand at all in any Man's Blood, and will not commit Murder. So I came up to the Coach-Door, and he to the other, and I did no more, and he fell back again.

Q. He made a further Application to you when he saw the People coming from towards Naas?—A. Yes, he did.

Q. Where was Mr. Annesley at this Time, on Horseback, or in the Coach?—A. In the Coach.

Q. How soon before this, or seeing the People coming from Naas, was it that Mr. Annesley got into the Coach?

A. I believe about a Mile beyond that Place, where we saw the People, but I cannot be sure.

Q. Well now, while Lacy was persuading of you by these Inducements and Promises to shoot Mr. Annesley, pray how many Miles might you have gone along with one another from the first Time that he began to discover his Mind, and give you Directions?

A. I believe near three Miles from Newbridge, better than half-way, before the People from Naas met us, there or thereabouts.

Q. You had gone a Mile after Mr. Annesley got into the Coach before you saw the People?—A. Yes.

Q. Whereabouts was it that Lacy first applied to you to persuade you to shoot Mr. Annesley?

A. He began that Minute after he gave me the Gun, and he held the Discourse till Mr. Annesley went into the Coach.

Q. After that did he renew his Applications?

A. He told me, that sure I did not fear, that I never was a Coward, and that I need not fear now, and that I might be done for as well as any Man in the World.

Q. By whom, pray?—A. He told me by my Lord Anglesea.

Q. Was there any mention of any thing, upon your Refusal, to contrive your Escape?

A. He said, That I need not fear if he was killed, for, says he, we have two good Horses to carry us off, and we have three Shots a-piece, and shall be brought off in case we are taken.

Q. By

Q. By whose Means did he promise you should be carried off?
A. He said these very Words; when I told him I would not do it, nor have any Hand in it, he said, *You need not fear, for you'll be done for; never fear.*

Q. Did you get to Naas?—A. Yes.

Q. Was you brought to any Magistrate there?

A. We were brought into the House of *Drake* there, and I went out with the two Horses to the Backside; and I came in, and gave the Gun to *Drake* to put up, and went into a Street-Seat, and called for some Drink. So, in some Time after the Sovereign came, and examined, *Who gave me the Gun?* I told them, *Mr. Lacy.* They asked, *If it was my Lord's Gun?* I told them, *It was.*

Q. And whose was it?—A. It was my Lord's.

Q. How long have you known the Gun?

A. I have known it these six Years.

Q. Is it a Gun of Value?—A. It is a Screw Gun.

Q. Did you charge that Gun?—A. It was not I charged it.

Q. Do you know who did?—A. I cannot tell who did.

D. Well, go on.

A. So then they asked me, *What was I to do with it? Why,* says I, *I was to be directed by Mr. Lacy, and to do what he would have me.* So then, *Lacy* said, *You are not to tell any Thing to any Man here.* Then I stayed there some Time, and I thought to go back to *Killcullen-Bridge* for my Wallet; and my Lord's Man comes up to me to *Drake's* House, and said, *You must go to Dublin.* Says I, *John, I'll not go.* Says he, *My Lord says you must follow him to Rathcoole.* So I went, and my Lord was going off as I got there. *Mr. Jans* gave me a Shilling to get my Dinner, and *Lacy* stayed with me. We went on to *Dublin* together, and I was hired the next Day by *Lacy* for the same Wages I had before from my Lord.

Q. *Mr. Harward.* What Day was it *Lord Anglesea* spoke to you at *Killcullen-Bridge*?—A. *Thursday.*

Q. Was this apart, or in the Place he met you in?

A. In private, in the Backside; I was standing in the Entry leading from the Kitchen, and my Lord was in the Backside; he called me, and said the Words I have told you before.

Q. Did he take you privately or not?

A. He took me about as far as from this to that Door, into the Back-Yard.

Q. Was any Person present when he spoke to you?

A. Nobody was there then.

Q. You did not charge any of the Arms?—A. I did not.

Q. Do you know who charged the Gun?—A. I cannot tell.

Q. Did not you see People charging Arms that Morning?

A. I saw People in the Kitchen; they were priming of them.

Q. Did you see any body charge them?

A. I saw *Mr. Jans* charge them; it was he gave me the Case of Pistols. *Mr. Digby.* I would ask him whether, as *Jans* gave him the Pistols; he got any, and what Directions from *Jans*?

Q. He said, *I was to follow Lacy's Directions, and I was to follow what he bade me.*

Cross-Examination.

Q. *Mr. Morgan.* Did you refuse *Lacy* to have your Hand in Blood?

A. I did.

Q. Did not you consent to murder *Mr. Annesley*?—A. I never did.

Q. Did you not ride up to *Mr. Hacket* and *Mr. Annesley*, with your Gun rested upon your Saddle?

A. I did, and had it this Way on my Thigh.

Q. On what Account did you do so?

A. I rode up as *Mr. Annesley* was going into the Coach.

Q. How did you hold the Gun then?—A. It was upon my Thigh.

Q. Was your Hand upon the Cock?—A. It was.

Q. Was the Gun cock'd?

A. It was not cock'd; nor can I say that I did cock it.

Q. In what Manner did you hold the Bridle and the Gun?

A. It was in my right Hand I had my Bridle; I gave my Whip to the Constable, thinking it too cumbersome; I had my right Hand on the Bridle, and the left had the Gun with my Thumb on the Cock.

Q. Did you cock up the Gun?

A. I cannot say that I did cock it up.

Q. Was it cock'd?

A. I had the Cock half bent, and let it down again.

Q. How long was this before *Mr. Annesley* went into the Coach?

A. Just as he was going to alight.

Q. In how long Time after did you turn back?

A. A Man, one *Bernard Neale*, came to me, and kept me back.

Q. How long; half an Hour was it?

A. No; only the Coach went on a little before us.

Q. Did you go from *Newbridge* with an Intent to guard them?

A. I did.

Q. How near did you ride to the Coach all along, till you met the People?
A. Sometimes near, and sometimes at a distance, and was not above fifty or a hundred Yards at the most from it; never further, but sometimes nearer.

Q. How many Servants attended *Mr. MacKercher* and his Company?

A. I cannot tell; I took notice of one that kept by the Coach-door all the Way; there was such a Number of People along the Road, that I could not tell which were Servants, and which not.

Q. How many People might there be in all?

A. A good many, I cannot tell the Number; I believe the Matter of thirty or forty in all.

Q. What Number attended these Gentlemen along with you and *Lacy* to *Morrisstown*?

A. They attended them as well as I, and went all the Way to *Naas*.

Q. Did not you ride in company with them to *Morrisstown*?—A. I did.

Q. Where and when then had *Lacy* the frequent Opportunities you mention, to make the Applications to you to take away *Mr. Annesley's* Life?

A. Why, because we kept company together all along, and the rest went on before us; we went slow as our Horses could walk; the Constable was on one Side along the Coach commonly, and *Brennan* was before, and I took no Notice of the rest one above another.

Q. Now, Sir, I would ask you, did not you, between *Newbridge* and *Morrisstown*, frequently ride up to the Coach, and just behind it?

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A. I did.

Q. With *Lacy*?—A. Yes; and he and I were constantly together.

Q. *Mr. Spring.* How far is *Kinna* from *Castlemartin*?

A. About half a Mile; it is not a Mile out.

Q. Did you not ask *Lacy* there, what it was you were going upon?

A. I did.

Q. Did not he tell you, to arrest the Gentlemen for assaulting my Lord *Anglesea*?—A. He did.

Q. Was any body in Conversation with you?—A. Nobody was by.

Q. Was not *Chapman* with you?—A. He was before us.

Q. Now, did *Lacy* at that Time communicate to you any Design of taking *Mr. Annesley's* Life?

A. Not at that Time, he did not.

Q. When, then?

A. Not till I went over the Bridge, and he gave me the Gun.

Q. How far was you from the Bridge of *Newbridge*, at the Time of his giving you the Gun?

A. Just beyond it; at the two Cabbins that are there.

Q. How many Yards do you think it was?

A. I cannot tell the Number of Yards.

Q. You know where *King* lives over the Way?—A. I do.

Q. Was it as many Yards as his House from this?

A. I cannot tell you to the Number of Yards; but it was just at the House on the right Hand.

Q. Are the Cabbins from the Bridge further than the Houses over the Way from this Court-House?

A. I cannot tell that; but it is hard by the Bridge.

Q. At the Time that he gave you the Gun, was the Coach on before you?—A. It was.

Q. How far?—A. Just afore us, and we rode up to it.

Q. Were all the other Attendants behind the Coach at this Time?

A. Some behind and some before.

Q. Were not the greater Part of them behind?

A. I do not know, for I never minded to reckon them.

Q. Did not they all leave the Inn along with you?—A. I cannot tell.

Q. Did not a great many of them?

A. Yes, a great many; I do not know the Number.

Q. Did you perceive any body near you, when *Lacy* gave you this Gun between the Bridge and the Houses?

A. I do not know; I believe there was People, to be sure.

Q. Well then, did he tell you then you were to take away *Mr. Annesley's* Life?

A. Before I went three hundred Yards beyond it he did.

Q. You went from *Rathcoole* to *Dublin* with him?—A. I did.

Q. You were hired in *Dublin*?

A. I was, by *Lacy*, for *Lord Anglesea*.

Q. Did you, when you were hired, go to *Lord Anglesea's* House?

A. I did not go to *Lord Anglesea's* House, but kept my Horse upon the *Merchant-Quay* at my Lord's Inn, and there kept for a Week.

Q. Where did you go from that Inn?

A. I went to the *Bull's Head*, in *Abbey-Street*, and kept there.

Q. Where did you go from that?

A. I went to my Service; two Days before *Christmas-Eve* I left Town.

Q. Where did you go to?

A. I went to *Camolin*; my Lord gave me his Hounds and my own Horse, and said—There was another Mare, a black Chaise-Mare I might ride; but I did not like her, and I took my own Horse.

Q. How long did you stay there?

A. I stayed there till *March*, till after the Assizes of *Naas*, and that I heard there that I was indicted, and that *Lacy* was come home; I said it was very hard I should be obliged to run my Country, when I had done nothing to deserve it.

Q. How came you to leave my Lord's Service?

A. I asked *Lacy* first for Money to buy Shoes, and he would give me none; I then said, I would stay no longer; delivered up the Hounds to the Keeper, and the Horse, and so came to *Michael Lacy's* House in *Camolin*, got a Dram there, and came towards *Dublin*, and lay at *Bray*, and came the next Day to *Dublin*, and put up my Horse at the *York-Minster*. Then I went to my Lord's House, and when I saw my Lord, he asked me, *What I came there for?* I told him, *I had neither Cloaths nor Money, and in dread of the Indictment found against me at the Assizes.* Well, says he, *stay in Town a little, and go to Camolin, and bring up some Hounds that I have given to my Lord Tyrone; and asked me, If Fortune's Hound was at home?* and said, *Fortune he would not give him.* And one Morning, when my Lord went to *Bray*, I went to him for some Money, and found he was gone; and I went to him to *Donnybrook*: Sure, says I to one of the Servants, *he would not go, and not leave me Money! Go to Donnybrook*, says he, *and you'll meet him there; he's gone in a Hackney-Coach, and is waiting till his own is ready.* I accordingly went and met him, and I walked in my Boots. He asked, *What brought my there, and made me wear Boots?* I told him, *Because I had no Shoes, nor Money to buy any, and came to get some from him.* He swore he would give me none; and seeing that, I asked the Coachman to carry me to *Dublin*. My Lord said, *Do not go; and said, He would give me half a Guinea, and bid me follow him to Bray, and that I should then go to Camolin, and carry the Hounds to my Lord Tyrone; and then he would make a Present of me and some Hounds to some Gentleman in England.* After this, *Joe* the Coachman told him I made a great Noise for Money in *Dublin*; so my Lord came out again, and called me *Mr. Byrne*; when he called me *Mr.* I thought he was angry with me, and he came and gave me a Chuck under the Chin, and said, *You Villain, do you make a Noise about my House? get about your Business.* Green, his Nephew, bade me not go away; but to beg Pardon, and I'd get half a Guinea; and afterwards my Lord came out and gave me half a Guinea; and, *Follow me to Bray*, says he.

Q. Did you ever threaten my Lord, and tell him, *It should be worse for him if he did not pay your Wages?*

A. I never did.

Q. Do you know *Thomas Stanley*?

A. I do.

Q. Is he any Relation to your Wife?

A. I do not know but he was a Relation of my Wife's.

Q. What Character has he?

A. Aye, aye, he is a very honest Man.

Mr. Spring. I desire the Jury may take Notice, he says Stanley is a very honest Man.

Mr. Mac Manus. He does so; but every body may easily see in what manner he said it.

Witness. But he is a noted Villain in Dublin, and as any Man in Ireland.

Q. Do you know Mr. Francis Annesley?—A. I do very well.

Q. Had you any Conversation with him returning from the Wexford Assizes about Lord Anglesea?

A. I had; I told him at Killeullen-Bridge the gross Usage I had from my Lord, that I got no Money; and he said he would speak to Counsellor Annesley; and, says he, you shall be ordered your Wages.

Q. Did not you make use of some threatening Expressions if you were not paid?—A. I made no use of any threatening Expressions.

Q. Was you ever in England?—A. I was.

Q. How long was it that you went there after this Conversation?

A. About a Month, I am sure; I cannot tell what Time, for I have not the Day of the Month; I went soon after, but cannot tell the Time.

Q. What Business carried you to England?

A. I tell you. First, I went there to see two Sisters I have married there, and a Brother I have married there. Secondly, I was in dread of these Indictments, and as I was bred and born in this Country, and not noted for any thing that was bad, I went to England to beg the Gentlemen's Pardons, and try if I could clear myself.

Q. In what Part of England are your Sisters and Brother?

A. I have a Brother lives in the Coal-Yard, he is in the Guards; one of my Sisters lives at St. Mary Axe, next Door to the Hoop and Grapes; the other Sister is married to a Chairman.

Q. Was not this in April you went over?

A. I cannot swear to the Month, nor the Day I left Ireland.

Q. How many Weeks after you left Lord Anglesea was you in Dublin?

A. I cannot tell.

Q. Was it a Month?—A. I cannot swear; I believe it was a Month.

Q. Do you know Mr. Mac Kercher?—A. I do.

Q. Did you see him in England?—A. I did, in London.

Q. How long was you in London before you saw him?

A. I believe ten Days before I seen him.

Q. Was you inquired after by him, or did you enquire for him?

A. Indeed I enquired for him.

Q. When you met him, did not you give him the Account you have mentioned here?

A. I gave him no Account; I gave them to a Gentleman that drew them in Dublin.

Q. What Gentleman?

A. To the best of my Knowledge his Name is Baily.

Q. For what Reason was it that you never disclosed the Matter till April?

A. I would not then, but only that the Indictments were found against me in the County of Kildare.

Q. Who is Baily?—A. An Attorney.

Q. Where does he live?—A. I cannot tell the Place; to the best of my Knowledge he lives in Golden-Lane.

Q. Is not he now in this Town?

A. I cannot tell; I have not seen him to my Knowledge.

Q. Where do you say he lives?

A. To the best of my Knowledge his Office is in Golden-Lane.

Q. Is he a young Man, or middle-aged?

A. He is a young Man, a middle-aged Man, tall and long visaged.

Q. How came you to find him?—A. I sent a Man for him.

Q. Were you acquainted with him then?

A. I was acquainted with him two Days or three before.

Q. How came you acquainted with him?

A. A Friend of mine recommended me to him, that he was fit for my Service, that I should employ him to give my Testimony.

Q. Where did he draw this Testimony for you?—A. He drew it for me in the House of Robert Kennedy on the Blind-Quay.

Q. Who was present when he drew it?

A. Nobody was present but himself and me.

Q. Who wrote the Words you said?

A. He is the Person that wrote the Words himself.

Q. Was Mr. Mac Kercher in England when this was done?—A. He was.

Q. Was there no Draught of what you had to say drawn by your Directions before Mr. Baily drew that, by any one else?

A. I had myself drawn one before that.

Q. By whom?—A. I do not know the Man.

Q. Where was it drawn?—A. At Mr. Robert Kennedy's.

Q. The first Time?—A. The first Time and second Time too.

Q. Did you shew Mr. Baily any Draught, but what you gave out of your Mouth?—A. I did not, Sir.

Q. What did you do with your first Draught?

A. It was tore to Pieces.

Q. Had you any Paper drawn for you in England?

A. Not for me, indeed.

Q. Have you any Paper of Instructions about you what you were to swear?—A. I have not.

Q. Did you swear to the Examinations you gave in this Kingdom?

A. I did.

Q. Before whom?

A. I do not know the Master in Chancery, I forget his Name.

Q. Where does he live?—A. He lives about Chancery-Lane.

Q. Is Mr. Baily here?—A. I cannot say that he is here.

Q. Who advised you to go to that Master in Chancery?—A. Myself.

Q. Did any body attend you there?—A. Mr. Baily attended me.

Q. Did he read it and sign it?—A. He did.

Q. Who paid for that Swearing?

A. I did; I borrowed the Money from Mr. Robert Kennedy.

Q. Where did you live from the Time you left Lord Anglesea till you lived with him again?

A. I lived with Mr. Colclough, and Mr. Gerard in Dublin, and Mr. Marsh.

Q. How long did you live with Mr. Colclough?—A. About seven Months.

Q. Where did you live after that?

A. Lord Anglesea put me in the Marshalsea.

Q. For what?

A. I will tell you for what. I came to demand my Wages and my Wife's Wages, that lived with him seven Months, and my Lord would give me no Money at Bray, but said, my Wife was the vilest Woman upon Earth; and I said I was very sorry his Lordship thought so; and he gave me a Shake, and said, my Children were not my own.

Q. But what did he put you in the Marshalsea for?

A. He put me in for a sham Writ for sol. and I cannot tell what.

Q. Did you owe him any Money?

A. No; I owed him none; he owed me my own and my Wife's Wages.

Q. How long was it after that you were to kill Mr. Annesley?

A. It is near three Years; the latter End of this Month it will be three Years.

Court. What was the Reason of your giving your Whip to the Constable?—A. Because that I could not keep the Whip, the Gun and Bridle in one Hand.

Q. How long had you had the Gun before you gave the Whip to the Constable?—A. I did not go, I believe, a Quarter of a Mile before I gave it to him.

Q. You carried them that Way?

A. I did; but they were troublesome to me.

Q. You put the Gun, you say, out of your right Hand into the left?

A. I did.

Q. For what Reason?—A. Mr. Lacy was at me to fire, I would not, and I did it to let the Cock down again.

Q. Are you right-handed?—A. I am, my Lord.

Q. When you go a-fowling, on which Side do you put your Gun?

A. On my right.

Q. Always?—A. Always, my Lord.

Q. Your Gun was at first held upwards?—A. Yes.

Q. Did you after that level it?

A. I held it this way; directly foreanent the Coach-door the Gun pointed.

Q. When you shifted the Gun out of your right Hand into your left, and laid it upon your Thigh, how stood the Muzzle?

A. It stood this Way.

Q. Did it point towards Mr. Hacket or Mr. Annesley?

A. I cannot tell; but I had it this Way facing the Coach Door.

Q. Did you never rest it upon the Pommel of the Saddle?

A. I shifted it backwards and forwards.

Q. After you told Lacy you would not be concerned in Blood, how long did you continue to ride with him?—A. All along.

Q. Did you see Mr. Annesley alight?—A. I did.

Q. Who was by him then?—A. I cannot tell the Man's Name.

Q. What Posture had you the Gun in?

A. This Way. [Holding it in his left hand, with the Muzzle cocked upwards upon his Arm.]

Mr. Harward. My Lord's House-Steward, Michael Lacy, is indicted, we have had Warrants against him, and cannot find him; I want to know from this Witness, where this Michael Lacy now is, in whose Service, or upon whose Estate he lives.

Mr. Malone. He is now in this Town, and you shall have him.

Mr. Harward. Pray, Gentlemen, where is he?

Mr. Malone. You shall have him; we will bring him hither before this Trial is over. [He never was produced.]

Angus Byrne. I shall wait three hours in Court 'till I see him and talk to him.

STATE of the CASE.

Mr. Spring. May it please your Lordship and you, Gentlemen of the Jury, I am of Counsel with the Noble Earl and the other Traversers of these several Indictments.

The Traversers, my Lord, stand charged with a Crime, which upon the Face of the Indictments appears to be no more than an ordinary Assault; but this Offence, though in its nature one of the lowest which the Law takes Notice of, has by infiniteS kill and Address been heightened into a Crime of a most enormous Size; but I hope we shall be able to shew to your Lordship and the Gentlemen of the Jury, that there is not the least Foundation in Truth for the Light, in which the Counsel for the Prosecutors have endeavoured to put this Transaction.

Our Case, my Lord, will appear to be this; That the Noble Earl and his Friends, who are now upon their Trials, happened to be on the 16th of September last on the Curragh of Kildare, to partake of the Diversions of the Place: Thither repairs Mr. James Annesley, attended by his Friends, Mr. Mac Kercher, and the other Prosecutors, whether with Intent to meet the Earl, and take hold of any Occasion that might offer of a Quarrel with him, their subsequent Behaviour will best explain.

The Earl and his Friends will appear to your Lordship to have repaired to this Race-place without any Preparation for what they did not expect, a Battle; they all go unarmed, as Gentlemen always do to a Horse-race, when nothing is intended but to partake of the Diversions of the Day.

The Prosecutors, one of whom had, as it is pretended, received ill Treatment two Days before from the Earl, and had consequently Reason to apprehend the like Treatment upon the next Interview, go to that very Place, where they were thus ill used, and where it was very notorious the Earl was: but they go prepared for every Event, prepared for that skirmish, which they had Reason to expect from the Earl's pretended Misbehaviour of the 14th; they go in a hostile Manner, in terroram populi, no less than five or six of them armed with Sword and Pistol, attended by a numerous Train of Servants armed in like manner with Pistols, cutting Swords, Carbines and Blunderbusses; they go thus armed and attended to see a common Horse-race. A Race, my Lord, is a Place of Entertainment, to which Gentlemen repair without any such hostile Preparations: I cannot tell indeed what may be done in North-Britain, but in England and Ireland we have no such Custom; the usual Manner of riding to Races, is on a Hunting-Saddle, and with a Snaffle Bit.

It will appear, my Lord, by positive Testimony, that the Words charged on Lord Anglesea, of the 14th of September, as spoken to Mr. Mac Kercher; he is a Dog, a Scoundrel, a Villain, and the Coat you see on his Back, I saw not a Month ago in Monmouth-Street, were not the Words of Lord Anglesea, they were Words uttered by another Person. These Gentlemen,

two Days after these Words they complain of were spoken, repaired to this same Curragh. And here I must beg Leave once more to observe a Circumstance in itself most extraordinary: that the Prosecutors, aware of ill Treatment, aware that my Lord Anglesea intended to breed a Quarrel with them, alarmed, as they pretend, with the grossest Insolence that could be offered to a Gentleman and a Man of Honour, go to the same Place where they apprehended they had Reason to expect the like or worse Treatment. It might be expected, if these Gentlemen had not imagined they might have derived some Benefit, some Reputation to their Cause, I mean to Mr. Annesley's Claim to the Earldom and Estate of Anglesea, that they might have avoided a Quarrel with the Earl, however disposed he might have been to enter into one; but these Gentlemen, who had nothing in View but a Quarrel, go there designedly to seek one, which they at last brought upon themselves by their own Means, and without even the Concurrence of the Earl.

It will appear to your Lordship, that these Gentlemen, taking some Offence at some Expressions charged upon the Coachman of Lord Anglesea, taking Offence at his driving on the Plain, as he had a Right to do, go to my Lord and demand publick Satisfaction for the Offence his Coachman had given, by stripping him in the Field. It will appear, that Mr. MacKercher seeks out for Lord Anglesea, whom with Difficulty he found; that he was cautioned and advised not to do it; yet it will appear that he goes to Lord Anglesea; that he, who is the known Supporter of Mr. Annesley, calls to Lord Anglesea for publick Satisfaction for an Injury not done to himself, but to another; that as the Champion of Mr. Annesley, considering himself as well the Guardian of this Gentleman's Honour, as the Assertor of his Right, he went up towards my Lord, and, in a menacing and violent Manner, forces through a Crowd, and then, with his Whip lifted up ready to strike, cried out, *My Lord, you will not turn him off! Step aside with me.* Lord Anglesea, who knew the Man and his Business, which, considering all Circumstances, could be nothing but to quarrel, endeavours to avoid this Quarrel, declines going, and says to him, *Sir, you can have no Business with me; and if you have, this is no proper Place to talk about it.* Mr. MacKercher says, *I have no Business but what may be done here, every Place is proper.* My Lord then inquires what he wanted, and is answered, *My Business is about your Coachman, who has affronted a Gentleman on the Field.* My Lord asks, *Who is the Gentleman?* He is told the Gentleman is this very Person thus claiming his Honour and Estate; and that, as the Affront has been publick, the Satisfaction must be adequate, and you must strip your Servant, and turn him off directly, and drive yourself home. My Lord, this Treatment, which will appear to have been attended with Circumstances sufficient to aggravate it, if it had been quite of another Nature, will appear to be the Occasion of the Quarrel; it will appear that Lord Anglesea declined this Combat, to which he was very unequal, as he was not armed, and to which he was not obliged to expose himself: he refuses, my Lord, to turn off his Servant. Mr. MacKercher resents this; he raises his Whip in a threatening Manner, and loudly demands Satisfaction. I had almost forgot saying, that, during his whole Conversation, he held his Whip over the Earl's Head. These Circumstances and Menaces will appear, I apprehend, to be no less in Point of Law than that he first assaulted Lord Anglesea. Then it will appear that Mr. Francis Annesley, the Friend and Relation of Lord Anglesea, who saw the Head of his Family, his Friend and Landlord, thus assaulted, gives Mr. MacKercher a Blow. It will appear, that though Lord Anglesea did not strike Mr. MacKercher, yet Mr. MacKercher struck him and broke his Head. Mr. Annesley stands indicted for assaulting not only Mr. MacKercher, but all the other Prosecutors: It will appear that he, upon the giving of this Blow, received two Blows, one from Mr. Gosstry, and one from Mr. Kennedy, and both behind his Back. My Lord, Mr. Annesley will appear to have been thus assaulted by those two Persons, and yet this is he that is indicted for assaulting Mr. Gosstry and Mr. Kennedy. It will appear that Mr. Annesley called out, and desired to know who had struck him; and being informed who they were, then, and not 'till then, returned the Blows. With respect to Mr. Jans, it will appear that he is the Agent of Lord Anglesea, that he saw his Employer, we may call him his Master, struck and affronted; and that will be a proper Defence for him. As to the Assault upon Mr. James Annesley, there is no Evidence of any such Assault. I shall give your Lordship no further Trouble at this Time. If I have omitted any thing material, there are other Gentlemen joined with me in this Service, who will supply my Want of Recollection.

Mr. Morgan. I believe this is our Time to have the Benefit of the Testimony of some of the Traversers in Favour of others of them. As to the Indictment for assaulting Mr. MacKercher, Lord Anglesea, Mr. Francis Annesley, Mr. Jans and Lady stand charged with that Indictment; and I beg Leave to appeal to your Lordship's Notes, whether there be any Colour (from the Evidence given on Behalf of the Crown) for this Indictment as against Mr. Annesley and Mr. Jans; and therefore hope that they only will now be given in Charge to the Jury, and that the Jury may be directed to bring in their Verdict as to them, in order, that if they be acquitted upon that Indictment, my Lord Anglesea may have the Benefit of their Testimony upon the same. When that is done, we shall beg Leave to proceed in like manner upon the several other Indictments, as to such of the Gentlemen as we apprehend have not been affected by the Evidence given on Behalf of the Crown.

Court. Upon the whole Evidence, I take it, that the Assault upon Mr. MacKercher stands already proved against Mr. Francis Annesley only, by Mr. MacKercher, Mr. Kennedy and Mr. Gosstry; the Assault upon Mr. Kennedy stands proved against Lord Anglesea and Mr. Jans, by Mr. Kennedy and Mr. Archbold: As to the Assault upon Mr. Gosstry, the only Person that speaks to that is Mr. Gosstry himself, who says, Mr. Annesley struck him with his Whip two Minutes after he had struck Mr. Annesley; so that upon that Indictment Mr. Annesley is not guilty in my Apprehension, and may be admitted as Evidence to that.

Mr. Harward. I do not know, my Lord, what those Gentlemen would be at; I apprehend the Practice they would introduce is new and unwarranted. Here are in each of these Indictments my Lord Anglesea, Mr. Jans, Mr. Francis Annesley, and the out-standing Man indicted; there are four of them in each Indictment.

Court. It is my Opinion, the Gentlemen of Counsel for the Traversers may separate the Indictments.

Mr. Harward. My Lord, I do admit the Practice to be, that where it has appeared to the Court upon the Trial, that all the Persons who could give any Account of the Offence have been indicted, or Bills have been found against all the Persons present when the Offence was committed: If it appears upon the Trial, that some of those Persons have not been guilty of the Offence, for which they were indicted, I cannot say, but it may be the Practice in such a Case to separate the Indictments, and permit such as shall be found not guilty to give Testimony for the rest, who happen to be indicted; and that may be reasonable from the Necessity of the Thing, as there can be no other Evidence for the Traversers, there being no other Persons present at the Time of committing the Offence; otherwise the Consequence might be, that all would be found guilty where the Offence was privately committed, though, in fact, some of them were innocent. But where the Offence has been committed before Thousands, as here, and that four Persons only are indicted for this, and that after six Hours Examination it does appear most evidently, that each of these Four have had a Hand in the general Affray, though not in the Assault of every of the Prosecutors, I would submit it, if that be such a Case, as from the Necessity and Nature of it, where there can be no want of other indifferent Witnesses presumed, the Court will permit that one of them should be at liberty to give Evidence for the other. The Consequence of it may be, that they may acquit each other of the several Indictments, and they are not such equal and indifferent Witnesses as the Law requires, each of them being proved to have had some Hand in one Part or other of this general Affray, though not in the actual Assault of every of the Prosecutors, and the Evidence in the whole reaches every one of the Traversers. Can it be said, that those Gentlemen, against each of whom Evidence has been given, are so unbiassed as to be fit Persons to be examined as Evidence in the Case of each other? I humbly apprehend not; and that it may be an Inlet to Perjury, and in great measure defeat the End of all Publick Prosecutions for Breach of the Peace. I beg Leave to say, that Lord Anglesea is guilty of the Assault upon each of the Prosecutors: It has been sworn that he cried out, *Knock them down, knock them down.* By those Words he is a Trespasser against every Man that was knocked down there. I apprehend the Law to be, that he who directs a Man to be knocked down is a Principal, as well as the Man who commits the Fact. Has it not been sworn, that he not only encouraged, but also gave Directions to pursue Mr. Annesley?—Why, then, as to Mr. Annesley of Ballysax, does it not appear evidently, that he was the Person who rushed out upon Mr. MacKercher and struck him, and that afterwards he fell upon Mr. Gosstry? I think there can be no Doubt but that my Lord Anglesea and Mr. Jans have been most deeply concerned in this whole Affray, not only of assaulting Mr. MacKercher, but also of the rest. When my Lord was told by Mr. MacKercher, *That he dare not for his Soul single himself out;* Mr. Jans said, *Sure you would not do it; are there not enough of us here to go out and to fight him?*

Court. Upon three of these Indictments there has been no Evidence given that can affect Mr. Francis Annesley, and therefore he is at Liberty to be examined.

Mr. Harward. My Lord, I humbly apprehend, that neither Mr. Annesley nor any of the Traversers have the Liberty to be examined 'till they are acquitted. I apprehend, though they may not be affected by Evidence on this or that particular Indictment, that they are not thereby cleared of this Charge; because the Gentlemen of the Jury are to consider upon the Circumstances and the Evidence of this whole Case, whether they are all guilty or not? And the Court are no Judges of Facts, the Jury must determine, and are the proper Judges of them.

Court. But you will allow the Judge to say, that there has been no Evidence of such or such a Kind given that can affect such or such a Person?

Mr. Harward. That I do not dispute, my Lord; but what I say is true in Point of Law, that the Court have nothing to do with the Determination of the Fact; that is to be left to the Jury; and if so, why then, I say, that in this Case, the Court cannot foresee who shall be found guilty upon this or that Indictment, and who not.

Court. Why, shall I not tell the Jury, that there is no Evidence against such or such a Person, and that they ought to be acquitted?

Mr. Harward. You certainly will, my Lord; but, notwithstanding that Direction, may not the Jury be of another Opinion concerning this Matter, and may they not conceive, that all those People in general have been guilty, though no Evidence appears against Mr. Annesley in particular? Unquestionably they may. Now, if it should be done, perhaps your Lordship will not fine them above a Penny, unless the Jury can satisfy the Court, that they went upon their own Knowledge from the whole Evidence, which, in all probability, some of them will in the present Case. So that they are the Judges of the Fact; and, if so, I would submit it, whether or no the Court can say, in a Case of that Nature, We will let one of you be Evidence for another, and so the third for the fourth, and by that means shift and help one another quite out of this Prosecution?

Court. I am greatly surprised that the Time of the Court is taken up with contending about this Fact of separating the Indictments. You have debated it before, and it was mutually agreed, that that Point should be given to them. For my Part, I think in point of Law they have a Right to insist upon that, and when it was agreed upon that they should be allowed it, I thought that Method was come into in order to save Time. The Argument which is insisted upon, that where an Indictment is laid against a Person *simul cum* others, they shall be all tried together, concludes against that which I have known done over and over again, and which hardly escapes ever being done in case of an Action of Assault against A, with *simul cum* other People.

Mr. Att. Gen. Here is an Indictment against Lord Anglesea, Mr. Francis Annesley, and Mr. Jans, for an Assault, suppose, against Mr. Gosstry; has not any one of these three Persons a Right to say Mr. Jans is put here to cut me out of my Evidence? They certainly have. I desire that Mr. Jans may be first tried, and that his Indictment may be disposed of before any other Proceedings be had against the other two; that if he be acquitted, he may be Evidence for them. And as this would be the Law and the Consequence in the Case of a Traverser, so the Law would be the same in

in any other Case. Why then, this is clear that the Agreement has passed in this Manner; the Gentlemen of Council for the Traversers made their Objections to the Indictments being tried together, and those on the other Side replied. What was their Answer? It was, that where this or that Person was not convicted on any one Indictment, he should be at Liberty to give his Evidence for the others on that Indictment.

Mr. Mac Manus. Here are four several Indictments against the Traversers at the Bar for four Assaults; and they are jointly charged in each Indictment. And where an Offence arises from a joint Act, which is in itself criminal, the Defendants may be indicted jointly and severally, as that they, and each of them, did so and so, or jointly only. So is the Law. Now, my Lord, consider, how it has appeared in Evidence; it has most fully and clearly appeared, that all Parties indicted have, one and all, jointly contributed to this unlawful Act; and please to consider the Objection these Gentlemen make, that if they are deprived of this Benefit, they may want the most proper and material Evidence for their Defence; as if some Persons might have been here indicted in order to take off their Testimony. Your Lordship will please to observe where this Action arose, at the Curragh of Kildare, a public Place, where there were a Multitude of People assembled; so that there could be no Defect of Testimony at all on their Side, if any Persons did or could see or hear any thing for their Service; and Numbers of Persons did and must have seen this whole Transaction; Curiosity, Humanity, or some other Motive, must have engaged every Eye and every Ear. Then, where there were so many Witnesses that might be had upon this Occasion, who would either voluntarily, or might have been compelled to come, if material; there can be no Complaint of Want of Evidence, or that the Prosecutors have taken this Method to deprive them of their Testimony. And, my Lord, these Indictments were of the last Assizes, so there is no Surprise; the Gentlemen might have been fully prepared with any Evidence they thought necessary for their Defence, without this extraordinary, this new Method of splitting Indictments. And I do apprehend, in this case they are in no fort entitled to the Testimony of each other. It is a settled Point, that in Trespas, though one may act more violently, more injuriously than another; yet, when all join in an unlawful Act of this nature, the Act of one is the Act of all. And though A did not strike B, yet if he struck C, where the whole is, as here, one continued Affray, he cannot possibly be a legal and competent Witness against the Crown; the whole is given in Charge to the Jury; he has been in the Affray, and actually committed Acts of Violence; and it has appeared uncontroverted in Evidence, that every Person here indicted has been guilty of one Assault or another; and that all have been guilty of a publick and dangerous Disturbance of the Peace.

Court. It has not appeared upon the Evidence, that Lord Anglesea or Mr. Fane actually assaulted Mr. Mac Kercher.

Mr. Mac Manus. My Lord, all the Acts of Violence of the Day proceeded from the Directions of Lord Anglesea; menacing Words, lifting up of Hands, his raising himself up on his Saddle, commanding and inciting others to strike; he himself, as Mr. Kennedy and Archbold swear, violently striking Kennedy on the Head, and Fane joining him in the Strokes till the People cried out Shame; and though opprobrious, abusive Language may not be an Assault, yet, there are many Things that they carried into Action, not only by Words, but by Gestures, that prove the Assault. My Lord Anglesea was so near Mr. Mac Kercher at the Time when Mr. Annesley struck him, that he could have struck him himself. Every Thing was done by his Directions; and menacing Words, with a lifted Hand, are an Assault in Law; and I do insist upon it, in point of Law, that whoever excites, persuades, or procures another to commit a Trespas or Treason is a principal Offender, and equally guilty in Law, as he who strikes; and more especially so when all are present; and my Lord Anglesea and Fane were indisputably present, aiding and assisting the assaulting of Mr. Mac Kercher, and are in Law guilty of that Assault.

Mr. Callaghan. My Lord, as I do on the one Hand agree, that Traversers are not to be laid under extraordinary Hardships, and that Prosecutors by no means are to make use of any Contrivance, any Scheme to entrap Men, in order to deprive them of the Benefit of defending themselves; so, on the other Hand, they are not to elude the Rules of Justice, by becoming Evidence for each other. I put it upon the Gentlemen on the other Side to shew, that ever they met in any Law-Book, that where there was a Fact done in the Presence of many, and a few only charged with it, that, on the Trial of those few Persons, the Indictments should be separated, to make them Evidence, in case of their Acquittal, for one another. I am the bolder in this Assertion, because it is never done, but where extreme Necessity requires it; that Necessity can never happen, but when all that were present at the Time the Offence was committed, are charged in the Indictment with the Committal of it: The Necessity, therefore, of examining any of the People charged with the Offence, if acquitted, as Evidence for the rest, cannot be, but where there is nobody else to give Evidence. In that Case, it appears but just and reasonable; but, on the other Hand, if you let those four People be Evidence for one another, when many other Witnesses might be had, who must have seen the whole Transaction; there is no Prosecution of this nature that will not be eluded. But, my Lord, I will go further, and I do say that every Person charged here is guilty of every Indictment with which he is charged. Wherever there is an Affray or an Assault, let who will be the first Promoter, every Man that does any Act whatever, that is aiding and assisting in any manner, is guilty of every Act which is done by the rest, as much as if done by himself; where there are several People that commit an Affray, each is answerable for the Act of the other. There is a Charge against Lord Anglesea in every Indictment; it stands proved in Evidence he has beat Mr. Kennedy; there, my Lord, is a direct Charge; and, though it does not appear he actually struck the rest, yet it is uncontroverted the rest were struck on his Account, and by his Directions, and in Law he is as guilty of the Assault committed on them, as if he himself had actually beat them; I say, in point of Law he is guilty of all those Facts for which he is indicted. Let any one of them separately be tried before the Jury, and I will undertake to make them guilty in point of Law; and if so, I humbly submit it, whether they can be permitted to try these Indictments separately.

Court. Was it not agreed upon at first, that if any of the Traversers

were acquitted of any of the Indictments, they should be Evidence for the rest charged with such Indictment?

Mr. Harward. Let us not be charged by the Court with a Breach of Consent. I will tell you very candidly what I meant, when the Objection was made. My Meaning was, that as all these Indictments were but upon a single Fact, if it should appear, through the Course of the Evidence, that any of the Traversers had no Hand at all in the Fact, but were idle Spectators there, I thought it reasonable that such Person, who did appear to be only a Spectator, should be examined as Evidence for the rest. That was my Meaning, my Lord; how I was understood I cannot account: But I beg leave to rely upon it for Law, and desire your Lordship's Consideration; Can any body that lifted his Hand up that Day in the Field, be innocent of this Assault? Can it be said that he is not guilty of all the Consequences of it?

Court. Well; but have they not a Right to be tried separately?

Mr. Harward. That is another Point, my Lord.

Court. Gentlemen of Council for the Traversers, you must go upon that Indictment, which the Jury are first charged with. The Traversers are first charged with the Indictment for assaulting Mr. Goofry.

Mr. Malone. The Indictment for assaulting Mr. Goofry, is in no fort proved against the Traversers. We have many Witnesses to shew, that before ever he was struck, he knocked Mr. Francis Annesley down, which indeed he very candidly admits himself; and this appears so clearly from his own Testimony, it would be mispending the Time of the Court for us to call our Witnesses to it. Your Lordship observes, that in two Minutes after Mr. Francis Annesley got up, and recovered himself, Mr. Goofry swears my Lord Anglesea said to Mr. Francis Annesley, That is he, that is Goofry, the greatest Rogue alive, damn him, knock him down. Mr. Goofry does not say, whether he heard Mr. Francis Annesley ask my Lord, who had knocked him down; but, from the Nature of the Things, it could not be otherwise; and the very Answer itself imports such a Question. A Gentleman is knocked down behind his Back (for so the Evidence is), and instantly, when he gets up, was it not most natural for him to enquire who struck him? It was to this Inquiry, most plainly, that Lord Anglesea gave that Answer; and then Mr. Francis Annesley goes up to Mr. Goofry, and returns his Compliment by breaking his Head. I submit it, therefore, to your Lordship, where a Witness fairly owns he first knocked me down, whether that is not such a sufficient Justification for my striking him, that I need not lay any other Matter before the Jury; for, if Mr. Francis Annesley, who gave the Blow, be not guilty of this Assault, it is impossible my Lord Anglesea, or Mr. Fane, who did not strike, should be guilty of it. Therefore, I hope your Lordship will acquaint the Jury, that there is no Colour for charging any of the Traversers with this Indictment.

Court. Mr. Goofry said, that he was struck, and was all bloody; but I heard none say that Lord Anglesea or Mr. Fane struck him, and Goofry did acknowledge that about two Minutes before he received the Blow he had struck Mr. Francis Annesley, and at the Time that he did strike him, did say, that he believed Mr. Francis Annesley did not know who it was that struck him, and that about two Minutes after my Lord Anglesea said, There is that Villain Goofry that struck you; upon which Mr. Francis Annesley struck him. This, as I remember, was Mr. Goofry's Evidence.

Mr. Harward. I now desire to know when it was that Lord Anglesea said, Knock them down, knock them down.

Mr. Callaghan. Mr. Goofry expressly swears, it was by the Directions of Lord Anglesea, that Mr. Francis Annesley struck him. He says, I thought the Quarrel was all over, there were above two Minutes between the Strokes, and then my Lord Anglesea said, There is the Villain Goofry, knock him down.

Mr. Malone. It does not appear from Mr. Goofry's Testimony, that my Lord said, Knock him down; the utmost Goofry said, was, that my Lord said, There is the Villain, that is he.

Court. I have nothing upon my Paper about his saying any thing concerning the knocking them down.

Mr. Bagon. My Lord, I have it upon my Paper, that Mr. Goofry said, There is Goofry, as great a Villain as any in Ireland, knock him down.

Mr. Mac Manus. We desire Mr. Goofry may have leave to inform your Lordship what he did say.

Mr. Goofry. My Lord said, There is Goofry, another of the Villains, as great a Rogue as any in Ireland, damn him, knock him down.

Court. You see, Gentlemen, Mr. Francis Annesley was struck by Mr. Goofry, on Evidence, two Minutes before he struck Mr. Goofry, can he then be found guilty of an Assault on Mr. Goofry?

Mr. Grattan. Mr. Goofry said, That there was Hurry and Confusion, and that during that Time he struck Mr. Annesley, and believes Mr. Annesley did not see him strike him. I take the Liberty to say, that if Mr. Annesley did strike Mr. Goofry, and did not see Mr. Goofry strike him first, it was the same Thing, in the Intention of his Mind, as if he had not struck him first: for, since he did not know who had struck him, and yet struck Mr. Goofry, it shews plainly he was determined to strike him, and nothing can justify Mr. Annesley for striking him, but the Provocation of his striking Mr. Annesley.

Mr. Callaghan. There is another Matter, my Lord, which is to be considered, that Mr. Annesley struck Mr. Goofry after his Passion was over. It is true, there is no limited Time for determining a Man's Passion, and a Man may in Passion commit an Act, and not be the Assailant. Your Lordship may remember many Cases in the Books to this purpose, which it is not necessary to trouble you with; but the Rule is, where a Man has cooled and come to temper, there the precedent Act, which was the Effect of Passion, is no Justification of the subsequent Act. Mr. Goofry's Evidence is: I did apprehend all that Matter was over; I do not apprehend the Stroke Mr. Annesley gave me was in consequence of the Stroke he had received, but of Lord Anglesea's Directions; and if so, Mr. Annesley is undoubtedly guilty of the Assault on Mr. Goofry.

Mr. Malone. As to the Indictment for the Assault on Mr. Goofry, we contend for it, that there is no Colour for charging the Traversers with that Indictment, and hope your Lordship will let it go to the Jury upon the Evidence of Mr. Goofry.

The Counsel for the Prosecutors were over-ruled in their Objection.

The Jury go to find whether Lord Anglesea, Mr. Francis Annesley, and Mr. Jans, are guilty of the Assault on Mr. Goostry, on the first Indictment; and, after a quarter of an Hour's stay, return into Court, and find

Lord Anglesea — Guilty.

Mr. Francis Annesley — Not Guilty. — Mr. Jans — Not Guilty.

Court. Gentlemen of Counsel for the Traversers, call your Evidence.
[Neile O'Neile is called to the Second Indictment, for assaulting Hugh Kennedy, Esq.]

Mr. Malone. There are three Gentlemen, my Lord, Lord Anglesea, Mr. Annesley, and Mr. Jans, indicted for assaulting Mr. Kennedy; they have traversed this Indictment, and Mr. Kennedy himself swears this Assault only on Lord Anglesea.

Court. And upon Mr. Jans; and there is not only his Evidence to prove it, but the Evidence of Mr. Archbold.

Mr. Malone. But there is no Sort of Evidence to affect Mr. Francis Annesley, and therefore, I hope your Lordship will direct the Jury to acquit him, that we may have the Benefit of his Testimony upon this Indictment.

Court. Have you any Objection, Gentlemen concerned for the Crown? You have not offered a Word upon this Indictment.

Mr. Harward. What I have offered before, is all any body can offer to this; and I believe it will soon be seen what the Consequence of it will be.

Court. I call upon you to know, whether you've any Objection to the examining Mr. Francis Annesley on the Indictment for assaulting Hugh Kennedy, Esq.

Mr. Harward. We have an Objection; we do object against examining him, and submit it to the Court.

Mr. MacManus. My Lord Anglesea and Mr. Francis Annesley mutually assisted each other; it is all one and the same Trespass, all one and the same Affray, each is *Particeps Criminis*, and the whole Scene is interwoven, and mixed together.

Mr. Malone. There is not a single Word of Evidence given, to prove that Mr. Francis Annesley was concerned in the Assault upon Mr. Kennedy, and Mr. Kennedy himself swore to that Effect; therefore we desire that Mr. Annesley may be acquitted of that Indictment, and permitted to give his Evidence.

The Jury go to find, whether Francis Annesley, Esq. is guilty of the Assault on Hugh Kennedy, Esq. or not; and, without quitting the Box, find him — Not Guilty of the Assault in the Indictment.

Mr. Malone. We are now upon an Indictment of Lord Anglesea and Mr. Jans, for assaulting Mr. Kennedy, and desire Mr. Annesley may be sworn.

I FRANCIS ANNESLEY, Esq.

Mr. Spring. Were you present upon the Curragh on the 16th of September? — Mr. Annesley. I was.

Q. I ask you, was you upon the Course at the Time of the Race?

A. I was.

Q. Was you present when Mr. MacKercher and his Company came up upon the Horse-Course?

A. I never saw one of them before that Day in my Life.

Q. Did you see Mr. Kennedy come up to speak to Lord Anglesea?

A. I don't remember that I ever saw his Face before this Day.

Q. Did you see any body come to ask him about his Behaviour?

A. I did.

Q. Who? — A. Mr. MacKercher.

Q. Do you remember any such Person upon the Course that Day, as Mr. Kennedy?

A. I was told after, that his Name was Kennedy, and I saw some Strokes between him and Lord Anglesea.

Q. Can you say that the Person you saw there was the same with him you now see here?

A. I don't remember his Face at all, but was told it was he.

Q. Can you take upon you to say you saw him that Day?

A. I did not see him that Day that I know of.

Q. What colour'd Cloaths had the Person on you saw engaged with Lord Anglesea?

A. It was Scarlet.

Q. And did not you see his Face?

A. I saw his Face, but I don't know it again.

Q. In what Situation was you when he struck you?

A. I had my Back to him.

Q. How do you know then that he struck you?

A. I apprehend, though my Back was to him, it was he, and upon his striking me, my Lord struck him.

Q. Did you see him strike my Lord? — A. I did.

Q. Which of them gave the first Stroke?

A. The first Stroke that was given was by my Lord to Mr. Kennedy, some Minutes after I had got a Stroke upon my Head.

Q. Were Mr. MacKercher and Mr. Goostry near? — A. They were.

Q. Was Mr. Jans near Mr. Kennedy?

A. I believe Mr. Jans was pretty near, but not within Reach of him.

Q. Did you see Mr. Jans or he give any Stroke to each other?

A. I did not.

Q. Do you think Mr. Jans could have struck him without your seeing him? — A. I don't think he could.

NEILE O'NEILE.

Mr. Morgan. Pray, Sir, do you know the Inn at Newbridge?

O'Neile. I do.

Q. Where was you on the 13th of September, in the Night?

A. In the Afternoon I went there, I was at Lord Besborough's; and Mr. MacKercher, Mr. Kennedy, and Mr. Livingstone, to the best of my Knowledge, sent a Messenger to my House to speak with me.

Court. Who told you they sent to speak to you?

A. My Wife, when I came home.

Q. Did you go to them? — A. I went to Newbridge.

Q. What Day was this? — A. It was the 15th I went to the Races.

Q. You went to them? — A. I did.

D. Name them again.

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A. Mr. MacKercher, Mr. Kennedy, Mr. Livingstone, and Mr. Goostry.

Mr. Morgan. Where did you go to the 15th? — A. To Newbridge.

Q. When you came there, who did you meet, and what passed?

A. On the 15th, the Gentlemen never were upon the Sod before, and they went all together to the Curragh.

Court. Upon the 15th?

A. Whatever Day the Race was, it was that Day, — on Wednesday, — as to the Day, I cannot be positive, I did not observe the Day of the Month. — It was the 14th: There was never a Horse to start but one. They said, they never were upon the Ground but at that Time, and upon going to the Curragh, there was no Diversion, and we came back, and Mr. MacKercher said, he saw Lord Anglesea, *See what a Look*, says he, *he gave at us all that Day*; but, says he, *I want nothing but to expose him to the Populace, and I'll make it my Business to do it before I go back to Dublin.*

Q. Who was the Company? Name them.

A. There was Mr. MacKercher, Mr. Kennedy, Mr. Livingstone, and Mr. Goostry present, and I don't know but Mr. Robinson was there.

Q. Can you be positive who was there?

A. I know Mr. MacKercher, Mr. Kennedy, Mr. Livingstone, Mr. Goostry, and Mr. Annesley were there.

Mr. Harward. My Lord, I desire the Court may take Notice he swears positively that Mr. Livingstone was one of the Company, and we can prove him to be in England at that Time.

Witness. In England! I can bring People to prove, that saw him in Naas the next Day after the Races.

Mr. Spring. Was you upon the Curragh the 16th? — A. I was.

Q. Was you there when Mr. Kennedy was there?

A. I saw him there.

Q. What Part of the Curragh did you first see him on?

A. I went along with him to the Curragh, for we dined at Newbridge that Day.

Mr. Att. Gen.] If you can prove, Gentlemen, that Mr. Livingstone was not there, what need you ask this Man another Question?

Mr. Malone.] My Lord, we will produce the top Men of the Country to his Character.

Mr. Spring.] Was you by with Mr. Kennedy when he met my Lord Anglesea?

A. I was by with him most Part of the Day.

Q. Then give an Account of what happened when they first met?

A. I cannot tell whether I was present at their first Meeting; but when they met, they never spoke a Word to one another, but at the Time of the Action.

Q. What Action, was there a Quarrel?

A. There was a Quarrel, and Mr. MacKercher was the Beginner of it. So there happened some Words that the Coachman had said to Mr. Annesley; and upon the same, Mr. MacKercher was very angry, and said, that the Thing was intended on purpose.

Court.] To whom?

A. To Mr. Kennedy and the Gentlemen in the Crowd with him; and I was there at the same Time.

Q. What Words were they?

A. The Words *Shoe-boy*, or some such Thing. — And upon that, he said, *He would make Application to my Lord, and if he did not discharge the Servant, he would have Satisfaction for it.* Upon which, my Lord happened to be down where there was a Dispute about Sir Edward O'Brien's Mare running on the wrong Side of the Post; and we rode around until they came to the Winning-Post, where my Lord was. Upon which, Mr. MacKercher told him, *That his Servant used him ill, and hoped for Satisfaction from him, and that he would turn him off.* My Lord said, *He would not.* And upon that Mr. MacKercher said, *He did not use him well, and would have Satisfaction.* And he had the Whip up in his Hand in order to strike, and he rode a Stone-horse, and he was vicious, and I don't know whether the Stroke was intended for my Lord or for the Horse.

Mr. Spring.] Did you see Lord Anglesea and Mr. Kennedy together that Day? — A. I saw them close together.

Q. Did any Thing happen between them?

A. I saw them strike one another.

Q. Who? — A. Mr. Annesley and Mr. Kennedy.

Q. Give an Account of that?

A. When Mr. Goostry struck Mr. Francis Annesley, he was for about two Minutes before he found out who it was. Upon which, he asked who it was; and my Lord said, *That is the Man, that Goostry*, pointing to him. Upon which he went over, and made a Stroke at Mr. Goostry, and there were some Strokes that passed; and upon that, Mr. Kennedy came and made a Stroke at Mr. Francis Annesley, and hit my Lord over the Wig, but whether it hurt him or no I cannot tell, or whether the Stroke was intended for him or not, I cannot tell.

Court.] Did you see the Stroke reach my Lord?

A. I did see it reach him upon the Wig.

Q. Did you see my Lord strike Mr. Kennedy?

A. I did. As soon as he received that Stroke, he up with his Whip and struck him.

Mr. Spring.] Did you see Mr. Jans there? — A. I did.

Q. Where was he at the Time of this Quarrel? — A. He was in a Crowd.

Q. Did you see any Engagement between Mr. Kennedy and Jans?

A. I did.

Q. Who struck first?

A. That I cannot swear to at all, which of them struck first; for the Crowd rushing backward and forward, I could not be distinct.

Q. Was the Blow given by Mr. Kennedy to Lord Anglesea, before Mr. Jans and Kennedy were engaged?

A. It was before I saw them engaged.

Q. Which struck first, Jans or Kennedy?

A. By virtue of my Oath, I cannot tell which; I saw Blood run down Mr. Kennedy, and whether it was he struck Mr. Jans first or no, I cannot tell: for when I saw my Lord receive the Stroke, I turned about my Horse, and did not mind. I was just crossing between him and my Lord, and whether Mr. Kennedy struck at Jans first I cannot tell.

Q. But you said you saw Mr. Kennedy strike Lord Anglesea before you saw Lord Anglesea give a Stroke? — A. I did, Sir.

Q. What happened between Mr. Kennedy and Mr. Jans?

A. I cannot tell.

Court.] Gentlemen concerned for the Crown, will you ask this Man any Questions?

Mr. Harward.] We will not ask him any Question, but beg, for Justice sake, he may not be permitted to get out of the Court, till we proceed to give Evidence against him for Perjury.

Court.] How long have you been acquainted with Mr. Mac Kercher?

O'Neill. I believe since his first coming into the Kingdom.

Q. And with Mr. Kennedy?—A. Yes.

Q. And with Mr. Gosfry?—A. No, not with him.

Q. How came you to go with them to the Curragh?

A. I had an Intimacy with Mr. Annesley, (for he was some time at my Father's House when a Child) on his first coming into the Kingdom, and they sent for me.

Q. On what Business did they send for you?

A. I cannot tell, my Lord.

Q. Who went to the Curragh with you?

A. We went all together to the Races, and we had discourse as we went along.

Mr. Mac Manus.] Who did they then send for you?—A. Several.

Q. Who were they?—A. Their own Servants.

Q. Name the Servants.—A. One Barney Neale, and several of them.

Mr. Digby, Foreman of the Jury.] Did you meet me coming home on the Road that Day?

A. Yes, Sir, I believe I did, I cannot recollect.

Q. Did you say any thing to me?—A. I cannot say I did.

Q. Did not you express Concern to me at the Treatment Mr. Mac Kercher and Mr. Annesley had received?—A. I do not remember that I did.

Q. Did not you express yourself, that you thought they were used very hard?—A. I do not know but I might tell you so.

Mr. Har.] I desire, my Lord, that Mr. Livingstone may be called, to satisfy you he was in England last September.

Court.] You had better stay a little.

[Patrick Cavenagh is called, and goes away again, being to be examined to another Point.]

Mr. Callaghan.] We'll beg Leave to produce Mr. Livingstone, to shew your Lordship where he was in September last.

WILLIAM LIVINGSTONE, Esq.

Mr. Callaghan.] Where was you in September last?

Mr. Livingstone.] In London.

Q. Was you any Part of that Month in Ireland?—A. I was not.

Q. When did you come over to Ireland?

A. It was the Middle of October before I came to this Kingdom.

[Mr. Malone informs the Court, that in October he saw Mr. Livingstone at Parkgate ready to embark for Ireland.]

Cross Examination.

Mr. Spring.] Do you know this Mr. Neile?

Mr. Livingstone.] Yes, Sir.

Q. Did you ever see him in Mr. Mac Kercher's or Mr. Kennedy's Company?—A. I have.

Q. Were they not well acquainted?—A. Yes, I believe they were.

Q. Was he employed by Mr. Mac Kercher or Mr. Kennedy?

A. Sir, when we came first into Ireland about two Years ago, Neile met us uncall'd-for at Kill; he told us a great deal of his Knowledge of Mr. Annesley at Kinna, and the Witnesses that knew his Affairs; and often came about us upon that Errand, till at last he came so often, that he was used with the utmost Disregard; and when we found out his Character, he was never suffered to come about the House at all.

Mr. Digby.] What Character has he? Do you think he is an honest Man?

A. We were Strangers in this Country; he looked like an honest Man to us at first, but upon a better Information we found him quite the Reverse.

Mr. Mac Manus.] My Lord, we desire my Lord Allen may be sworn, to give a Character of this Man.

The Right Honourable Lord Viscount ALLEN.

Mr. Mac Manus.] Pray, my Lord, do you know this Neile O Neile?

Lord Allen. I know him very well, and believe no Man bears a more infamous Character in the County of Kildare.

Q. Does your Lordship think he deserves any Credit?

A. I am confident he does not; he is a very great Villain; I would not credit him, nor believe one Word he says. I know that no Gentleman would admit you into his Company at the Time you were employed by me; and my Uncle and I had often many Words because I employed you, and we found you out to be the greatest Rogue that could be.

Court.] Do you think he is a Man to be credited upon Oath?

A. No, my Lord, he is not.

Mr. Mac Manus.] We beg leave to produce the Minister of the Parish where he lives.

The Rev. Mr. JOHN DAWSON.

Mr. Mac Manus.] Do you know Neile O Neile?

Mr. Dawson. I know him ever since I came into the Parish of Naas.

Q. How long is that, Sir?—A. I have been two Years there.

Q. What Character has he generally bore during that Time?

A. I have always heard he was a Person guilty of as many Frauds as he was capable of committing; I cannot account for his Morals, but he is a Person that was always very litigious.

Q. What is his general Character?

A. Why, I protest, I have known him guilty of Numbers of Lyes and Falshoods, and is a Person, I think, not to be credited.

Q. Do you believe him a Person to be credited upon his Oath?

A. The general Character is, that he is a Person not only litigious, but capable of any Cheat imaginable.

Q. Is he, or is he not to be believed upon his Oath?

A. I should give little Credit to his Oath, because I have heard his Word so often forfeited.

Lord Viscount Allen.] He is the greatest Rogue alive. 'Tis nine Years since he robbed me; I have had Warrants out against him, and could never catch him, but will now send him to Gaol before I leave this Town.

Mr. Malone.] We desire Maurice Keating, Esq. may be called to the Character of O'Neill. [Mr. Keating is called, but does not come into Court.]

Mr. Spring to Mr. Dawson.] Was not this Neile an Agent to Mr. Mac Kercher and Mr. Annesley?

Mr. Dawson. He had the Repute in Naas some time ago of being a strenuous Friend of theirs; but I never saw him about them; I had no Occasion to interfere in their Affairs.

Court.] Gentlemen of the Jury, the Lord Anglesea and Mr. Jans stand indicted for an Assault on Mr. Kennedy. I shall only tell you, Gentlemen, that I find, on the Recollection of the Evidence, it stands fully proved by Mr. Kennedy and Mr. Archbold, that both his Lordship and Mr. Jans, without Provocation, without any Attempt in Mr. Kennedy to strike a Blow, did strike and sorely beat this Gentleman. Thus it stands proved upon their Testimony; and, Gentlemen, the only Evidence offered to take off this Charge was first Mr. Francis Annesley; and I do think you may lay what he says entirely out of the Case; for he tells you he never saw Mr. Kennedy before this Day, and did see Lord Anglesea and a Gentleman in Red engaged that Day on the Curragh; but who that Gentleman was he cannot tell, and knows not whether it was Mr. Kennedy or not, but that he saw several Blows pass between them. And Mr. Annesley with great Candour and Integrity said, that if it was proved that Mr. Kennedy and that Gentleman were the same, he saw him give no Provocation; so that it still remains clear and undoubted upon the Testimony of Mr. Annesley, that my Lord Anglesea and Mr. Jans are both guilty of the Assault upon Mr. Kennedy; for he tells you farther, that the first Stroke that was given between them was by my Lord. Why then the only other Evidence produced was a Person of extremely different Character from Mr. Annesley, one Neile O Neile, a Surgeon from Naas; and what does he say? He tells you that he was at the Inn of Newbridge with those Gentlemen; that he was sent for by them to Naas, and being from home, was told, when he returned, they had sent for him, and that there he went and found Mr. Mac Kercher, Mr. Kennedy, Mr. Gosfry, and twice I am positive, I think three times, swore that he saw Mr. Livingstone there too. That with these Gentlemen he went to the Curragh; that in the Way Mr. Mac Kercher told him, He wanted of all Things in the World to expose the Lord Anglesea to the Populace, and was determined to do it before he returned to Dublin; that for that Purpose he began the Quarrel: but says he did not see Mr. Mac Kercher strike my Lord, nor attempt to strike him: That he was upon a vicious Stone-Horse, and whether he lifted up his Whip to correct his Horse, or for what other Purpose, he cannot tell. He tells you further, that he saw Mr. Kennedy strike my Lord, but knows not whether he intended to strike him or not: and says, he believes the Stroke did not hurt my Lord. That upon this, my Lord struck him; but if you believe him, the first Blow hit upon my Lord. Why then, this Man having sworn that Mr. Livingstone was one of this Company, and it being alledged that he was then in England, Mr. Livingstone was sworn to account whether he was or no. He declares upon his Oath he was not in Ireland at that Time, but in London, and came over to this Kingdom in October; and says, he knew that this Man was acquainted with Mr. Mac Kercher and Mr. Kennedy, and employed by them; but that he met them on the Road uncall'd-for, frequently attended them under Pretence of serving them, until at length he became so troublesome, they were obliged to dismiss him, and forbid him to come near them. Then, in the next place, in order to discredit him further, the Counsel for the Prosecutors called my Lord Allen to give a Character of him; and his Lordship tells you, that he is of a most infamous Character, of such a one, that his Lordship swears positively he is not to be credited on his Oath. The same bad Character is given him by Mr. Dawson, the Minister of the Place where he lives.

You see, Gentlemen, there is nothing in the World offered but the Evidence of this Man to take off the Weight of Mr. Kennedy and Mr. Archbold; and you will consider what Credit he deserves.

The Jury go to find whether Lord Anglesea and Mr. Jans are guilty of the Assault upon Hugh Kennedy, Esq. or not; and find

Lord Anglesea - - - Guilty.

Mr. Jans - - - Guilty.

The Indictment for the Assault on DANIEL MAC KERCHER, Esq.

Mr. Malone.] This, in reality, is the main Indictment, upon which all the rest have been grounded. It does not appear by any Evidence, that my Lord Anglesea and Mr. Jans had any hand in assaulting him; and therefore we hope, upon the Rule you have laid down, to be allowed the Benefit of their Testimony. Mr. Mac Kercher himself, in his Evidence upon this Indictment, does not pretend that either Lord Anglesea or Mr. Jans did assault him on the Curragh. If I mistake your Evidence, you'll set me right.

Mr. Mac Kercher.] What do you understand, Sir, by assaulting me?

Mr. Malone.] I mean a Blow.

Mr. Mac Kercher.] I cannot say they gave me any Blow.

Court.] The Account Mr. Mac Kercher gave was, that after a good deal of opprobrious Language, he told my Lord Anglesea, He lied, and dared me for the Soul of him sin-le himself out, and tell him so. That upon those Words Mr. Francis Annesley stepped forward, and struck Mr. Mac Kercher upon the Forehead, which occasioned a Swelling and a Bleeding: and I do not recollect that Mr. Mac Kercher gave any thing in Evidence that my Lord said or did to him more than this.

Mr. Malone.] As there does not appear any Evidence that can affect Lord Anglesea and Mr. Jans on this Indictment, we beg leave to desire your Lordship will give the Jury some Directions concerning them before we proceed further.

Mr. Harward.] I believe there can be very little Doubt, when you consider, but that Mr. Jans is guilty of the Assault upon Mr. Mac Kercher; and I'll tell your Lordship the Reason why I apprehend it so; because there is no Controversy but that this Man, upon the Words which passed between Lord Anglesea and Mr. Mac Kercher, rushed out and said, Sure, my Lord, you would not offer to fight this Fellow, while there are so many here by to fight him for you. What follows upon this? Why then, one of this very Company goes out and strikes him. Pray, my Lord, are not they

all guilty of the Trespass committed against him? I do say they are all Principals, and that there is no distinguishing in Law between the Man that struck, and the Man that assisted by Word or Act.

Mr. MacKercher.] I apprehend the Question to be, Whether my Lord Anglesa and Mr. Jans assaulted a particular Person whom they incited others to strike, and whom their Rage and Passion would have inclined them to strike, if they could as forcibly have struck him, as they did other Persons nearer to them of the same Party. In Construction of Law it is an Assault; they both did assault Mr. MacKercher, and that clearly appears from the Evidence.

Court.] The Evidence of Mr. MacKercher was, that upon my Lord's calling him *Thief, Scoundrel, and Villain*, Mr. MacKercher said, *You dared not for your Soul single yourself out, and tell me so.* Upon which some that were by said, *My Lord, you go fight such a Scoundrel! here are enough to go out with him.* What ensued upon this? Why, then Mr. MacKercher tells you, that upon further Words between them, he said, *My Lord, you lie;* and that immediately upon his saying so, not a Word said by any other Person, Mr. Francis Annesley stepped forward, and struck him a Blow on the Forehead.

Mr. Bagot.] If I apprehend his Testimony aright, Mr. MacKercher said the Words, *You lie*, were antecedent to the other Words.

Court.] The Jury, I see, have taken very accurate Notes, and they'll take care to do what is right.

(PATRICK CAVENAGH, Dancing-Master.)

Mr. Morgan.] Do you recollect where you were the 16th of September last?—Mr. Cavenagh.] I do.

Q. Where was you?—A. I was at the Curragh at the Time of the Races.

Q. Did you see Lord Anglesa there?—A. I did.

Q. Did you see Mr. Jans there?—A. I did.

Q. Did you see Mr. MacKercher there?—A. I saw him there.

Q. Give an Account to the Court and the Jury, what you recollect to have passed touching Mr. MacKercher's coming up to Lord Anglesa.

A. I heard some little Thing when I was at Kilkullen-Bridge before the Race, of some Design, and it made me a little more particular. My Lord Anglesa was going down to the Winning-Post when the Dispute was about the Running of the Horses, and I parted from him there; and as I was going, I saw these Gentlemen, Mr. Annesley, Mr. MacKercher, Gosfry, and Kennedy, going towards Lord Anglesa. When I saw that, I immediately recollected what I had heard at the Bridge, that there would be a Quarrel; upon which I returned immediately again, and when I came up, I found there was a Crowd about them, and they were engaged in Words: And I just came up at the Time when my Lord Anglesa said, *Sir, I would not suffer my Servants to affront any one, let alone a Gentleman.* I just came in upon that Answer, and I don't know what passed before at all.

Q. What did Mr. MacKercher reply to that?

A. I could not hear well what he said, for he spoke very low; but Lord Anglesa spoke very loud.

Q. Was Mr. MacKercher near Lord Anglesa?

A. He was close to my Lord, the Horses Heads were just together; and then I heard Mr. MacKercher some little Time after say, *My Lord, your Servant has affronted a Gentleman.* And my Lord answered, *What Gentleman?* And Mr. MacKercher assured him again, *That he was a Gentleman;* but did not tell who he was.

Q. Did not he tell my Lord at all who he was?

A. Mr. MacKercher assured him twice or thrice that he was a Gentleman, and insisted upon my Lord's doing him Justice, without telling him who the Gentleman was, but at last pointed to him; upon which, when Mr. MacKercher insisted on that, and desired him to turn him off, my Lord said, *Is it for you?* or Words to that Purpose. And Mr. MacKercher still insisted upon it for affronting a Gentleman.

Q. Was Mr. Francis Annesley or Mr. Jans near my Lord at this time?

A. Mr. Annesley was close by my Lord, and so was Mr. Jans; they stood close together, and my Lord a little on one Side speaking to Mr. MacKercher.

Q. What was it my Lord said to Mr. MacKercher?

A. My Lord said, *He would not turn him off for him.*

Q. What ensued upon that?

A. Mr. MacKercher insisted upon it, and held up the Butt-End of his Whip to my Lord; upon which Mr. Annesley gave him a Blow before he could give my Lord a Blow, if he intended it.

Q. Did he positively turn up the Butt-End of his Whip?

A. He turned up the Butt-End of his Whip, Sir.

Q. How did he hold his Whip when he spoke to my Lord?

A. He had the proper End of it in his Hand first; but upon my Lord's refusing to turn his Coachman off, he turned his Whip, and said, *You won't turn him off, my Lord!*

Q. What Kind of a Whip was it that Mr. MacKercher had?

A. I cannot be particular.

Q. Was it a long or a short Whip?

A. It was a long Whip; it either had a Lash, or was one of the Whips with a prodigious long End to it.

Mr. Harward.] Was it not a short Jockey-Whip?—A. It was not.

Q. Had it a Lash to it?—A. I don't believe it had a Lash, but he took it about the Middle, or thereabouts, in his Hand.

Q. Did he hold it in a threatening Manner?

A. He did, and said in Anger, *You won't turn him off, my Lord!*

Mr. Morgan.] Was there, or was there not before that Time in which he turned his Whip, any Stroke given, by virtue of your Oath?

A. There was none given before that Time, by virtue of my Oath.

Q. Did you observe Mr. Jans at that Time?—A. I did.

Q. Did you see him do any Thing?—A. I did not.

Q. Did you see him strike Mr. MacKercher, or any body?

A. I did not. He spoke to Mr. MacKercher, and asked him, *Dared he ask any one else there, for he was not worth my Lord's while?*

Mr. Digby.] I think you said, some Conversation had passed at Kilkullen-Bridge, about a Design to quarrel?

A. I heard there, as I was mounting my Horse, that there would be a Quarrel.

Q. When was it you heard so?

A. It was the Morning, the 16th, before I went to the Curragh.

Q. Who was it told you so?

A. I heard that a Gentleman came from Dublin, and told Mr. Jans there would be a Quarrel, and I think it was he told me; that there would be a great Quarrel at the Curragh that Day.

Q. Who said this?

A. I heard it from Mr. Jans, and, I think, Mr. Tynan. Jans said he was informed by one out of Dublin, that there would be a Quarrel there.

Q. When did Mr. Jans say he was told so by one from Dublin?

A. He said, he heard by one from Dublin that Morning, that there would be a Quarrel.

Mr. Bagot.] You say, that Mr. Jans told you he heard from Dublin there would be a Quarrel; did he hear it from Dublin, or from a Gentleman that came from Dublin?

A. He told me from a Gentleman that came from Dublin.

Q. Do you know the Road from Dublin to Newbridge?

A. Not very well.

Q. Do you know whether Newbridge lies on the Road between Kilkullen and Dublin?

A. I know it does not lie on the Turnpike Road.

Mr. Digby.] Explain yourself, what you mean had passed when Mrs. MacKercher had challenged my Lord.

A. When my Lord refused to give him Satisfaction, he said, *He dared not tell him so aside by himself.* And my Lord said, *He would go with him aside.* Upon which Mr. Annesley and Mr. Jans said, *He should not.*

Q. You said Mr. Jans told you, he was informed of a Quarrel that would happen; I ask you, whether he told you the Gentleman that informed him gave him any Reasons why he apprehended there would be a Quarrel?

A. Mr. Jans told me, he was informed there would be a Quarrel, that a Gentleman from Dublin told him there would be a Quarrel; and told me no more.

(Cross-Examination.)

Mr. Harward takes a Gentleman's Whip in his Hand, and says, *A Thong-Whip is where there is a Thong, this is a Fox-Hunter.*

Cavenagh.] I understand it to be such a Whip as that; I cannot tell what you call it.

Mr. Harward.] This is a Fox-Hunter. Now, Sir, will you take this Whip, and shew us how Mr. MacKercher exercised his Whip?

A. Sir, this is the Way he had it when I saw him first, [*holding the Handle in his Hand*] and while I saw him talking with my Lord, he took it up in this Manner [*holding the Whip by the Middle*].

Q. Tell what People were next to you at that Time.

A. I do not know who was next to me, for I did not know them; I saw Mr. Jans on the other Side, almost opposite to me, and Mr. Francis Annesley, Mr. Kennedy, and Mr. Gosfry, were, I think, together to my left Hand.

Q. Now, I think you said, when Lord Anglesa was challenged, you understood it was a Challenge to fight?—A. I did.

Q. I think you have also said, that Lord Anglesa upon that said, he would go out and fight Mr. MacKercher?

A. He said he would go with him, but I do not think he would have gone.

Q. Are you sure he said he would go out and fight him?

A. I am sure he said so.

Q. What was it my Lord said?

A. Mr. MacKercher asked him the Question twice or thrice; upon which my Lord said, *Well, I will.* And the others said, *He should not.*

Q. Did what Mr. MacKercher said appear to be in a challenging Manner?—A. It did.

Q. When Lord Anglesa said he would go out with him, did not you apprehend that he would go and fight with him?

A. How do I know, Sir, whether he would or no?

Q. What did you understand my Lord meant?

A. To me it looked indeed as if they would be engaged.

Q. What did you apprehend my Lord intended to do upon his saying those Words?

A. I did not believe my Lord would go out to fight.

Q. You apprehended Mr. MacKercher meant that my Lord should go to fight?—A. I did.

Q. If so, what Reason could make you not apprehend that my Lord did not mean to fight?

A. No, perhaps not, it might be otherwise; it did not come to that Issue, therefore I cannot judge.

Q. Had my Lord any Arms?

A. He had not.

Q. Are you certain that Mr. MacKercher meant to fight?

A. Indeed I cannot tell. How can I be certain? If you challenge me, how do I know whether you will fight me or no?

Q. What do you believe?

A. I protest I cannot answer whether they would have fought, if my Lord had gone.

Q. Do not you believe, if a Man challenges another to fight, he who gives the Challenge means to fight?—A. I do believe.

Q. Do not you believe the Man that accepts the Challenge does?

A. It is probable he does; but I do not believe my Lord intended to fight.

Q. What Kind of a Whip had Mr. MacKercher in his Hand?

A. It was a long Whip, a hunting Whip.

Q. Was it not a Jockey Whip that Mr. MacKercher had that Day?

A. It appeared to have a Tail twice as long as this almost; (the Witnesses at the same time held out a hunting Whip with a long Lash to it.)

Q. To Mr. MacKercher. Had you ever such a Whip?

A. I might possibly some time or other in my Life have had such a Whip in my Hand, but I never make use of such a Whip; I had a very small Whip, one of the smallest Size, that Day.

DENNIS TYNAN.

Mr. Spring. Do you know Mr. Jans?

Tynan. I do.

Q. Recol-

Q. Recollect what Conversation you had with him at the Time of the Races at the Curragh, the 15th or 16th of September, concerning any Quarrel that you had heard there was likely to be? Had you any Conversation with him?—A. I had.

D. Tell what it was.

A. On Monday before the Races, I cannot tell the Day of the Month now, but I could if I was in Dublin, because I kept a regular Table.

Q. What do you mean by a regular Table?

A. I mean of my Business.

Q. What Business do you follow?—A. That of a Druggist and a Dyer.

D. Well, go on.

A. Mr. Usher of Balscon and Purcell the Butcher, as he told me he was, the Man that kept the young Earl some time, they were in my Shop; I happened to be backwards when they came in, and when I saw them, I came out to know what Business they had, and I first spoke to Purcell, and asked what he wanted. He told me they were come there to wait for the young Earl. I went backwards on that, and came into the Shop again; and in a little while after, Mr. MacKercher came into the Shop, and spoke to my Man over the Counter. I did not hear what he said, and my Man had a Room over the Way, and they went there together and stayed for some Time; and while he was away, says I, *Is that the young Earl? No, by G—d, says Purcell, but a cleverer Fellow, a Fellow that would whip the old Earl if he had bold of him.* Aye, says Usher, *by G—d he would wring his Nose.* So Mr. MacKercher came back, took Coach and went off; and they went off after him.

Q. What Day was this?—A. It was Monday.

Q. Tell what you did relate to Mr. Fans.

A. I told him, that my Servant had told me, that Usher had told him, there were ten Men armed and gone to the Curragh.

[Note, Mr. MacKercher and his Company did not set out till Wednesday.]

Court. To Mr. MacKercher. Do you hear what this Man swears; was you ever in his Shop?—A. I do not know that ever I was.

Cross Examination.

Mr. MacManus. Do you know young Mr. Annesley?

A. I believe I should know him.

Q. Was you ever in England, Sir?—A. I was.

Q. Was you ever concerned in the Prosecution of Mr. Annesley at the Old-Bailly?—A. Not upon the Prosecution, upon my Oath.

Q. Was you a Witness there?—A. I will answer you. I was to be a Witness to tell what I knew of one Paul Keating.

Q. Do you know Mr. Giffard?

A. I do. Mr. Fans brought me to him, and desired me to tell Mr. Giffard what I knew of Paul Keating.

[Hereupon this Witness was turned off the Table by the Traversers own Counsel.]

The Jury go to try whether Lord Anglesea and Mr. Fans are guilty of the Assault on Mr. MacKercher or not, and find

Lord Anglesea—Guilty.

Mr. Fans—Guilty.

Mr. Spring. My Lord, I do not know whether it will be necessary to trouble your Lordship with any further Evidence; for my Part, I am satisfied to rest upon the Evidence of the Crown, and not trouble your Lordship and the Jury with any thing further upon that Evidence; but my Duty calls upon me to do every thing I can for my Clients, and therefore with respect to Mr. Annesley, I would say a short Thing. The Jury will consider who was the first Aggressor in this Assault, and will find it was Mr. MacKercher. I do insist upon it, in Point of Law, that the lifting up an Hand in the manner Mr. MacKercher did, as appears even from his own Confession, is in point of Law an Assault; it appears, and the Jury cannot forget, that these Gentlemen went into the Field armed and prepared for Battle, that they went to this Horse-Race attended by many Servants, all armed in an unusual Manner, in such an extraordinary Manner, as cannot be justified by Law; because going armed to Places, where all other People generally go unarmed, is in *terrorem populi*, and not suffered by the Law. Why then Mr. MacKercher and his Company, who, as they pretend, had been insulted by my Lord on the 14th, repair to the same Place again armed in this manner, which plainly shews what their Intent was, and that it was no other but to bring on a Quarrel with my Lord Anglesea. It appears from the Evidence, that upon some Indignity offered by a Coachman to Mr. James Annesley, Mr. MacKercher goes to call Lord Anglesea to an Account, and demand publick Satisfaction, and it appears that he was cautioned not to go for fear of bringing on a Quarrel, and that, notwithstanding, he went and forced through the Crowd to get at my Lord; so that it appears, instead of declining a Combat, as he would willingly make you believe he did, he brought it upon himself, he went to call upon Lord Anglesea for an Offence not done to himself, he calls him out to fight him, and my Lord declines doing so, by telling him, *This is no Time nor Place, you see I have no Pistols.* Mr. MacKercher answered, *Your Servant has affronted a Gentleman, Mr. Annesley, and as it was publick, it is expected that you strip him and turn him off.* And so my Lord, to satisfy Mr. MacKercher, must take upon him to drive his own Person home in this Coach. This Treatment of a Nobleman, must call for such a Degree of Resentment, as must of Necessity have ended in a Quarrel; it tends plainly to a Breach of the Peace, and I would know what Right Mr. MacKercher had to resent an Affront done to another, and demand Satisfaction in such a manner, as no Gentleman would have complied with. What Right had he to prescribe the Method of receiving this Satisfaction? That very Circumstance plainly shews he had an Intent to quarrel, and his Manner of demanding Satisfaction, amounts to a Challenge. Why then, if, besides this, your Lordship and the Jury will please to consider, who the Person affronted is, and for whom this publick Satisfaction is demanded, that my Lord Anglesea looked upon him as his Brother's Bastard, by a Kitchen Wench, and knew he was claiming his Estate and Titles; I hope you will think my Lord's Behaviour was no more than could reasonably be expected from him, under such Circumstances. But this is not all, Mr. MacKercher gives my Lord the Lye, desires him to withdraw with him, and in case of his Refusal, threatens him with a lifted-up

Hand. Mr. Cawley positively swears to his lifting his Hand with the Butt-End of his Whip towards my Lord, and threatening him at the same time; and Mr. MacKercher in his Evidence does not deny but he might do it. He says indeed, that he has a different manner of carrying and holding his Hand from other Persons, that it was his Custom in Conversation to raise his Hand; it may be so to his Footman, but to a Peer of the Kingdom, an Earl of Great Britain, that raising of his Hand did not become him, and was in point of Law an Assault: Why then, what is the Consequence? Here is a Gentleman, Mr. Francis Annesley, attending Lord Anglesea: this Gentleman, his Tenant, his Relation and Friend, sees him thus affronted and assaulted, and strikes the Person who threatened to strike him; I do say, that Mr. MacKercher thus assaulting Lord Anglesea, could expect no other Return, than that which Mr. Annesley made him. It was incumbent in some measure on Mr. Francis Annesley, even for the Safety of Lord Anglesea, to do what he did. Was he to wait for this Gentleman drawing out his Pistol? Did it not seem incumbent on him to prevent this? I beg leave to say it was, and that he was justifiable in point of Law, if he had been no Relation or Friend to my Lord, but even a Stranger, and saw him threaten'd in the manner Mr. MacKercher threaten'd him, he ought to prevent the Quarrel likely to ensue between them; and if in so doing, he hurted Mr. MacKercher, he is justified by the Law. It would be taking up too much of your Time to say more; but for my Part, all Circumstances considered, I am only amaz'd, that instead of the slight Injury done those Gentlemen, they were not much worse off.

Court. What you have offered may be considered as a Mitigation of the Offence, but not by the Law as a Justification of it. I already find that the Jury have determined upon that Assault, to be an Assault committed by my Lord Anglesea upon Mr. MacKercher; because had it appeared from Evidence that Mr. MacKercher had assaulted my Lord Anglesea first, the Jury could not possibly have found the Lord Anglesea Guilty. As to Mitigation, that is a Matter proper for the Consideration of the Court when they come to give Judgment for the Offence. But as to the Assault of Mr. Francis Annesley on Mr. MacKercher, it stands proved against him by the Evidence of Mr. MacKercher, Mr. Kennedy, and Mr. Gossey, and in my Apprehension he is guilty of that Assault. Now, as to the fourth Assault, that on Mr. James Annesley, I believe that fourth Indictment may go to the Jury. It appears to me, that the most Part of the Evidence as to that, was principally material for the Consideration of the Court to determine their Discretion, to shew the Nature and general Tendency of this unfortunate Affair. But, I say, that as I recollect it, it does not appear upon the Evidence, that any one Person struck, or attempted to strike Mr. James Annesley; and before any Words were uttered by Lord Anglesea, directing the Pursuit of him, there was an Account brought that he was gone off the Sod, and then those Words were spoke by my Lord, *Follow the Son of a Whore, and knock his Brains out.* Mr. Annesley gallops away, and falls into a Ditch, and there lay in a very miserable Manner; but how that happened is accounted for, by the Feet of his Horse slipping into the Ditch; it does not appear that it was by a Stroke given by any body; it does not appear that any one Person did attempt to strike him; there was a Gentleman, that one of the Witnesses said, had not he interpos'd, would have struck him; but he is out of the Case, and not to come within your Consideration. If you that are concerned for the Crown have any thing to say, proceed.

Mr. Harward. We are ready to offer what occurs to us upon this Indictment; and, my Lord, I humbly apprehend that this Question is reduced to a very single Point of Law upon the following Facts; that Mr. MacKercher being apprehensive of an Intention in Lord Anglesea and his Company to murder him and all his Friends, desired Mr. Annesley, who was his chief Care, to get away as fast as he could. It is given in Evidence that Mr. Annesley did so, and also that upon my Lord Anglesea's hearing that he had left the Field, that he cried out to the People about him, *Pursue him, and tear him Limb from Limb.* In consequence whereof, several did pursue, and drove him on full Speed; and Word being brought back to him that he was killed, my Lord approved of it, and said, *All well.* This being the Fact as nearly as I can recollect it, I apprehend the Law will be clearly determined by your Lordship in our Favour. Lord Anglesea, throughout this Evidence, has appeared to have abused this Gentleman, to have assaulted some of his Friends, for which he and some of his Associates are found guilty; here is an Abuse given to this very Gentleman precedent to every thing that happened; here follows an Assault upon two or three of his Friends, and Advice being brought from the Place where the noble Lord and his Associates were, of his bad Intentions to this young Gentleman, for fear the like Fate should attend him, he is desired by one of them to run away, or he would be murdered. The Minute my Lord hears he has left the Field, he hallooes to all his People after him, to tear him Limb from Limb, and one of the Pursuers attempts to strike him, but was prevented. This is clearly proved by the Evidence offered to your Lordship; and this being so, then the Question is, whether my Lord Anglesea is guilty of an Assault upon this Gentleman, who was thrown into the Ditch by his Horse, as he was turning him about to defend himself against the Pursuers? I submit it to your Lordship, whether you won't take the whole Case, both Words, and Facts, and Circumstances, into your Consideration, and then pronounce what the Law is. Why then it appears, that this Gentleman, upon the Pursuit of him, finding the People come up so close to him, turned his Horse to defend himself; and then it appears that the Horse fell into the Ditch, and upon him, and there he received his Hurt. The Question then is, Whether or no Lord Anglesea is a Principal in this Assault or not? Whether he was not the Cause of the Hurt that Mr. Annesley received by the Fall of the Horse upon him? I believe Nobody will deny, but that the Persons who actually pursued and gave Occasion immediately to this Fall, were guilty of an Assault, and also of the Battery and wounding received by the Fall. There is a Difference in point of Law between an Assault, a Wounding and a Battery; an Assault is in its Nature of the least Degree of these Kind of Offences. If this Gentleman, who was thus pursued, had happened to be drove into the River Liffy and drowned, there I apprehend every Man that pushed him to the Brink of that River was guilty of his Murder. The Law is clear, that in High Treason and Trespas they are

Principals, and there can be no Accessories in those which are the highest and lowest Offence; the Persons aiding, inciting, in any kind of Language or Overt-Act, are all Principals; and if I am present, and encourage or desire a Man to break another's Head, and he does it, I am guilty of that Assault. If the Persons then, who have pursued this poor Gentleman, had been guilty of Murder, in case he had been forced into the River and drowned, I would be glad to be informed by the Counsel of the other Side, how it comes about, that the Law should be more tender in determining a Man to be a Principal in Trespass, than it does in Cases of Murder; I presume they must allow the contrary, and that there is more Indulgence shewn in favour of Life. And if the Case I put, would have been Murder in the Pursuers, and also in Lord Anglesea, I think the Consequence must be, that he is to be looked upon as a Principal in the Assault, as all Cases of Murder include a Trespass; also there are many Mitigations in Cases of Killing, not allowed in an Assault: So that I am at a loss to find how it can be imagined that a Man is not guilty of an Assault, when, if the Person he pursued had been driven into the River and drowned, he would have been guilty of Murder. If this be the Case of the Principal, pray consider, whether any Distinction in Law, or in point of Reason, can put Lord Anglesea in a better Condition, with regard to the Offence, than the Persons he prevailed upon to do it. He was the first Person that stirred up these Men to pursue, who were the Occasion of the Fall into the Ditch; he was the principal Agent, who wrought up their Spirits to execute that unlawful Intention which he had against him, and approved of what was done, when he heard Mr. Annesley was dead. I beg leave to say, that every Act they did in pursuance of his Directions, is his Act in point of Law; and the Law does not separate any of them, but makes them all Principals in Trespass. I would suppose, my Lord, that instead of a brutish Mob, I had got a mere Brute, a fierce Dog, and halloo'd him at a Gentleman without Provocation, and this Gentleman had leap'd into a River to escape from the Dog and was drowned; and if it had appeared I had halloo'd this Dog in order to wound, hurt, or frighten him into this Distress, am not I the Cause, and guilty of all the Distress the Dog frightened him into, and guilty of this Murder? And, tho' the Dog did not come so near as to bite him, and that he rather chose to leap into the River and be drown'd, than be mangled by this Dog, I conceive it would be a Case of Murder, and that it would be so. I put another Case: Suppose a Man designedly had scared another Man's Horse with an Intention that he should do some Mischief to the Man that rode him; the Rider is thrown upon this, though the Man never meddles with him, only scares his Horse; if he breaks his Neck in the Fall, is not that Murder? I must humbly insist upon it that it is, because the Law will not permit any one, either by himself, or others by his Procurement, to do any Act, whereby another's Property or his Life may be in danger or destroyed. Why then, I apprehend, that if my Lord Anglesea had ordered the Men to pursue in such a manner, that they had affrighted this Gentleman's Horse, and that he was unruly, and he had broke his Neck, I look upon it that that was a determinate Murder in Lord Anglesea. If in point of Reason, what I have mentioned has not the Weight that I proposed by it, to prove that this was an Assault in consideration of the Law, as much as if my Lord had with his own Hand broke his Head; I will put your Lordship in mind of a determined Case that comes up to the Point in question, and is this: There was a Man confined above Stairs in a Castle; another Man below sends armed Men up in order to murder him; they get into the Door, and run up the Castle Stairs. As he found them coming up, the Man had not resolution to stand; he thought he might have some Prospect of escaping, by leaping down from the Top of the Castle; he leap'd down from the Battlements, and it so happened that he broke his Neck and died: And in that Case I recollect, upon the Determination of the Judges, there was no doubt but that it was clearly Murder in the Man that commanded them, as well as in those, who by their Appearance of Violence, occasioned him to leap down. Here, my Lord, there was no Stroke given, no Man came near him, they had not got up to the Place where he was; however, the Man not being of Resolution strong enough to wait their cutting his Throat, he chose to leap down, and by that lost his Life. Here was no Election left to Mr. Annesley, he was thrown down by his Horse. If a Man lets loose a mad Bull, knowing him to be so, with Intent only to frighten People, it is Murder in him if any body is killed. Now, my Lord, as I have mentioned some Cases, which I conceive would be held to be Murder, if they were to be determined by your Lordship; and, as I have mentioned others upon my Memory, which have been so determined, and that would make this Fact, had this Gentleman died, Murder in Lord Anglesea; I am at a loss in recalling any Distinction taken in our Law-Books, that any Fact, which would be Murder in case the Person died, shall be extenuated, and said not to be an Assault in case he survived it. I know the Law is quite the contrary, and takes large Strides in Matters of Assault to come at Offenders, to protect the publick Peace, when it will not go so far as to take away the Life of a Man upon a capital Prosecution. I shall only trouble you with this further; that there can be no doubt but that Lord Anglesea gave the Directions I have mentioned, desired them to go and tear him in pieces; it is as certain that People did go and pursue; and it is to be left in the Breast of the Jury, whether that Pursuit was in consequence of my Lord's Directions, or not; and whether it is so natural to believe that this Crowd of People, who don't appear to be any way concern'd, or to have any Ill-will towards Mr. Annesley, would have pursued and halloped after him, who was galloping away to save his Life, had it not been in pursuance of my Lord's Commands, who had such Influence on them. This is to be left to the Consideration of the Jury, and I apprehend you will be pleas'd, when all the Words and Circumstances attending this public Affray, is taken into your Consideration, from the Beginning to the End, to direct the Jury to find my Lord guilty of the Assault against Mr. Annesley, as he not only directed it, but approved of it, when done; nor can he complain of it as a Rigour in the Law to charge him with an Assault, where his Directions amounted to a Crime of Murder.

Court.] Gentlemen of the Jury, this Case, upon the Evidence, stands thus: Mr. Annesley is already gone off the Sod by the prudent Advice of Mr. Mac Kercher; he goes away after Mr. Mac Kercher had given him

this Advice, and before the Words are uttered by my Lord; which it is insisted upon is a Foundation for the Jury to find the Traversers guilty of the Indictment for assaulting Mr. Annesley. You must observe, Gentlemen, Mr. Annesley is not driven off the Ground; he is prudently gone already: upon which Intelligence, Lord Anglesea does most improperly, and in a manner that the Court will consider when they come to pronounce their Judgment, call aloud and say, Follow him, and knock his Brains out. The material Evidence to what happened to Mr. Annesley, after he was thus gone off the Field, was Mr. Archbold, who was several times ask'd, I ask'd him myself no less than three times, Did any of the People that you saw follow, in pursuance of and under the Influence of that Direction given by my Lord Anglesea, strike him? He did not say they did. And when he was ask'd, if they pursued Mr. Annesley by my Lord's Directions, or for what other Purpose, he could not account for that; he said, some might, and some might not; some might follow him out of Curiosity, and others not, so far as he could judge. There does not appear after this any Blow given; there does not appear any actual Attempt, upon the Evidence, or any actual Blow by any Man to Mr. Annesley in the Ditch. Nothing appears, but that several People, some out of Curiosity, and some with different Intentions, rode after him, who is already gone, and not forced to go. He goes off the Field by Advice from his Friend, he is followed, after he is gone, by these People, he apprehends he is pursued by them with an evil Intent, he turns about to face them and defend himself, and in the Turn his Horse throws him into the Ditch, upon which he lay senseless, and no Person whatever attempts to hurt him: this, I say, is the Evidence; and I can't persuade myself to direct the Jury, that any of the Traversers are guilty of assaulting him.—As to the other Indictment for the Assault on Mr. Mac Kercher, if I err in point of Law, I have the Assistance of a Gentleman, who can and will set me right. Upon the other Indictment, in which Lord Anglesea, Mr. Francis Annesley, and Mr. Jans, stand indicted for assaulting Mr. Mac Kercher, the Jury have already disposed of two of them, my Lord Anglesea and Mr. Jans. As to Mr. Francis Annesley, it stands proved by the Testimony of Mr. Mac Kercher, Mr. Kennedy, and Mr. Goofry, that he did without any legal Provocation strike Mr. Mac Kercher with the Butt-End of his Whip upon his Forehead; upon which Blood came, and there has been no Evidence given to contradict that; so that I do apprehend Mr. Annesley is guilty of assaulting Mr. Mac Kercher.

Mr. Attorney-General.] I concur in Opinion, as to that Point, with Mr. Baron Mounteney; and as to the Indictment for the Assault on Mr. Annesley, I also think the Traversers are not guilty. He gallops off the Field, and is accidentally thrown by his Horse into a Ditch. The Accident happened in the Flight; the Flight was not in consequence of the Words that Lord Anglesea said, but by the Advice of Mr. Mac Kercher; but yet, if in consequence of those Words, supposing the Parties did pursue, and that there was a Fall; yet if it was no more than a Hurt by the Fall, it does not come within the Consideration of the Law to be an Assault.

The Jury go to find whether Mr. Francis Annesley is guilty of an Assault upon Mr. Mac Kercher. Also,

The Jury go to find whether Lord Anglesea, Mr. Francis Annesley, and Mr. Jans, are guilty of the Assault upon James Annesley, Esq. and find

Mr. Francis Annesley guilty of the Assault on Mr. Mac Kercher. And

Lord Anglesea —	} Not guilty {	of the Assault on James Annesley, Esq.
Mr. Francis Annesley —		
Mr. Jans —		

Clerk of the Crown.] Neile O Neile, call your Security; you must give Bail, or stand committed for a Charge of Perjury.
Neile O Neile giving no Security, was committed.

Saturday, August the 4th.

A Bill of Indictment for Perjury is found by the Grand Jury against Neile O Neile, which is read by the Clerk of the Crown.

Clerk of the Crown.] Do you submit to your Traverse or not?

Neile O Neile.] Traverse.

Clerk of the Crown.] How will you be tried?

Neile O Neile.] I am not ready for my Trial at present, for it is too sudden upon me.

Mr. Attorney-General.] I don't see what Defence the Man can make; but however the Rule of Law must prevail.

Mr. Baron Mounteney comes into Court.

Mr. Mac Manus.] I hope your Lordship will think that there is a Necessity for a speedy Execution of Justice in Crimes of this nature, that a Man so dangerous to the Publick should be removed from the Society of Mankind as speedily as possible. No Man's Life or Property is, or can be safe but upon the due Observation of Oaths; when these are violated, a quick Execution of the Law should follow for the sake of the Publick. I hope therefore we shall be permitted to go to Trial for this Perjury, committed in the Face of the Court; but if you don't try it this Assizes, this Man must go unpunished. My Lord, Captain Livingstone, a material Witness, had the Honour, about two Years ago, to be sent from the Province of South Carolina with a Petition from that Province to his Majesty, and, as he thinks his Solicitations in regard to that Petition are now at an end, he verily believes that he shall be obliged to set out for South Carolina before the next Assizes for this County; so that we cannot promise ourselves to have him here at the next Assizes, and it would be a Hardship to have him bound over to prosecute, when he is obliged to go on his Majesty's Commands. My Lord, this is a recent Case, a wilful Perjury acted openly last Night before your Lordship, which ought to be instantly punished: I humbly therefore hope your Lordship will bring on this Trial at this Time, considering the many and great Inconveniences that must attend the putting it off, that so flagrant a Perjurer may be brought to Justice.

[Mr. Moreton enforces this with the Case of the King against Davis at the Assizes at Maryborough some Years ago, where Davis was convicted,

and a Bill of Indictment being sent up, and found against the Witness (a Bogue-maker) for Perjury, the Court would not put it off, but pillo-
 ned him that very Day.

Court. I understand this Matter has been ruled already.

Mr. Mac Manus. Here is an Affidavit of Capt. Livingstone's, which we
 desire may be read.

Court. I do think when a Man is indicted on the last Day of the Assizes,
 and desires Time, he has a Right to traverse.

Mr. Moreson. I hope the Court will make Nails give good Security.

Court. Indeed he shall.

Court. Mr. Mac Kercher, I desire to be informed whether you design to
 bring any Action to recover Damages for this Assault?

Mr. Mac Kercher. We do not, my Lord; we prosecute for publick
 Justice, for the Safety of our own and Mr. Annesley's Life.

Court. Mr. Kennedy, do you design to bring any Action to recover Da-
 mages for the Assault?

Mr. Kennedy. I do not, my Lord.

Court. My Lord, the Concern I am under is very great to see your
 Lordship here as an Offender against the Law; and it is extremely more
 so that it falls to my Lot to punish your Lordship for that Offence. Your
 Lordship has been found guilty of an Assault, and before I mention the
 Judgment of the Court, it will be necessary to remind your Lordship of
 some Circumstances appearing upon the Evidence attending this Fact,
 which greatly aggravate it. It appears, to the Satisfaction of the Court,
 that the Persons assaulted by you and Mr. Jans gave no Provocation, had not
 struck or attempted to strike; and it appears upon the Evidence of one of the
 Witnesses, that not so much as one Word had passed between your Lord-
 ship and them. This Circumstance is a great Aggravation of the Assault.
 My Lord, your Quality likewise greatly aggravates the Offence; you have
 the Honour to be a Peer of England, as well as of this Kingdom; and that
 Quality calls upon you to set an Example of Obedience to the King's
 Laws. The Place where this Accident happened, is another grand Ag-
 gravation of the Offence; it was done at a publick Meeting of Gentlemen
 on the Curragh, in the Presence of great Numbers, to whom such a Beha-
 viour in a Person of your Dignity and Station of Life, must be of a very

bad Example; the Prevention of which is the Thing principally re-
 quired by the Law. A Number of People there, by your Lordship's Exem-
 ple might be led to take Part on the one Side or the other, and if they
 were done so, it is to be feared that there might have been more fatal Con-
 sequences. It is with great Concern I mention this, but such was the
 Evidence, and I cannot doubt but that your Lordship will be thoroughly
 persuaded, as I am satisfied every body else will, that the Court exercise
 their Discretion with Tendernefs, when they pronounce the Judgment, that
 a Fine of Thirty Pounds only is imposed on your Lordship for assaulting
 Mr. Kennedy, and you are fined accordingly in the Sum of Thirty Pounds
 for that Assault.

Mr. Francis Annesley, you likewise have been found guilty of an Assault
 on Mr. Mac Kercher; great Part of what I have mentioned to your
 Lordship will be applicable in your Case; you being a Gentleman of
 Fortune and Character in your Country, the People expect, and will take
 Example from you. It appears, upon Evidence, that a Gentleman was
 assaulted by you, who had not assaulted you; and I must say this in Jus-
 tice to the Prosecutor, that there was no Reason to strike any body for the
 Words which were said by the Prosecutor; and though the Words did
 pass in your Hearing, yet they were but Words; and Words the Law does
 not consider as a Provocation sufficient for an Assault. Besides, they did
 not pass till after very opprobrious Language had been given. It also ap-
 pears, that this Blow given by you, was the first Blow given in that Ac-
 tion, and that Blow occasioned all the rest which were given. That is
 the aggravating Circumstance, which makes it necessary for the Court
 to lay a pretty smart Fine upon you; but they are pleased to mitigate the
 Severity of the Law, and go no farther than to fine you in the Sum
 of Twenty Pounds.---Mr. Jans stands guilty of assaulting Mr. Kennedy,
 for which he is fined in the Sum of Ten Pounds.---This Assault of
 Mr. Mac Kercher, my Lord Anglesea has likewise been found guilty of, and
 a Fine of Five Marks is laid on him for that Offence.---And on Mr.
 Jans, who is likewise guilty of assaulting the same Gentleman, our
 Mark.---I think I have disposed of all of them but the first Indict-
 ment for the Assault on Mr. Goffry, for which Lord Anglesea is fined
 Sixpence.

XXVI. The Trial in Ejectment between CAMPBELL CRAIG, Lessee of JAMES ANNESLEY, Esq. and Others, Plaintiff; and the Right Honourable RICHARD EARL of ANGLESEA, Defendant; before the Lord Chief Baron Bowes, the Honourable Mr. Baron Mounteney, and the Honourable Mr. Baron Dawson, Barons of his Majesty's Court of Exchequer in Ireland: Begun on Friday, November 11, 1743; and continued by several Adjournments to Friday the 25th of the said Month *.

The Court being sat, the Jury were called over, and answered to their
 Names; of whom the following Twelve were sworn to try the Issue
 joined between the Parties:

Sir Thomas Taylor, Bart.	Nathaniel Preston, Esq.
R. H. Will. Graham, Esq.	Charles Hamilton, Esq.
Richard Wesley, Esq.	Clotworthy Wade, Esq.
Her. Langford Rowley, Esq.	Thomas Shaw, Esq.
Richard Gergas, Esq.	Gorges Louther, Esq.
John Preston, Esq.	Joseph Ashe, Esq.

Campbell Craig, Lessee of James Annesley, Esq. PLAINTIFF.

The Right Honourable Richard Earl of Anglesea, DEFENDANT.

Michaelmas Term, in the 16th and 17th Years of George II.

In the Exchequer.

County of Meath, } THE Plaintiff declares that James Annesley, Esq.
 to wit. } on the first Day of May 1742, at Trim, in the
 County of Meath, demised to the said Campbell
 Craig 30 Messuages, 30 Tofts, 50 Cottages, 2 Mills, 50 Gardens, 800
 Acres of arable Land, 300 Acres of Meadow, 600 Acres of Pasture,
 50 Acres of Furze and Heathy Ground, 50 Acres of Moory Land, with
 the Appurtenances, in Great Stramine otherwise Stameen, Little Stramine

otherwise Stameen, Little Donacorney, Shallon, Kilmacree, otherwise Kilparva,
 Cruffey, Annagor, otherwise Annager, and Little Gaffney, situate, lying,
 and being in the County of Meath aforesaid: All which said Premises
 were formerly the Estate of the Right Honourable James Earl of Anglesea,
 deceased, and lately the Estate of the Right Honourable Arthur Earl of
 Anglesea, also deceased; so that the said demised Premises, with the Ap-
 purtenances, to the said Campbell Craig, his Executors, Administrators, and
 Assigns, from the first Day of May aforesaid, for the Term of Twenty-
 one Years then next ensuing, fully to be compleated and ended.

The Plaintiff also declares upon two other several Demises made by the
 said Lessor of the same Premises, that is to say, one by the Name of the
 Right Honourable James Earl of Anglesea, and the other by the Name of
 the Right Honourable James Annesley, only Son and Heir of Arthur Earl
 of Anglesea, deceased; otherwise the Right Honourable James Baron
 Altham of Altham. By virtue of which said several Demises, the said Cam-
 bell Craig, on the second Day of May aforesaid, in the Year of our Lord
 aforesaid, entered and was thereof possessed, until the aforesaid Richard Earl
 of Anglesea afterwards, on the 3d Day of May aforesaid, in the Year of our
 Lord aforesaid, with Force and Arms, and so forth, entered into the said
 demised Premises with the Appurtenances, and ejected, expelled and re-
 moved him the said Craig from his said Farm, (his said Term not being
 then or since determined) and otherwise did unto him, against the Peace
 of our Lord the King that now is, and to the Damage of the said Craig
 One Hundred Pounds Sterling.

* This was the longest Trial ever known, lasting 15 Days, and the Jury (most of them) Gentlemen of the greatest Property in Ireland, and almost all Members of Parliament. They were only to try a meer Matter of Fact, whether Lord Altham had a Son?—Therefore this Trial cannot be called a State Trial, or a Trial in a criminal Cause, as it was so long, and contains so much Repetition and Tautology in examining and cross-examining the Witnesses, &c. (and as the Trial at large, is in almost every body's Hands) we shall only give you the Opening of the Evidence on both Sides, and the Depositions of the two most material Witnesses, viz. Mr. Giffard, who was reckoned very principal one for the PLAINTIFF; wherein a Point of Law is determined: 'Whether an Attorney shall be allowed to disclose, and give in Evidence, what his Client told him in secret?' with the Arguments of the Counsel and Judges upon the Question: (perused by themselves) as also the whole Evidence of Mrs. Mary Heath, Lord Altham's Woman, who lived with her from her Ladyship's first going to Ireland until her Death; and was the chief and principal Evidence for the DEFENDANT: which with the summing up of the Evidence, by the Lord Chief Baron Bowes, Baron Mounteney, and Baron Dawson (as corrected and revised by themselves) will shew the Substance of the whole Trial, and sufficient to carry on the Connection to the following Trial of Mrs. Heath for Perjury.—Besides, as great Part of the Evidence will be repeated in her Trial, it would be unnecessary to insert it here.

To this Declaration the Defendant pleaded the general Issue, Not Guilty. Mr. Lill, of Counsel for the Plaintiff, My Lord, we shall call our Evidence, and prove the Plaintiff's Title, and then we hope your Gentlemen will find for the Plaintiff.

Mr. Serjeant Marshall. I am in this Case of Counsel with the Lessor of the Plaintiff, whose Title stands thus: The Lands in question were the Estate of Arthur, late Lord Altham, of which he died seised, and the Lessor of the Plaintiff is his only Son and Heir. My Lord, if this were a common Case, I should have rested here; but as the Course of Descent has been interrupted on a Supposition that Lord Altham died without Issue; and as this is a Matter of great Expectation, very extraordinary in its Nature and Circumstances, and may be much more so in its Consequences; so it will be incumbent on me particularly to point out to your Lordship, and to the Jury, the Time and Place when and where the Lessor of the Plaintiff was born; for on that important Birth this Cause must depend.

My Lord, in the Year 1706, Arthur late Lord Altham was married to Mary Sheffield, natural Daughter of John Duke of Buckingham. After the Marriage, Lord Altham's Affairs required his Attendance in this Kingdom, and in the Year 1709 he came over; but his Lady remained in England till the Year 1713, when she came into Ireland; and in the Year 1714, Lady Altham resided in the City of Dublin with Lord Altham her Husband, and proved with Child. When she had been some Months advanced in her Pregnancy, and at the latter End of the Year 1714, Lady Altham went to his Lordship's House at Dunmaine, in the County of Wexford, where it was publicly known in the Neighbourhood that Lady Altham was with Child, and the then Dowager Lady Altham (who was married to Mr. Ogle, one of the Commissioners of the Revenue in this Kingdom) made Lady Altham a Present of a very rich Quilt against her Lying-in: And it will appear to your Lordship, and to the Jury, that Lady Altham's Pregnancy was so well known in the Country, that Interest was made by several Women to nurse this Child when it should be born; and that great Care was taken in examining the Milk of the several Women who did apply to be Nurses, and that one Joan Landy was approved of to be the Nurse. My Lord, in the Beginning of the Year 1715, Lady Altham fell in Labour, and was delivered of the Lessor of the Plaintiff by Mrs. Shiel, a Midwife of Skill and Reputation, who then lived at Ros, about three Miles from Dunmaine; and it will appear to your Lordship and to the Jury, that Lord Altham expressed great Satisfaction and Joy upon the Birth of this Son; that a Bonfire was made upon this happy Event, and Drink publicly given to the Neighbours and People who came in to testify their Joy upon such an Occasion. It will likewise appear to your Lordship, and to the Jury, that great Preparations were made for the Christening of this Son, and that about a Month after the Birth, the Lessor of the Plaintiff was christened at the late Lord Altham's House at Dunmaine, in the Parish of Tynterne, by one Mr. Llo d, who was his Lordship's Chaplain, and at that Time Curate of Ros, by the Christian Name of James, after the third Earl of Anglesea, from whom Lord Altham had received great Favours, and the Sponsors on that Occasion were Mr. Colclough, Mr. Cliff, and Mrs. Pigot. I mentioned to your Lordship before, that Joan Landy was appointed the Nurse; her Father's House was about a quarter of a Mile from Dunmaine, where the Child continued for about a Month; and then the Nurse's Father's House being first made fit for the Reception of such a Child, he was carried to that Place with his Nurse: And it will appear to your Lordship, and to the Jury, that for the Convenience of Lady Altham, and that she might visit this Child as often as she pleased, a Coach-Road was made from the House of Dunmaine to the Nurse's Father's House. When the Child was about sixteen Months old he was weaned, and brought back to Lord Altham's House at Dunmaine, where one Joan Loffan was appointed his dry Nurse: And it will appear to your Lordship, and to the Jury, that while Lord and Lady Altham were united, the greatest Fondness was shewn to this Infant by both. My Lord, in February 1716, there were some very unhappy Differences between the late Lord Altham and his Lady, upon which they, by Agreement, separated; but Lady Altham, as was extremely natural, desired to have the Company of her Child, which Lord Altham, but with great Expressions of Regard and Tenderness for the Child, refused; and it will appear to your Lordship, and to the Jury, that Lady Altham left her Son with the utmost Concern and Regret. After this unhappy Separation, Lord Altham forbade Lady Altham's Access to this Child, and directed that she should by no means see him, and that the Child should not be carried to visit her. The Lessor of the Plaintiff, thus deprived of his Mother, continued at Dunmaine in the Care of Servants, till the Year 1718, and in that Year Lord Altham removed his Family to Kenna, in the County of Kildare, where he continued about two Years; and it will appear to your Lordship, and to the Jury, that the Lessor of the Plaintiff was educated there with the greatest Affection, and was constantly reputed and deemed to be Lord Altham's Son and Heir. My Lord, in the latter end of the Year 1719, or beginning of the Year 1720, Lord Altham removed to Dublin, and had a House in this Town for some Time, to which the Lessor of the Plaintiff was also brought; and it will appear to your Lordship, and to the Jury, that he was then clothed in a very extraordinary Manner, and was treated and esteemed as the Son and Heir of the Lord Altham. My Lord, some Time in the Year 1720, Lord Altham removed to a Place called Carrickduffe, in the County of Carlow; and it will appear to your Lordship, and to the Jury, that as the Lessor of the Plaintiff was then of Years capable of Instruction, so Lord Altham provided a Tutor for him in the House; and when afterwards Lord Altham sent the Lessor of the Plaintiff to a publick School at Bundock in the County of Carlow, that he was there attended as the Son of a Nobleman, and treated as such. My Lord, in the Year 1722, (it was a Year extremely fatal to my Client) Lord Altham began a criminal Correspondence with one Miss Gregory, and in the Winter of that Year, Lord Altham settled in Dublin with her, in a House in Cross-Lane; and it will appear to your Lordship, and to the Jury, that this Miss Gregory, before she had made her Interest in Lord Altham quite secure, behaved tolerably well to the Lessor of the Plaintiff; and the Lessor of the Plaintiff was brought to the House where Lord Altham resided with her, and was sent to a publick School in this City, and was

used with great Care and Tenderness by his Father, and at School was deemed and taken to be the Son of Lord Altham. It will be necessary to mention to your Lordship and the Jury what became of Lady Altham after this Separation. She resided in the Town of Ros for about three Years, and her Affection for the Lessor of the Plaintiff was so strong, that, notwithstanding Lord Altham's Prohibition, she found means privately to see the Child, and always expressed the greatest Regard and Fondness for him, and complained much more severely of being deprived of the Comfort in her Child, than the Loss of her Husband. In the Year 1720, or thereabouts, Lady Altham came to reside in Dublin; but, unhappily for this Lady, she had in her Lying-in contracted Disorders, which at last ended in a Dead Palsy, and not only took from her the Use of her Limbs, but also, in some Measure, deprived her of her Memory and Senses; but notwithstanding, it will appear to your Lordship and to the Jury, that during the Time she continued in this Kingdom, she kept a secret Correspondence with this Family, relative only to this Child. In the Year 1723, Lady Altham was carried from this Kingdom to London in a very languishing Condition, and there, during the Remainder of her Life, lived upon the Bounty of some Persons who had Charity enough to support her. My Lord, from this languishing Condition of Lady Altham, Miss Gregory, who had gained a prodigious Influence over Lord Altham (who will appear to your Lordship to have been a very weak Man); had Hopes from him of every Thing in his Power, expected to be Lady Altham, and had assumed the Title even in the Life-time of Lady Altham; and therefore considered the Lessor of the Plaintiff as the greatest Bar to her Hopes, in case she should have Issue by this Lord, and thereupon grew very harsh and severe to the Lessor of the Plaintiff; she raised Doubts in the Lord Altham, that, though this was the Son of the Lady Altham, it might not be the Son of his Lordship, that so she might take off that paternal Affection from the Lessor of the Plaintiff, which he had always shewn to him before; and, my Lord, she gained such an Influence at last upon this unhappy Lord, that she prevailed on him to remove the Lessor of the Plaintiff out of his House; and in the Year 1724, the Lessor of the Plaintiff was sent by Lord Altham to one Cooper's in Ship-street, in this Town. But the Heart of Lord Altham was not at this Time quite estranged from his Son, for he gave Directions there that the Lessor of the Plaintiff should be taken great Care of, that he should be put to School; and it will appear to your Lordship and to the Jury, that he was put to School at one Dunn's, in Warburgh-street, in this Town, and that Lord Altham came privately sometimes to see him there. My Lord, it will appear to your Lordship, and to the Jury, that about this Time the Necessities of the late Lord Altham were so extremely great, that he looked out to raise Money by all Manner of Ways and Means; and Lord Altham being advised, that if the Lessor of the Plaintiff were out of the Way, large Sums might be raised by the Sale of Reversions, in conjunction with the Remainder-man in Tail; and this Scheme being agreeable to the Inclinations of Miss Gregory, who was willing to get rid of the Lessor of the Plaintiff at any rate, it was determined that this great Obstacle to Lord Altham's Desire of raising Money should be removed; and to that End the Lessor of the Plaintiff was sent to the House of one Covenagh, with Directions to be kept quite private, so as it should not be known where he was. What farther was design'd against him I can't say; but it will appear to your Lordship, and to the Jury, that though the Lessor of the Plaintiff was at this Time a very young Lad, yet he was a little too sprightly to be confined in that Manner; he found Means to make his Escape from thence, and being denied Admittance into his Father's House, he roved about from Place to Place (as will be more particularly given an Account of to your Lordship and to the Jury, by the Witnesses) for the Space of two Years before the Death of the late Lord Altham, his Father, which happened on the 16th of November, 1727. But during all that Time he was taken Care of by several Persons of extreme good Credit, and considered as the Lord Altham's Son and Heir. Upon the Death of the late Lord Altham, in the Year 1727, the Lessor of the Plaintiff was extremely young; he was by the Mother's Side destitute of all Friends whatsoever in this Kingdom; and the now Defendant, the Earl of Anglesea (I must take the Liberty now of mentioning him), he, my Lord, upon the Death of the Lord Altham, claimed the Title of Lord Altham, as Brother and Heir to the deceased Lord, upon a Supposition that the late Lord died without Issue Male. My Lord, it will appear to your Lordship, and to the Jury, that many People who had known the Lessor of the Plaintiff for several Years before his Father's Death, appeared to be greatly surprized that the Defendant assumed the Title of Lord Altham, in regard that they believed the Lessor of the Plaintiff to be the Son and Heir of the Lord Altham; and there were Murmurings among the Servants, and a great many People who were acquainted with the Lessor of the Plaintiff, on that Account. It will appear to your Lordship, and to the Jury, that, in order to remove every Obstacle out of the Way of the Defendant, and to take from the Lessor of the Plaintiff all Possibility of asserting his Right, and claiming the Title, an Attempt was made very early after the Death of the late Lord Altham; an Attempt was made, I say, to kidnap the Lessor of the Plaintiff; and it will appear that the first Attempt was in vain; a second Attempt of this Kind was made, and likewise defeated; but the third Attempt was more successful; and in about four Months after the Death of the late Lord Altham, the Lessor of the Plaintiff was sent into America, and there sold for a common Slave. I, my Lord, have not taken upon me to mention by whom those several Attempts were made, it will much more properly come out of the Mouths of the Witnesses; and when they shall speak it here upon the Table, every body will judge with what View and Design such a wicked Attempt could be made. My Lord, the Lessor of the Plaintiff, while he was in Slavery, suffered many and various Hardships, as every body in those unhappy Circumstances does, and did make an Attempt to regain his Liberty; but being retaken, he suffered according to the Law of that Country, and continued about 13 Years in Slavery: But it will appear to your Lordship, and to the Jury, that even in that miserable Condition, when he had an Opportunity of relating his Misfortunes to any body that had Compassion of them, he did mention the Unhappiness of his Case, and by what Means he was reduced to such Circumstances. It will appear to your Lordship and to the Jury, in what Manner the Plaintiff, was brought by the Care and Bounty

of Admiral *Vernon*, into the Kingdom of Great Britain. There an unhappy Misfortune detained him for some time; he happened by an accidental Shot, to kill a Man near London, for which he was indicted, and stood his Trial: How that Prosecution was carried on, or for what Purpose, I shall not take upon me to say, though it will have its Weight in the Case; but it was necessary to mention this Circumstance, to shew that, when we were at liberty of coming into this Kingdom, and prosecuting our Right, we did it as recently as was in our power. When these Facts are laid before your Lordship and the Jury, we of Counsel for the Lessor of the Plaintiff, do apprehend there is such a Connection in every one of them, that the Force of Truth will prevail, and that your Lordship will direct the Jury to find a Verdict for the Lessor of the Plaintiff.

Mr. Serjeant *Tisdall*. My Lord, Mr. Serjeant *Marshall* has so fully stated the Case of the Lessor of the Plaintiff, that I have no further Facts to mention, unless the Gentlemen on the other Side should require of us to prove the Title of the late Lord *Altham* to the Lands in question; if they do, we are ready to enter into it, and to shew that by the Will of James Earl of *Anglesea*, a Remainder of the Lands in the Declaration was limited to the Lessor of the Plaintiff, after the Death of his Father.

Mr. *Lehant*, of Counsel for the Defendant. My Lord, I hope they will read the Remainders in the Will of James Earl of *Anglesea*, and the Codicils; whereby it will appear that the next Remainder of the Lands in question, after Failure of Issue of *Arthur* late Lord *Altham*, was limited to *Arthur* Earl of *Anglesea*, and not to the present Defendant, who was Brother to the late Lord *Altham*.

Mr. Serjeant *Marshall*. We admit that the late Lord *Altham* was Tenant for Life of the Lands in the County of *Meath*, and that *Arthur* late Earl of *Anglesea* had a Remainder before the present Defendant, and did enjoy it accordingly.

Mr. Serjeant *Tisdall*. My Lord, the Legitimacy of the Lessor of the Plaintiff is the material Point.

Mr. Recorder, for the Defendant. My Lord, the Lessor of the Plaintiff insists that he is the Legitimate Son of the late Lord *Altham*; if this be proved, there will be no necessity to read the Wills and Codicils: for we admit, that if *Arthur* Lord *Altham* left a Son, the present Earl of *Anglesea* has no right to the Lands in question.

Mr. Serjeant *Marshall*. My Lord, there is one Point further to be admitted, which is, that the late Lord *Altham* intermarried in the Year 1706 with *Mary* *Sheffield*, Natural Daughter of the Duke of *Buckingham* (which was admitted). My Lord, we have been so happy as to be able not only to trace the Lessor of the Plaintiff from his Birth, but to shew some preceding Circumstances, rendering it highly probable; with which we shall begin, by laying before your Lordship and the Jury, that immediately after Lady *Altham's* coming into this Country she proved with Child, that she miscarried at *Dunmaine* of that Child, that she proved pregnant a second time, and was delivered of the Lessor of the Plaintiff.

Lord Chief Baron *Bowes*. Gentlemen, From the Evidence as opened, I see this is like to prove a Trial of Length, as well as Expectation; and I think it is to the Honour of your Country, as well as for the Advantage of the Parties concerned, that Men of your Rank and known Probity attend the Trial of this Issue: But I fear it will not be in the power of the Court to take the Evidence with such Exactness as to give you the usual Assistance, by summing of it up at the End of the Trial. I must therefore request you, Gentlemen, to take Notes, as we proceed.

Here follow the Names of the Witnesses produced on the Part of the Plaintiff; those marked thus * were the most material.

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|---|--|
| 1 Mrs. <i>Dorothy</i> <i>Briscoe</i> , * | 22 Mr. <i>James</i> <i>Cavenagh</i> , |
| 2 Mrs. <i>Henrietta</i> <i>Cole</i> , * | 23 <i>James</i> <i>Dempsey</i> , * |
| 3 <i>Alice</i> <i>Bates</i> , * | 24 <i>Charles</i> <i>Byrne</i> , of <i>Byrnes</i> <i>Grove</i> , |
| 4 <i>Catharine</i> <i>Mac Cormack</i> , * | Esq. |
| 5 <i>Charles</i> <i>Mac Carthy</i> , | 25 <i>Charles</i> <i>Cavenagh</i> , |
| 6 Major <i>Richard</i> <i>Fitzgerald</i> , | 26 <i>Nicholas</i> <i>Duffe</i> , |
| 7 <i>John</i> <i>Turner</i> , | 27 <i>Catharine</i> <i>O'Neile</i> , * |
| 8 <i>Dennis</i> <i>Redmond</i> , * | 28 Mr. <i>John</i> <i>Byrne</i> , |
| 9 <i>Margaret</i> <i>Surcliff</i> , | 29 Mrs. <i>Charity</i> <i>Blake</i> , |
| 10 <i>Mary</i> <i>Doyle</i> , | 30 <i>Edward</i> <i>Lutwyche</i> , |
| 11 Mrs. <i>Deborah</i> <i>Annesley</i> , of <i>Bally-</i> | 31 <i>Bartholomew</i> <i>Furlong</i> , |
| <i>sonan</i> , in <i>Kildare</i> , | 32 <i>Hugh</i> <i>Earl</i> of <i>Mount-Alexander</i> , |
| 12 (a) <i>Alderman</i> <i>Thomas</i> <i>Barnes</i> , of | 33 <i>Margaret</i> <i>Hodgers</i> , |
| <i>Kilkenny</i> , | 34 (c) Mr. <i>Thomas</i> <i>Byrne</i> , |
| 13 (b) <i>Southwell</i> <i>Pigot</i> , Esq; | 35 <i>Michael</i> <i>Waldron</i> , Gent. |
| 14 <i>Philip</i> <i>Breen</i> , | 36 <i>Barnaby</i> <i>Dunn</i> , |
| 15 <i>Eleanor</i> <i>Murphy</i> , * | 37 <i>Patrick</i> <i>Plunket</i> , |
| 16 <i>Christopher</i> <i>Brown</i> , | 38 <i>Amias</i> <i>Bush</i> , of <i>Kisfary</i> , in <i>Kil-</i> |
| 17 <i>John</i> <i>Scott</i> , | <i>kenny</i> , |
| 18 <i>Joan</i> <i>Laffan</i> , * | 39 <i>Dominic</i> <i>Farrell</i> , |
| 19 <i>Thomas</i> <i>Brookes</i> , | 40 <i>John</i> <i>Purcell</i> , * |
| 20 <i>Lawrence</i> <i>Misset</i> , Esq. | 41 <i>Silvius</i> <i>Asb</i> , Gent. |
| 21 <i>James</i> <i>Walsh</i> , of <i>Dromdowny</i> , in | 42 <i>Mark</i> <i>Byrne</i> , |
| <i>Kilkenny</i> , | 43 <i>James</i> <i>Reiley</i> , |

(a) As some Points of Law were determined, on Questions asked the Witnesses by the Counsel, we shall insert them by way of Notes.

Alderman Barnes was asked, Whether he heard Lord *Altham* mention his having a Son?

The Question was objected to by the Counsel for the Defendant, who said, That what Lord *Altham* told the Witness was not to be given in evidence, but only what came within the Compass of his own Knowledge. But the Court were of Opinion, that any Declaration of my Lord *Altham*, relative to this Transaction, the Birth of the Lessor of the Plaintiff, was proper Evidence, and ought to be received.

(b) Mr. *Pigot* was asked, Whether ever he heard from his Mother, that she was Godmother to Mr. *Annesley*, or no? The Question is objected to, by the Earl of *Anglesea's* Counsel; That Hearsay was no Evidence, and that he should not be admitted to declare what his Mother told him. And the Court allowed the Objection.

(c) Mr. *Thomas Byrne*, in his Evidence, saying, Mr. *Annesley* told him, he would not go to his Father at *Inchicore*, for Miss *Gregory* was there, who would never let him alone.

Mr. Attorney-General. My Lord, I desire to have the Sense of the Court upon this Part of the Evidence: The Witness was going to say what the Plaintiff told him: So long as this was for Connection, I made no Objection to it; but he is going by a Side-wind to reflect upon the Credit of a Person, who may be produced in evidence for the Defendant; this makes it material to object to this Part of the Evidence.

Lord Chief Baron. It may be material to know what Reason the Boy gave for refusing to go to my Lord *Altham*.

Mr. Attorney-General. The Boy's Declaration cannot be Evidence for him.

Lord Chief Baron. I shall confine the Witness to Facts.

- 44 *George* *Babe*, Esq;
45 Mr. *Andrew* *Crommy*,
46 Mr. *Henry* *Ganne*,
47 *Richard* *Tygh*, Esq;

- 48 *John* *Broders*,
49 Mr. *JOHN* *GIFFARD*,
50 Rev. Mr. *Abel* *Butler*,
51 *Joshua* *Barton*.

These Witnesses swear, That after Lord and Lady *Altham* came to Ireland, my Lady miscarried, and they saw an Abortion, and afterwards was with Child again; some swear they felt her Belly, and found she was with Child, and that she grew bigger and bigger; and several, that they saw her big with Child.—*Dennis Redmond* swears, he saw my Lady big bellied; was sent to *Ross* by Mrs. *Heath*, for a Midwife, and brought Mrs. *Shiel* the Midwife; and that my Lady was delivered of a Son, about April 1715; and that Bonfires were made on the Occasion; that the Boy was christened by Mr. *Lloyd*, my Lord's Chaplain, by the Name of *James*, and that the Godfathers were Mr. *Colclough*, Counsellor *Cliff*, and the Godmother, Mrs. *Pigot*.—*Mary Doyle* and *Eleanor Murphy* swear they were in the Room at the Delivery; several swore, that the Child was put to nurse, first to *Joan Landy*, and afterwards to *Joan Laffan*, and that a Coach-way was made to the House of the latter, for my Lord and Lady to go and see their Son.—Others, that my Lord kept it and maintained it as his lawful Child, and owned it as such to several People; put it to School, and maintained it there as his lawful Son; till at last Lord *Altham* parted from his Wife, and took Miss *Gregory* into keeping; she hated the Boy, used him ill, and was continually telling Stories of his bad Behaviour to my Lord, and at last prevailed on my Lord to turn him out of doors under pretence of thieving.—That this Boy afterwards wandered about for some time, living some time with one *Purcell*, and some time with others, till my Lord's Death, in November 1727. Soon after which, he was kidnapp'd and transported abroad, and not heard of for many Years, till at last he was discovered and sent home by Admiral *Vernon*, to assert his Rights, &c. That in 1742, when Mr. *Annesley* happened accidentally to kill a Man at *Staines* in *Middlesex*, that Lord *Anglesea* was at a great Expence to prosecute him, &c. But Mr. *Giffard's* Evidence will best explain the whole Affair.

Tuesday, November 15th.

49. Mr. *JOHN* *GIFFARD*.

Q. Do you know the Plaintiff Mr. *James Annesley*?

Mr. *Giffard*. Yes, Sir,

Q. Did you know when it was that he arrived in England from the *West-Indies*?

A. No, Sir.

Q. Do you know of any Prosecution carried on against the Plaintiff by the Defendant for Murder?

[The Question is objected to by the Counsel for the Defendant.]

Mr. *Fitz Gibbon*, of Counsel for the Plaintiff. My Lord, this Witness is brought to shew that the Lord *Anglesea*, knowing that the Plaintiff claim'd the Estate of the Family, as Son and Heir to the late Lord *Altham*, expended vast Sums of Money on a Prosecution, which he set on foot against him for the Murder of an unfortunate Man at *Staines*, in *Middlesex*, though the Person killed stood in no Degree of Relation to my Lord *Anglesea*, that could have engaged him to have taken up this Matter.

It will also appear, that while he laboured to convict the Plaintiff for Murder, he knew the Person, whose Death gave Occasion for the Prosecution, was killed by Accident. And this we apprehend to be a Circumstance proper to be laid before the Jury, to shew that my Lord *Anglesea*, conscious of the Plaintiff's Title, took these Methods to cut him off.

Mr. Recorder, (*Eaton Stannard*, Esq;) of Counsel for the Defendant. My Lord, I apprehend that the Evidence now offered is not legal Evidence in this Cause, because it appertains not directly to it; it is a collateral Thing. It was proper to shew the Plaintiff to be the legitimate Son of Lord *Altham*, and that he was intitled to the Lands ejected; but to produce Evidence of a Trial in England, is very improper; in my Apprehension, this is no Evidence in this Trial of Ejectment. The taking away a Person, and secreting him after the Title accrues to him, is a material Evidence to shew that he could not assert his Right sooner; but how is the Indictment of a Man for this Murder, be it accidental or not, relative to this Cause? For pending the Indictment, it was no Hindrance to him to put in his Claim when he pleased, and to assert his Title.

This Cause was tried in England. Can you have all the Witnesses there brought before you? Could any Person concerned for Lord *Anglesea* foresee that this Indictment would be introduced? And therefore my Lord *Anglesea* could not be prepared to have the Witnesses of that Trial here. I say, it is not proper to introduce it, for what Man living could guard against it?

This Evidence is offered, as I apprehend, to raise a Presumption that the Plaintiff is the legitimate Son of the Lord *Altham*, because the Defendant endeavoured to destroy him; and then the Question will be, Whether such Evidence is proper to be admitted? It would be a Question whether any improper Measure taken to affect the Life of the Plaintiff would be Evidence; but where, from their own opening the Case, it does appear to your Lordship nothing more than a Proceeding according to the regular

and open Course of the Law, with humble Submission, that in this Case or any Case whatsoever, is not to be imputed to a Man as a Crime. As they state it, there was a Prosecution for Murder, whereas the killing was accidental, every Homicide in the Indictment is laid Murder; and if there was a Prosecution on this Indictment, is it not a material Circumstance, that this Indictment must have had the Sanction of a Grand Jury? Here has been an Indictment, is all that they have said, and a Prosecution upon that Indictment. I desire your Lordship to consider, whether my Lord Annesley, or any other Person, might not have carried on the Prosecution? Nothing is more frequent, in Murder especially, than that the Prosecution is carried on, not at the Expence of the Crown, though the Prosecution is in the Name of the Crown. Will it not then be a Matter of very great Consequence, to say, that this shall be imputed to a Man as a Crime, and affect him not only as to his Character, but his Fortune? Your Lordship cannot judge now whether or not this Prosecution was what they would make it appear to be, without entering into the Merits of the Cause. How can it appear to your Lordship whether this was a real Murder, or the Person escaped only by a favourable Verdict? And therefore we hope, for the Sake of Evidence, that it may not be made a Precedent in other Cases.

Mr. Serj. Marshall, for the Plaintiff. My Lord, we have endeavoured to lay before the Jury a spiriting away of the now Lessor of the Plaintiff, at a Time when he was extremely young, not capable of asserting his Right, and with a View of putting him out of the Way of ever asserting that Right. We now come to offer Evidence, to shew that the Malice of the Defendant did not rest there; that after he had actually caused him to be transported, the Lessor of the Plaintiff, at his Return, unfortunately killed a Man; what we now propose to lay before your Lordship and the Jury, is the very extraordinary Part that the Earl of Anglesea took in that Trial; a Trial wherein he was not any way concerned. When the Witness shall be permitted to tell you what Expence the Earl was at in this Prosecution, it will strengthen that Evidence, of the Defendant's spiriting away the Lessor of the Plaintiff, and shew the Defendant's continued Design of removing this Gentleman from any Possibility of asserting his Birthright. And therefore we humbly hope your Lordship will permit us to go into this Evidence; and submit it to the Jury, whether there could be any Reason but one for such an uncommon Proceeding.

Mr. Harward, for the Plaintiff. My Lord, I apprehend, that every Matter which in any degree tends to shew whether the Plaintiff was the lawful Son of the late Lord Albani, or no, is proper Evidence to be laid before the Jury. This Evidence now offered, is to shew that the present Lord Anglesea, conscious of the Plaintiff's Legitimacy, undertook the Prosecution to take away his Life, and spent great Sums of Money in it. If it is an Act of the Defendant's, it is proper for the Jury to consider, *quo animo* he undertook it, whether from a publick Spirit of Justice, or a private View to take away the Life of this Rival to his Estate; for every Act of the Defendant that can give Light to the Jury of the Opinion that my Lord himself had of the Plaintiff's Right, is proper Evidence to be offered to them. We have already laid Evidence before the Jury that we apprehend clearly shews that the Lord Anglesea had, several Years ago, spirited away this Plaintiff, to prevent his asserting his Right to the Estate. This now offered is a further Proof of my Lord Anglesea's Opinion concerning his Right; and to corroborate that Evidence that has been already laid before the Court, we have a Right to produce it, as a further Instance of this Lord's own Opinion, that it was necessary for him to come at his Life at any rate.

The Question is not now, whether the Prosecution was just or not? Whether Mr. Annesley was guilty or not of the Murder charged on him? He has been acquitted. I must beg leave to say, if he had been found guilty, and got a Pardon, and came to seek his Right in this Court, my Lord's carrying on the Prosecution might have been imputed to a Zeal for Justice; but being acquitted, there is Room for the Jury to consider, whether his interfering was not owing to some other Motive, and some other End than that of publick Justice. The single Question is, Whether my Lord Anglesea, being a Stranger to the Deceased, became a voluntary Prosecutor, for the Death of a Man who stood in no Degree of Relation to the Family, from a Principle of Justice, or to gratify some private End of his own? It might have been very proper for Lord Anglesea to have expended such large Sums of Money in prosecution of Justice, had he been any way related to the Deceased; but as he was not, his expending such unusual Sums in a Prosecution no ways relating to him, more than to any other Stranger, argues, that it was to answer his private Ends, by securing his own Title to the Estate, if he could prevail to have the Plaintiff found guilty of Murder. If we were going to charge him with any thing that might involve him in any Sort of Guilt, the Objections might have been proper, but as we are not, they can carry no Weight.

Lord Chief Baron. This Witness was produced to shew that the Prosecution against the Plaintiff, for killing a Man at Staines, was promoted and carried on by the Defendant, and at his Expence; which, as it was an Attempt to take away the Plaintiff's Life, his Counsel have insisted is proper to be laid before the Jury, as further Proof of the present Defendant's Distrust of his own Title, and his Opinion of the now Plaintiff's Right: And this has been offered without any previous Evidence, that the Defendant had been convicted or prosecuted for the malicious Prosecution of the Plaintiff, or that the Court, before whom the Plaintiff was tried for that supposed Murder, had, by any Act of theirs, declared their Opinion that this Prosecution was malicious, as is frequently done by ordering the Prisoner a Copy of his Indictment.

This is a new Attempt, and were it necessary for me now to give my Opinion, I should think it ought not to be admitted.

The Prosecution in itself was not unlawful, on the contrary, it is the Duty of every Man, especially in the Case of Blood, to take care that the Offender be put upon his Trial. And therefore, without entering into the Merits of that Case, the Motives of the Prosecution cannot appear; and those alone can, in my Apprehension, introduce this Evidence as pertinent to the Matter in Issue in this Cause: Who, without going farther, can say, this Prosecution, though lawful, was carried on with an unlawful Intention?

These Reasons weigh with me at present. But as this Trial will last another Day, the Counsel for the Plaintiff may proceed to some other Evidence, and we, if it be insisted on, will give you our Opinions in the Morning.

Mr. Baron Mountney. It will always give me Concern, to find myself under a Necessity of delivering a sudden and immediate Opinion upon any Question, the contrary Sides of which are with equal Zeal contended for, by Gentlemen of such Figure and Character in their Profession as those concerned in the present Cause: that Concern must be extremely increased, whenever I have the Misfortune to differ in Opinion, either from my Lord Chief Baron, or my Brother Dawson, for both of whose Opinions I have the highest Regard; and still infinitely more so in the present Cause; the immense Consequence of which will incline me to hesitate even upon such Points, as I should otherwise be most extremely clear in. I shall therefore very gladly avail myself of that Opportunity, which, as my Lord Chief Baron hath been pleased to mention, the Adjournment of this Cause will afford us, of giving this Matter a farther Consideration.

But my present Opinion is, that the Evidence now offered ought to be admitted; and the Foundation of my Opinion is this: Every Act done by the Defendant, which hath a Tendency to shew a Consciousness in him of Title in the Lessor of the Plaintiff, must, I think, be admitted, beyond all Controversy, to be pertinent and legal Evidence in the present Cause:—I think that the Evidence now offered hath that Tendency, and consequently is proper to be admitted.

This Evidence of the Prosecution, in my Apprehension, stands exactly on the same Footing with the Evidence of the Kid-knapping; (against which not the least Objection was attempted by the Defendant's Counsel) for I can by no means enter into the Distinction of lawful and unlawful Acts; which seems to have so much Weight with my Lord Chief Baron.

That unlawful Act was not therefore, in my Apprehension, to be admitted in Evidence, because unlawful, but, because it had a Tendency to shew such a Consciousness, as I have mentioned, in the Defendant: and if the carrying on the Prosecution (which must be admitted to be a very extraordinary, though lawful, Act of the Defendant) hath the same Tendency, it ought, upon the same Principle, to be admitted.

Many Instances, I believe, might be put of lawful Acts done by one Party, which yet, it could not be controverted, would be legal and material Evidence for the other. One Instance occurs to me at present, which I think cannot bear the least Dispute. Suppose it could be proved, that the Defendant had offered to the Lessor of the Plaintiff a considerable Part of his Estate, or a large Sum of Money, to compromise this very Suit—Will any of his Counsel say, or can any Man living imagine, that this would not be legal Evidence in the present Cause?—And yet, the compromising of a Law-Suit is not only, universally, a lawful, but is, generally speaking, a commendable Act.

Cui bono hath ever been esteemed one of the strongest, and most unanswerable Arguments in all Cases:—And therefore the Fact, which I have mentioned, would be not only legal, but, in my Apprehension, most exceedingly material Evidence to be left to the Jury; who would be the proper Judges *quo animo* such an Offer was made.

As to the Fact now offered to be proved, it is possible indeed, that the Noble Lord might take up a Prosecution, deserted (so far as appears) by the near Relations of the Deceased (the Persons most likely to have carried it on, if they had thought Mr. Annesley guilty of Murder) merely out of a publick-spirited Regard to Justice;—it is likewise possible, that his Motive for engaging in it might be an interested one—a Consciousness of Right in that Person, and consequently that, unless that Person could be put out of the Way, the Titles and Estates which he was in Possession of would be insecure.

I think the Jury will be the proper Judges upon the whole Evidence in this Case, upon which of these two Motives, it is most probable, the Defendant acted:—and that therefore the Evidence of that Fact ought to be admitted, and left to their Consideration.

This, I say, is clearly my present Opinion: but, as I mentioned before, I shall make use of the Opportunity of considering it further; and, if I find Reason to think that I am at present mistaken, I will mention it To-morrow, and shall be exceedingly glad to change the Opinion which I have now given for a better.

Mr. Baron Dawson. I am very glad that there is no Necessity for our giving our Opinions immediately on this Point, I shall therefore decline giving any positive Opinion, as we have this Night to consider of it. The Prosecution here is agreed to be a lawful Act, and is not immediately relative to the Matter in Issue. The Difficulty with me is, that if this be given in Evidence, a Jury may, from a lawful Act not immediately relative to the Issue, draw an unwarrantable Consequence.

If the Act were unlawful, it would undoubtedly be good Evidence, there could be no other Way of accounting for the Party's subjecting himself to legal Punishment: But where it is not unlawful, it may be dangerous to leave the Intent to the Jury. We will consider of this Matter, and give our Opinions in it To-morrow.

Wednesday, November the 16th.

The Counsel for the Plaintiff proposed to examine Mr. John Giffard to what he had heard the Defendant say concerning the Lessor of the Plaintiff, and his Title; and being called upon to open the Nature of that Evidence;

Mr. Harward, of Counsel for the Plaintiff, spoke as follows: My Lord, the Conversation Mr. Giffard had with Lord Anglesea was to this Purpose, Mr. Giffard is an Attorney of Reputation in England, and as such has been twenty Years or thereabouts employed by this noble Earl in his Business, as he had Occasion for him. When my unfortunate Client was to be tried at the Old Bailey, that was the Time Lord Anglesea had greatest Occasion for this Mr. Giffard; and it will appear to your Lordship that Lord Anglesea disclosed his Intentions to him in this Manner: "I am advised that it is not prudent for me to appear publicly in the Prosecution, but I would give ten thousand Pounds to have him hanged. Mr. Jans my Agent shall always attend you. I am in great Distress; I am worried by my Wife in Ireland; Mr. Charles Annesley is at Law with me for Part of my Estate, and," says he, "if I cannot hang James Annesley, it is better for me to quit this Kingdom and go to France, and let Jemmy have his Right, if he will remit me into France Three thousand Pounds a-Year; I will learn French before I go."

Mr. Daly, of Counsel for the Defendant, objects to Mr. Giffard's being examined, since as an Attorney he was to keep the Secrets of his Client,

and ought not to be permitted to disclose them; and cited the Case of *Cutts and Pickering*, 1. Vent. 197.

Mr. Serj. Marshall, for the Defendant.] But if an Attorney will voluntarily come and disclose any Secret, he ought to be heard.

Mr. Blake, of Counsel for the Defendant.] An Attorney or Solicitor might not, nor is he compellable to disclose the Secrets of his Client; this is a Privilege inherent in the Office of an Attorney or Solicitor: But as this Privilege has its Source in a publick Consideration, I shall, with Submission to better Judgment, insist that this exemptive Privilege is not merely and solely the Privilege of the Solicitor or Attorney, but is, in Law and Reason, the Right and Privilege of the Client. Formerly, Persons involved in Contests and Litigations appeared in Court personally, and pleaded and enforced their several Demands and respective Defences, and beyond all doubt retained some Secrets unrevealed; but when, from an inevitable Variation of Things, an Increase of Trade, and an Exuberance of Opulence, legal Altercations became innumerable, then it became necessary to employ others to represent the Parties engaged; these Persons are denominated Attornies or Solicitors, and they, in the Nature of Things, must unavoidably be trusted with the most retired and secret Thoughts and Actions of their Employers, not only with respect to Suits actually instituted, but also with regard to Suits threatened or intended to be commenced; for a Person menaced, if directed by Prudence, will be conducted by Vigilance and Caution, equally as if attacked; therefore it is absolutely necessary to extend this Privilege to the Client, and not restrict it entirely to the Solicitor, especially as there may be some of that Profession, who cannot be supposed to be actuated by such Principles of Honour and Virtue, as an Office of so great Confidence requires; I mean the Person now produced to be a Witness for the Plaintiff. The Case of Lord Say and Seal, in *Macclesfield's Reports*, I think, is an Authority in point.

Mr. Recorder, for the Defendant.] My Lord, formerly Persons appeared in Court themselves; but as Business multiplied and became more intricate, and Titles more perplexed, both the Distance of Places, and the Multiplicity of Business, made it absolutely necessary that there should be a Set of People who should stand in the Place of the Suitors, and these Persons are called Attornies. Since this has been thought necessary, all People and all Courts have looked upon that Confidence between the Party and Attorney to be so great, that it would be destructive to all Business, if Attornies were to disclose the Business of their Clients. In many Cases Men hold their Estates without Titles; in others, by such Titles, that if their Deeds could be got out of their Hands, they must lose their Fortunes. When Persons become Purchasers for valuable Considerations, and get a Deed that makes against them, they are not obliged to disclose whether they have that Deed. Now, if an Attorney was to be examined in every Case, what Man would trust an Attorney with the Secret of his Estate, if he should be permitted to offer himself as a Witness? If an Attorney had it in his Option to be examined, there would be an intire Stop to Business; Nobody would trust an Attorney with the State of his Affairs.

The Reason why Attornies are not to be examined to any thing relating to their Clients or their Affairs, is, because they would destroy the Confidence that is necessary to be preserved between them. This Confidence between the Employer and the Person employed, is so sacred a Thing, that if they were at liberty, when the present Cause was over that they were employed in, to give Testimony in favour of any other Person, it would not answer the End for which it was instituted. The End is, that Persons with Safety may substitute others in their room; and therefore if you can't ask me, you can't ask that Man; for every thing said to him, is as if I had said it to myself, and he is not to answer it. Now, the Question will be, for whose Sake it was instituted? Be sure, for the Sake of the Person employing him. Who then has the Option that he should be examined? Why, the Employer; because otherwise it would be in vain to fix a Confidence in Persons, if that Person was at liberty on any Account to shake him off, and say, While I was employed by you, it was not in my Option to disclose it, but now that I am not, I will unravel all. As it was for the Sake of the Employer that Attornies were instituted, they cannot in Civil Suits become Witnesses without the Consent of the Employer; therefore, I submit it, whether the Option is in the Attorney or in the Person who is the Employer; and if in the Employer, as I think it must be both for his Safety and Advantage, the Attorney neither can nor ought to reveal what is intrusted to him. In Pleading, it is, *ponit in loco suo Attornatum*, the Attorney is as himself. And it is contrary to the Rules of natural Justice and Equity, that any Man should betray himself. I apprehend it is not material whether this be a *turpis Causa* or not; as this Man was employed by my Lord Anglesea, he can be asked no other Questions than my Lord Anglesea himself.

My Lord, I must submit it, whether an Attorney's Testimony should be received, altho' he offers to give it? And in the next place, I submit it, whether this Kind of Testimony in this criminal Case ought to be received? It would be very little Satisfaction to a Client to be put to apply to the Court for an Attachment against this Person who offers to lay his Evidence before the Jury, if his Testimony could be received. I apprehend that Person is in the Place of the Client, and as he intrusts him with Secrets, he is not to disclose them without his Leave; and if he should disclose them out of Court, an Action of Deceit lies against him. And tho' an Attorney should not insist upon his Privilege, yet it is in the Power of the Employer to insist upon that Privilege, and to say he is the Person intrusted with his Secrets. Now, in this Case it is much stronger, for here it is said, that he is employed by my Lord Anglesea. Now, if that Party can't disclose those Secrets in a civil Case, he ought not, for a stronger Reason, in a criminal Case; because that is subjecting his Client perhaps to a criminal Prosecution.

Mr. Lee, of Counsel for the Defendant.] My Lord, if the Attorney confesses Judgment upon Record, it shall bind the *Conusor*, though done without Warrant; and the Reason is, that the Attorney appearing for the Party is, since the Statute of *Merton*, considered as the Party himself. If then the Attorney and Party are considered as one Person, why shall the one be suffered to be examined in this Cause, when the other cannot?

Mr. Serj. Marshall.] I do admit in some Cases the Attorney ought not to be permitted to disclose the Secrets of his Clients; but that must be where the Confidence was necessary and lawful: but here the Trust was unlawful, and the Attorney could not conceal it without Breach of his Oath,

as an Attorney, which was to do Right to all Men. This was a criminal Secret, that was not only to affect the Plaintiff's Property and Life, but also to acquire a Title in which the Public were interested; so that it became the Duty of the Attorney to disclose it.

[Mr. JOHN GIFFARD called and sworn]

Q. Are you an Attorney of any, and what Court?

A. I am an Attorney of the Common-Pleas in England, and a Solicitor of the High-Court of Chancery, and sworn and admitted as such by Virtue of the Act of Parliament.

Q. Did you know the Defendant the Earl of Anglesea?—A. Yes.

Q. Was you ever Agent or Solicitor for him in any, and what Cause?

A. In the Year 1722, Lord Anglesea employed me to assist him on a particular Occasion to make his Defence.

Q. Name the Parties.

A. He was prosecuted, the King against him, as Richard Annesley, Esq.

Q. Were you employed in any other Cause?

A. In the Year 1722, the same Year, when an Action was brought against him at the Suit of one George Risden. But from the Year 1722, till he became Earl of Anglesea, I never heard of him. In the Year 1737 I met him in London, and he desired me to solicit an Affair between him and his Countess that lived at Biddisford.

Q. Name the next Cause.

A. Between the Right Honourable Maurice Thompson Lord Haverham, and the Earl of Anglesea.

Q. The next.

A. I was concerned in another, the same Year, and attended it, (it is very well known through the Houses of Lords and Commons in England) in order to throw a Bill out of the House of Commons, for the exemplifying the late Earl of Anglesea's Will.

Q. Go on.

A. I was likewise concerned in a particular Cause, between my Lord Anglesea, in the Year 1741, and one Mrs. Simpson of this Place; and have also sued out several Writs out of the Court of Common-Pleas, at the Suit of my Lord Anglesea, against one Henderson a Quaker.

Q. Go on.

A. I likewise was employed by Lord Anglesea in a Cause, wherein his Lordship was Plaintiff, and one Rachel Cooper was Defendant.

Q. Go on.

A. I issued out Writs against Henderson, at the Suit of one Banks, by Lord Anglesea's Directions.

Q. Go on.

A. I was sent for, and commanded by him to solicit and carry on a Prosecution against the Plaintiff Mr. Annesley.

Q. Have you been retained as Agent or Solicitor for the Earl of Anglesea, in any other Causes within these three Years?

A. I do not know; some frivolous Thing might have slipped my Memory, but I was not concerned in any other Cause, since the Prosecution of Mr. Annesley.

Q. Name the Time when you was retained by the Earl to prosecute that Murder.

A. The second Day of May, 1742.

Q. The Conversation that passed between you and my Lord, to which you are now produced as an Evidence, was it before, or after, that Time?

A. There were several Declarations, some before, and some after. The Conversations were from the 7th of December 1741, to the Time of Mr. Annesley's being discharged at the Old-Bailey.

Q. When was the Bill of Indictment found against Mr. Annesley?

A. The Bill was found in June, and he was admitted to Bail in July Sessions, 1742.

Q. On what Day is the Murder laid in the Indictment?

A. On the first of May, 1742, the 15th Year of the present King.

Q. Was you Agent or Solicitor for Lord Anglesea at the Time that the Conversation passed, before the 2d of May?

A. Not for the Cause of Mr. Annesley.

Q. Were not the other Causes subsisting?

A. The Causes were on Writs which were never executed.

Q. I desire you may answer directly, whether the Conversation before the 2d of May was not on some Affair in which my Lord Anglesea consulted and advised with you as his Agent or Solicitor, designing to employ you in that Affair?

A. No, my Lord, it was not; for I did not expect to be employed by him again, he having employed Mr. George Garden and Mr. Adam Gordon.

D. Name the People.

A. Mr. Garden and Mr. Gordon. They are Attornies, they are Partners, and I received my Instructions, in a great part, from them; my Lord ordered me to take Directions from them, and I have Instructions under Gordon's own Hand-writing.

Q. Had my Lord Anglesea those Conversations with you relative to the Plaintiff, between the 7th of December and the 2d of May, as intending to employ you, or not?

A. I never was employed, nor intended to be employed, in any Suit for or against him, during that Time.

Q. When did you first receive Instructions from Garden and Gordon?

A. In a Week after the first of May.

Q. Had you any Instructions from them, except what were relative to the Prosecution, in relation to the Plaintiff?

A. No; no Instructions but what were relative to the Prosecution.

Q. Did you charge Lord Anglesea with any Term Fees in the Year 1741, relative to particular Suits?

A. I believed I charged 10 s. 4 d. for Lord Haverham's Suit.

Q. In what Term did you charge it?

A. I find that Cause was in the Vacation between Hillary and Easter Term, and was concluded before Easter Term came. It was depending in Hillary Term 1741, and was concluded before the next Term.

Q. Was it depending for any time before Hillary Term?

A. The Beginning of it was the 20th of January, the Essoign before Hillary Term.

Was you concerned for Lord Anglesea from the latter end of November to the beginning of January 1741?

I was concerned in issuing out some Writs.

2. Add do not you think, if any Suit had depended upon them, you would have been concerned? — A. I do not know but I might.

The Witness goes off the Table.

Mr. *Primo Serjeant*, (*Anthony Malone*, Esq.) for the Defendant.] An Attorney shall not disclose any thing whatsoever in a collateral Question, that shall affect the Property of the Client.

Mr. *Serj. Tisdall*, for the Plaintiff.] My Lord, we propose to examine to no Fact which came to his Knowledge as an Attorney, in any Suit in which he was employed for Lord Anglesea: but he declares he never was employed in any Suit relating to the *Lessor* of the Plaintiff, nor was even intended to be employed in any Suit relating to this Trial. We hope, therefore, we are proper to give in Evidence several Declarations and Conversations Lord Anglesea had with the Witness concerning the *Lessor*, his Title to this Estate, and the Necessity he apprehended himself under of putting him out of the Way at that Time. We do not propose to examine him as to any Facts relating to the Prosecution of that Suit in which he was then employed; we desire only to examine him as to the Conversations with Lord Anglesea concerning this Cause; and I apprehend we have undoubtedly a Right to examine him as to these Points.

I cannot say, but the Gentlemen on the other Side have good Reason to oppose this Evidence, which, if it appears in the Manner we are instructed it will, must be an Evidence of great Weight. I shall first beg Leave to consider, whether an Attorney may be examined to any Matter which came to his Knowledge as an Attorney. If he is employed as an Attorney in any unlawful or wicked Act, his Duty to the Publick obliges him to disclose it; no private Obligations can dispense with that universal one, which lies on every Member of the Society, to discover every Design which may be formed, contrary to the Laws of the Society, to destroy the publick Welfare. For this Reason I apprehend, that if a Secret, which is contrary to the publick Good, such as a Design to commit Treason, Murder, or Perjury, comes to the Knowledge of an Attorney, even in a Cause wherein he is concerned, the Obligation to the Publick must dispense with the private Obligation to the Client: But in this Case the Witness proposed to be examined was not Attorney to the Defendant in any Case relative to his Testimony. And the Secrecy of the Attorney is necessary to the Client in that Cause only, for the carrying on of which he is under a Necessity to entrust him. For this Reason I agree, that whatever is communicated to him from that Necessity ought not to be disclosed, even in a future Cause, wherein he is not concerned; but as the Client is not obliged to entrust his Attorney with any of his Secrets, but such only as are relative to, or may be useful for carrying on the Cause in which he is employed; if he trusts him with any Matter foreign to that, even during the Time that he is employed, with any Matter which was not necessary, or any way material to the Cause depending, he is not obliged to conceal it.

I beg Leave to say, as there was no Necessity upon the Client to entrust him with it, so mutually there can be no Obligation upon the Attorney to conceal it; for as the only Obligation which lies on the Attorney to Secrecy, arises from the Necessity of Confidence between him and his Employer, from the Necessity the Client must be under to entrust him, it cannot extend to any Case where that Confidence was not necessary, where the Client was not under such a Necessity. If this be admitted, the Matters we propose to examine to are quite foreign to those Suits in which the Witness was employed for the Defendant. My Lord Anglesea was indeed under a Necessity of entrusting him with all the Evidence that he thought necessary for the Prosecution carried on against the Plaintiff in England, and the Attorney is under an Obligation of concealing that Evidence: but was he under a Necessity of telling the Attorney he wanted to put this Man out of the Way, or that he was entitled to his Honours and Estate? This was a Secret he ought in Prudence to have kept within his own Breast, and not to have discovered. This was a Secret not necessary to be communicated, and therefore not to be concealed.

Upon these Principles, therefore, I should submit it to your Lordship, that we must be at Liberty to examine Mr. Giffard as to those Conversations which were no way relative to the Matter in which he was then employed by the Defendant, and which, if true, as they are represented to us, import a Design contrary to all Laws of Nature and Society.

Mr. *Walsh*, for the Plaintiff.] I do admit that an Attorney shall not be examined to any Fact disclosed to him by his Client as an Attorney, relative to a Cause wherein he was employed; because a Client must of Necessity entrust the Secrets of his Title to his Attorney, to enable him to conduct his Suit; and therefore the Attorney stands in the Place of his Client, who cannot be examined as a Witness against himself. But this Rule can never be extended either to a Case where the Matter was not communicated to him as a Secret, in the Cause wherein he was employed, or before he was employed as Attorney in that Cause; because there the Client was not under any Necessity of disclosing the Fact to him; and if it were otherwise, this Inconvenience must happen, that no Attorney could ever be a Witness against a Person, if he ever happened, upon any Occasion whatsoever, to be his Attorney. The Question then is, Whether the Fact to which we want to examine Mr. Giffard was communicated to him by Lord Anglesea, as his Lordship's Attorney, or not? or whether he was actually employed by him in the Prosecution of Mr. *Annesley*, at the Time the Discourse we would examine him to happened? It is true, Mr. Giffard had been Attorney to Lord Anglesea in several Suits before this Conversation happened; but he could not be at that Time employed in the Prosecution of Mr. *Annesley*; because it appears, that this Discourse happened before the Coroner's Inquest sat, or any Prosecution began on that Account; so that I apprehend this Case does not come within the Rule I mentioned, and that Mr. Giffard ought to be examined. But besides, what we would examine him to is, not as to any Secret in the Prosecution itself, but only as to Lord Anglesea's Intention and Design in engaging himself in the Prosecution. But I must mention another Reason, which puts this Matter out of doubt, and that is, that this Prosecution was at the Suit of the Crown; if any Secrets were in that Suit, they were the King's Secrets, the revealing of which could be no Inconvenience to Lord Anglesea, or affect his Property; and therefore, my Lord,

I apprehend, for these Reasons, that Mr. Giffard ought to be examined as to the Point we have opened.

Mr. *Harward*.] I apprehend, that what is contended for by the Gentlemen on the other Side, is not supported by the Authorities they have relied on; because, in all the Cases quoted by them it does appear, that the Attorney proposed to be examined, was the Attorney or Agent in that very Cause that was then to receive a Determination, and it appears that the Secrets to which he was to be examined, were Secrets that came to his Knowledge from his Client concerning that very Cause. So that the Cases quoted do not maintain the Objection made; for this Witness was never in this Cause employed as Agent, or in any other, in which the Title to the Anglesea Estate was controverted, as it is here; so can't be said to violate any Confidence reposed in him, as to any Secrets concerning the Title to the Estate; for that could not come in question on the Prosecution for Murder, or be in any Sort necessary for the Client to reveal to him to carry on the Prosecution; and therefore not within the Rule laid down, *That the Client has a Privilege to hinder his Attorney from disclosing any of the Secrets communicated to him necessary to carry on the Cause he is employed in*: And in the Case of *Cutts* and *Pickering* in *Ventris*, it was agreed, that if the Secret came to him from his Client before he was retained, he might be examined; and a Retainer in a capital Prosecution cannot, in the Nature of the Thing, imply any Trust in the Attorney to keep the Secrets of the Title to an Estate, no way to be in question in that Prosecution: And the Case of Lord *Say* and *Seal* mentioned, makes rather for us than against us; for there the Attorney employed to suffer a Recovery was examined against his Client as to antedating a Deed to make a Tenant to the *Præcipe*; for that the Time of executing a Deed could not be called the Secret of his Client; and the Rule laid down on the other Side, in such general Terms as it is urged, instead of promoting public Justice, would subvert it, and screen all Villainies that could be contrived to carry a Cause. I take the Distinction to be, that where an Attorney comes to the Knowledge of a Thing that is *malum in se*, against the common Rules of Morality and Honesty, though from his Client, and necessary to procure Success in the Cause, yet it is no Breach of Trust in him to disclose it, as it can't be presumed an honest Man would engage in a Trust that by Law prevented him from discharging that moral Duty all are bound to, nor can private Obligation cancel the Justice owing by us to the Publick. But the Trust reposed in this Attorney was, to carry on a Prosecution of Murder. The Matter disclosed by this Lord to him was foreign concerning the Title to an Estate; then, how can the revealing of that be a Breach of Trust, when not within the Trust he was employed in? The Prosecution was properly at the King's Suit, and not at the Lord Anglesea's; this Ejectment was not then even in Contemplation, or could be foreseen that the Title to the Estate would ever come in question; so, what Lord Anglesea declared to him concerning the Title, is no more within the Bounds of the Trust reposed, than if any other Person had declared it to him, for whom he never was employed.

But to go a little farther, suppose I employ an Attorney to recover *Blackacre* for me, and I bring an Ejectment for it; while he is thus employed, I come and discover to him that I have forged a Deed which relates to *Whiteacre* in my Possession, and which is the Right of another Man; might not the Attorney hereafter disclose that Forgery, to enable the other to recover *Whiteacre* from me? For he never was employed or entrusted as an Attorney by me in that Case. So, in the present Case, the Attorney was never employed in any Cause where the Title of the Estate was or could come in question; so not at all within the Reason of that necessary Privilege given by Law to the Client, to hinder his Attorney from disclosing any of the Secrets communicated to him, necessary for, and relative to the carrying on of the Cause he has engaged himself in to prosecute. The Thing therefore that varies this Case from the Rule of Privilege laid down on the other Side is, that this Attorney was never concerned in any Suit of my Lord's relative to the Title of the Estate, and to which we now produce him; and there can be no such Privilege, but where there is such Suit and Retainer for that individual Purpose, and cannot extend to Concealment of Secrets disclosed under the Confidence of ordinary Friendships or Discourses.

And lastly, As it is a Discovery to the Agent to contrive the Death of an innocent Man, that there is no Protection whatsoever can be given to dispense with that moral Engagement he was under to the Discovery of it; if this unfortunate Gentleman had come to the Discovery, that the Lord Anglesea and his Attorney had entered into a Conspiracy to bribe Witnesses, could the Court stand by and say, That this Witness should not be examined? How can he now then, in a Civil Case, wherein he never was concerned, have that Protection? Will any Gentleman deny, that this Attorney could have gone and given in an Examination concerning this Prosecution? He certainly could; for no Man can have a Protection against the King. And if Lord Anglesea was so idle, or if Providence has so ordered it, that he should be so unwary, or so wanton, as to make a Discovery of this, and of the Plaintiff's Title to the Estate, he has no Privilege against the Discovery of it.

Mr. *Solicitor General*, (*Warden Flood*, Esq.) for the Defendant.] I humbly hope your Lordship will not admit this Person to be examined in this Cause. If the Question were only to his Credit, surely he can deserve none; for he appears under the Circumstances of a Person who was employed from the Year 1722, by this noble Person as his Attorney; a Man willingly betraying those Secrets, which, in point of Duty and common Honesty, he ought to keep. Besides, the Secrets he pretends to disclose are such as it was not necessary for my Lord to communicate to him, and such as no Man in his Wits could disclose to any Person, under what Obligation soever of Secrecy, without an unavoidable Necessity, which does in no Sort appear to be the Case here; and this makes what he says the less credible, and him the less fit to be believed as to his Competency. The Case of the Lord *Say*, which has been cited, is a full Authority that the Secrecy indulged to this Sort of People by the Law, is not for their Sakes, but that of their Clients. That it is the Privilege, not of the Attorney, but of the Client; and of consequence cannot be waved without his Consent. 'Tis true, this Privilege will not hold in a criminal Case, but is superseded, when it is incompatible with the Peace and Welfare of the Publick; but ours is a private Case, and falls not within this Rule.

Mr.

Mr. *Harward* mentions the Case of *Staples and Staples*, wherein a Settlement that was concealed, but not suppressed, was wanted to be known by Mr. *Matthews*; when the Lord Chancellor directed it so, that there was a Meeting, by Consent of all Parties, between the Attorneys on both Sides, and a Copy taken and signed.

Mr. *Daly*, of Counsel for the Defendant, supposes, that if he was concerned for a Man guilty of High-Treason, the Court could not oblige him to disclose the Secrets committed to him by that Man.

Mr. *Smith*, for the Defendant,] If I rightly apprehend the Nature of Mr. *Giffard's* Evidence offered by the Gentlemen on the other Side, it relates to two different Kinds of Declarations alledged to have been made to him by my Lord *Anglesea* in Conversation during two different Periods of Time; first, the Declarations of my Lord concerning the Right of Mr. *Annesley*, (the Lessor of the Plaintiff) and these are alledged to have been made at several Times in the Year 1741, antecedent to the Prosecution of Mr. *Annesley*; and in the next Place, my Lord's Declarations that he would give Ten Thousand Pounds to have Mr. *Annesley* hanged; and these are said to have been made during the Continuance of the Prosecution. We objected to this Evidence, that as Mr. *Giffard* appeared from what he said on the Table, to have been employed by my Lord as his Attorney, he ought not, by Law, to be permitted to disclose any Thing that was uttered to him by my Lord under the Trust and Confidence reposed in him as an Attorney. There have been two Answers given to this Objection: First, That the not disclosing the Secrets of the Client is a Privilege given by Law to the Attorney, and in his Favour only, and therefore he is at Liberty, if he thinks fit, to waive it. In the next Place, the Gentlemen say, that the Declarations touching Mr. *Annesley's* Right, were made at a Time when my Lord had no Cause depending, and that whatever is disclosed by the Client to his Attorney, when there is no Cause depending in which the Attorney is employed, is not within the Reason of the general Rule; because in such Case he may be said to be intrusted as a Companion or Acquaintance, but cannot be said to be trusted as an Attorney; and therefore, they say, Mr. *Giffard* ought to be examined, at least to these Declarations. Before I speak to these Points, I shall beg Leave to observe in general, that Breach of Trust and Confidence is a Thing no ways to be favoured in any Man whatsoever, whether he is or is not an Attorney; for mutual Trust and Confidence is one of the strongest Cements of human Society, and without which it could not subsist; and therefore I apprehend, that the Court will always go as far in every Case, as by Law they can, to prevent a Person from being guilty of so base an Action as Violation of Trust and Confidence, although he should be ever so willing to do it.

As to the first Point, Whether Mr. *Giffard* ought to be at Liberty to waive his Privilege; I think the Case of my Lord *Say and Seal*, in the Book called *Maclesfield's Cases*, fol. 41. mentioned by Mr. *Prime Sergeant*, seems to be an express Authority that he ought not. In that Case, the Court in giving their Opinion, lay it down as a general Rule, "That an Attorney's Privilege is the Privilege of his Client; and that an Attorney, though he would, yet shall not be allowed to discover the Secrets of his Client." The different Interest which the Attorney and the Client have in this Privilege, shew this Rule to be highly agreeable to Reason. As to the Attorney, this Privilege is an Exemption from the General Rule, which obliges every one to testify his Knowledge in any Affair where he is called upon as a Witness. By this Exemption he is freed from the disagreeable Necessity of revealing what was disclosed to him by his Client under the Seal of Confidence; this is a Privilege which every honest Attorney will set the highest Value upon, and will endeavour to preserve; and whenever any Attorney desires to be discharged from that Exemption, and to be at Liberty to waive his Privilege, he does, in effect, desire to be at Liberty to be guilty of one of the basest of Actions, Breach of Trust and Confidence; which as it is a Thing highly to be discountenanced in any Case, more especially in that of an Attorney; he ought not to be permitted to do it, let him have ever so strong an Inclination to it. As to the Client, the Interest which he has in this Privilege, is very obvious. No Man can conduct any of his Affairs which relate to Matters of Law, without employing and consulting with an Attorney; and if he does not fully and candidly disclose every Thing that is in his Mind, which he apprehends may be in the least relative to the Affair he consults his Attorney upon, it will be impossible for the Attorney properly to serve him: Therefore, to permit an Attorney, whenever he thinks fit, to betray that Confidence which the Client is under such an absolute Necessity of reposing in him, would be of the most dangerous Consequence, not only to the particular Client concerned, but to every other Man who is or may be a Client. The Gentlemen on the other Side have attempted to confine and circumscribe this Privilege, and to make it extend only to Matters disclosed by the Client relative to some Suit, then depending, in which the Attorney is concerned. But I apprehend this would be making the Rule a great deal too narrow; for, if the Principles on which the Rule is founded, are considered, the true Meaning of it must be, that the Attorney shall not be permitted to reveal any thing that his Client discloses to him under a general Confidence as his Attorney; so that it cannot be material whether a Suit was then actually depending or not; but the material Point to be considered is, whether the Client did not consider him as his Attorney, when he so disclosed his Mind to him? In the present Case, that my Lord *Anglesea*, at the Time these Declarations touching Mr. *Annesley's* Right are said to have been made, did consider Mr. *Giffard* as his Attorney, cannot be doubted. Mr. *Giffard* says, That my Lord, at several Times before, and particularly in the Year 1741, had employed him in several Suits; that he, after those Discourses, employed him again, and in the Month of May 1742 discharged him. So that the general Confidence my Lord reposed in him as his Attorney, must be presumed actually to subsist from the Time he first retained Mr. *Giffard*, till the Time he discharged him; and whatever my Lord said to him, during that Space of Time, touching his Affairs, was plainly said to him under Confidence as his Attorney; my Lord had employed him as an Attorney before, and plainly intended again to employ him as his Attorney afterwards; and because there was an Interval, during that Space of Time, in which my Lord was at Peace, and happened to have no Suits on his Hands, to say that his Attorney shall therefore be at Liberty to

disclose what was in that Interval revealed to him, would be equally deductive of all the ill Consequences that would attend his being permitted to disclose what he was intrusted with relative to a Suit actually depending; the Confidence reposed in the Attorney, is the same in the one Case as in the other, and his Violation of that Confidence equally prejudicial both to the Client and the Publick. It has been objected, That what has been cited out of the Case of Lord *Say and Seal*, is not the Point adjudged in the Case: But although the Court do there decide the Question before them upon another Point, yet the general Rule which they lay down (as I have mentioned it) stands admitted. The Case of Mr. *Matthews*, the Attorney, was mentioned on the other Side: If I am rightly informed of that Case, Mr. *Matthews* had, in the Presence, and at the Desire of his Client, attested and subscribed a Deed as a Witness. The Question asked of him, was touching the Execution of that Deed, and he was ordered to answer it; but that Case is entirely different from the present; whenever a Man attests the Execution of a Deed as a Witness, he does thereby engage to prove the Execution of it, whenever he is judicially called upon so to do; and his Client's desiring him to attest the Deed, is a Consent that the Attorney shall enter into that Engagement; therefore that Case is no way relative to the present Question. This is all I shall trouble the Court with as to the supposed Declarations of my Lord, antecedent to the Prosecution of Mr. *Annesley*. As to the Declarations supposed to have been made by my Lord during the Prosecution; besides the other Reasons I have before mentioned, as to the Confidence my Lord reposed in him as an Attorney, I have another Objection against the examining Mr. *Giffard* in this Point. The Gentlemen last Night produced Mr. *Giffard*, and proposed to examine him, to shew that my Lord *Anglesea* was concerned in, and assisted to carry on this Prosecution; which Evidence was objected to on our Side, and upon Debate the Court seemed to be of Opinion, that they ought not to be let in to give that Evidence; and I apprehend the Point was this Morning given up by the Gentlemen on the other Side: But the Examination now proposed, is an Attempt to do the same Thing in another Shape; they were not admitted to give Evidence directly that my Lord was concerned in, or carried on the Prosecution; but if they are admitted to prove his Declarations touching his Intention in carrying it on, it is plainly doing the same Thing in other Words, and would be to admit them to do that this Morning which was refused last Night. The Gentlemen have, in proposing their Evidence on this Occasion, used many harsh Expressions concerning the Defendant; but I apprehend they are a little too early; harsh Reflections should not be used until the Facts on which they are founded are proved and given in Evidence; whether that Evidence shall be given or not, is now the Point under the Consideration of the Court; and until that Matter is decided, I make no Doubt but that the Gentlemen of the Jury will not permit the Supposition of Facts to have any Influence upon them, before the Facts themselves shall be proved. Upon the whole, as whatever the Court shall do in this Case will be a Precedent, and, for the Reasons I have mentioned, a Precedent of very great Consequence, in all other Cases between every other Client and his Attorney, I hope the Court will be of Opinion, that Mr. *Giffard* ought not to be examined to any of the Points proposed.

The Lord Chief Baron. The Objections to Mr. *Giffard's* being admitted to give the Evidence proposed by the Plaintiff's Counsel, have been argued with great Strength; and undoubtedly the Publick is interested in the Event of this Question, so far as it may affect the necessary Confidence between the Client and his Attorney or Agent, which will make me cautious of fixing Boundaries to that Trust. The proper Way will be to determine this and every like Case upon their own Circumstances. What has been urged to take the present Case out of the general Rule, was, that the Conversation to which they would examine Mr. *Giffard*, was neither in any Cause wherein he was concerned for the Defendant, or relative to any in which he was consulted, or intended to be employed by the Defendant. If so, the Question will be, Whether an Attorney shall be permitted to disclose the general Conversation he had with his Client, without relation to him as his Attorney? Now, admitting the Policy of the Law in protecting Secrets disclosed by the Client to his Attorney, to be, as has been said, in Favour of the Client, and principally for his Service, and that the Attorney is *in loco* of the Client, and therefore his Trustee, does it follow from thence, that every Thing said by a Client to his Attorney, falls under the same Reason? I own, I think not; because there is not the same Necessity upon the Client to trust him in one Case as in the other; and of this the Court may judge, from the Particulars of the Conversation. Nor do I see any Impropriety in supposing the same Person to be trusted in one Case as an Attorney or Agent, and in another as a common Acquaintance. In the first Instance, the Court will not permit him, though willing, to discover what came to his Knowledge as an Attorney, because it would be in Breach of that Trust which the Law supposes to be necessary between him and his Employer: But where the Client talks to him at large as a Friend, and not in the Way of his Profession, I think the Court is not under the same Obligations to guard such Secrets, though in the Breast of an Attorney. The Case cited of *Cutts and Pickering*, 1 Vent. 197. restrains it to what came to his Knowledge as Attorney; and so I think is the Case of Lord *Say and Seal*; the Evidence to which he was produced being to the defective Execution of a Deed, to make a Tenant to the *Præcipe* for suffering a Recovery, in which the Witness had been employed as Attorney, which was the Secret of his Client's Cause.

The Lord Chief Baron was going to mention the Case of one *Hamilton*, where he apprehended the Attorney had been examined in Chancery; but being informed he was not, his Lordship proceeded:

What I found myself upon is, the Nature of the Testimony proposed, which appears to me to have been casual Conversation between the Witness and the Earl of *Anglesea*, which was not necessary to have been communicated to *Giffard* by his Lordship. And as to the private Trusts between Man and Man, we cannot interpose. Besides, as this was in Part a wicked Secret, it ought not to have been concealed; though, if earlier disclosed, it might have been more for the Credit of the Witness. I therefore think Mr. *Giffard* may be examined to the Defendant's Declarations concerning the Plaintiff's Person and Title.

Mr. Baron *Montague*. The prodigious Consequence of the Cause depending before us, hath, very properly, induced the Gentlemen who are

Counsel

on both Sides, to insist upon, and argue at large, every Point arising in the Cause, which could possibly bear the least Debate.—The Reason hath induced the Court to hear gladly, with the utmost Patience and Attention, every thing which could possibly be offered on either Side; and, I think, nothing hath been omitted, which could have been materially offered upon the present Question.

For my own Part, notwithstanding all the Objections which have been raised against the Evidence now under Consideration by the Defendant's Counsel, I still continue of the same Opinion, which I entertained when the Evidence was first offered and objected to; which is, that the Question now before us will receive a very easy, clear, and short Determination, and that in favour of the Evidence proposed: I the rather say so, because I think, that upon the very Principles laid down, and upon the Authority of the very Cases cited by the Defendant's Counsel, it is a Demonstration clear that the Evidence now offered ought to be admitted.

Mr. Recorder hath very properly mentioned the Foundation upon which it hath been held, and is certainly undoubted Law, that Attornies ought to keep inviolably the Secrets of their Clients, viz. That an Increase of legal Business, and the Inability of Parties to transact that Business themselves, made it necessary for them to employ (and as the Law properly expresses it, *ponere in loco suo*) other Persons who might transact that Business for them.—That this Necessity introduced with it the Necessity of what the Law hath very justly established, an inviolable Secrecy to be observed by Attornies, in order to render it safe for Clients to communicate to their Attornies all proper Instruction for the carrying on those Causes which they found themselves under a Necessity of intrusting to their Care. And if this original Principle be kept constantly in view, I think it cannot be difficult to determine either the present Question, or any other which may arise upon this Head: for upon this Principle, whatever either is, or by the Party concerned can naturally be supposed, necessary to be communicated to the Attorney, in order to the carrying on any Suit or Prosecution, in which he is retained; That the Attorney shall inviolably keep secret.

On the other hand, whatever is not, nor can possibly by any Man living be supposed to be, necessary for that Purpose, That the Attorney is at liberty, and in many Cases, as particularly, I think, in the present Case, the Attorney ought to disclose.

The Declarations of the Defendant to his Attorney, which are now offered to be proved, I shall not mention at large, but shall only take notice of one, which was, that (speaking of Mr. Annesley, the now Lessor of the Plaintiff) he declared, *he did not care if it cost him ten thousand Pounds, if he could get him hanged.* Does any Man living, who hears these Words pronounced, hesitate one Moment as to the Meaning and Import of them? They speak too plainly to be misunderstood, or doubted of. For God's sake then let us consider, what will be the Consequence of the Doctrine now laid down, and so earnestly contended for, that such a Declaration made by any Person to his Attorney, ought not by that Attorney to be proved? A Man (without any natural Call to it) promotes a Prosecution against another for a Capital Offence—he is desirous and determined, at all Events, to get him hanged—he retains an Attorney to carry on the Prosecution, and makes such a Declaration to him as I have before mentioned, (the Meaning and Intention of which, if the Attorney hath common Understanding about him, it is impossible he should mistake)—he happens to be too honest a Man to engage in such an Affair—he declines the Prosecution—but he must never discover this Declaration, because he was retained as Attorney. This Prosecutor applies in the same Manner to a second, a third, and so on, who still refuse, but are still to keep this inviolably secret:—at last, he finds an Attorney wicked enough to carry this iniquitous Scheme into Execution—and after all, none of these Persons are to be admitted to prove this, in order either to bring the guilty Party to condign Punishment, or to prevent the evil Consequences of his Crime with regard to civil Property. Is this Law? Is this Reason? I think it is absolutely contrary to both.

As the Principles upon which the Defendant's Counsel have argued, so I think likewise the Cases which they have cited make directly against them, and are express Authorities in favour of the Evidence now offered.—In the Case of *Cutts and Pickering*, in 1 Vent. the Court were of Opinion, that the Solicitor might be sworn to the Discoveries made to him by his Client before his Retainer.—The Meaning of which I take to be, that such Discovery not being made in consequence of the necessary Confidence between Client and Attorney, was therefore not within the Rule of Secrecy: and if the same Reason will hold in the present, or any other given Case, even after a Retainer, the Objection must equally fail. Now I think the same Reason does hold in the present Case, because the Declaration now offered to be proved does not appear, nor could possibly by the Defendant be supposed, to be a necessary Instruction, or Communication between him and his Attorney, in order to the better carrying on either that Prosecution, or any other legal Business in which he had retained that Attorney.—So that this Declaration, after the Retainer, stands entirely, in my Apprehension, on the same Footing as if it had been made before. For to say that the Confidence between Client and Attorney (to which inviolable Secrecy is to be annexed) is to be taken in the Latitude laid down by the Defendant's Counsel, is, in my Apprehension, to say that which hath no Foundation in Law, nor the least Colour in point of Reason.

The other Case which was cited by the Defendant's Counsel, that of Lord *Sey and Seal*, is, I think, still infinitely stronger against them; and every Reason which the Court in that Case proceeded upon concludes directly in favour of the Evidence which is the Subject of the present Debate.

In that Case the Court were of Opinion (and I think most rightly), that the Privilege of an Attorney is the Privilege of his Client; (and so I have always understood the Law to be) but, notwithstanding that, the Court admitted the very Attorney, who had been intrusted in suffering the common Recovery, to prove that the Deed to lead the Uses of that very Recovery was antedated. And what were the Reasons upon which the Court proceeded? The first mentioned in the Book is, that "the Time of executing the Deed could not be called the Secret of his Client." Now, I think, in this Case, the Declaration offered to be proved, can still infinitely less be considered as the Secret of the Client. The next Thing mentioned in the Report of that Case now produced, is, that "it

was a thing he might come to the Knowledge of without his Client's acquainting him;" and that, I think, will hold equally strong in the present Case. Giffard might have heard from others, that Lord Anglesea had made such a Declaration; or Lord Anglesea might himself equally have made it to Giffard, altho' he had not retained him as an Attorney, it not being, as I have before mentioned, a necessary Instruction, nor what could possibly by the Defendant be thought so, for the better carrying on the Business in which he was retained; and consequently, not proceeding from that Confidence which is necessary between Client and Attorney, and to which, only because, and so far as it is necessary, the Privilege of Secrecy hath been annexed. The last thing mentioned in the Book is that the Fact offered to be proved, "was of that Nature," that an Attorney concerned, or any body else, might inform the Court of it. Now I cannot help thinking from these Words, that one Ingredient in the Determination of the Court, was, that the Proof offered in that Case was the Proof of a criminal Fact: If it were, that Reason will hold infinitely stronger in the present Case. The Declaration now offered to be proved, is of that Nature, and so highly criminal, that, in my Opinion, Mankind is interested in the Discovery; and whoever it was made to, Attorney or not Attorney, lies under an Obligation to Society in general, prior and superior to any Obligation he can lie under to a particular Individual, to make it known.

I speak this without Prejudice: God knows whether such Declarations, as have been mentioned, were, or were not, made by the now Defendant; but, when we are debating the Propriety of the Evidence, we are, during the Debate (and for Argument's sake only) to suppose it true: If they shall afterwards appear in Proof, I think they will be exceedingly material for the Consideration of the Jury; and do therefore most heartily concur in the Opinion given by my Lord Chief Baron, that the Evidence now offered ought to be admitted.

Mr. Baron Dawson.] If there had been no Objection made on the Part of the Defendant that the Attorney had been employed by him, the Plaintiff would have had a Right *prima facie* for his being admitted a Witness; therefore to deprive the Plaintiff of this Right, it must be shewn, that the Particulars offered here to be given in Evidence came to the Knowledge of Giffard merely as Attorney for the Defendant. Nothing that came properly to the Knowledge of the Attorney in defence of his Client's Cause ought to be revealed. I will suppose an unknowing Man to have twenty Deeds by him, and he delivers them all to his Attorney to see which were relative to the Suit; he looks them over, and finds not half of them to be relative thereto; I apprehend the Attorney is not compellable to disclose the Contents of any one of those Deeds; neither do I think it necessary that there should be a Suit actually depending. If I have an Apprehension that a Man intends a Suit against me, and I employ an Attorney to draw a State of my Case from my Papers, though there is no Cause depending, there I apprehend it would be a Breach of Trust to disclose the Contents of those Papers, and that the Attorney ought not to be admitted to disclose what has been so intrusted to him: And I think the Court must, in this Case, be satisfied, first, that what came to this Man's Knowledge was not necessary to his Client's Affairs; and in the next place, that the Client could not think it necessary. The Cause to be carried on, was a Prosecution for the killing of a Man; what was necessary for the carrying on that Prosecution, I think the Attorney ought not to disclose. I think further, that any thing that the Client thought necessary, ought likewise not to be disclosed. The Motive for carrying on the Prosecution against the Plaintiff is said to be, because he has a Right to the Estate the Defendant was in possession of. Can any Man think that this was necessary to tell the Attorney, or that the Defendant could have thought it so? What was necessary, or what a Man might have thought necessary, ought not to be disclosed. But if the Defendant in this Case, has gone any thing further, he has trusted him, not as an Attorney, but as an Acquaintance. The Attorney is to keep secret what comes to him as an Attorney; but this Conversation I don't think was necessary for carrying on the Cause. I agree therefore with my Lord Chief Baron and my Brother Mounteney, that the Evidence is proper to be given.

I think it proper at this Time to mention, that I have considered the Point of Evidence that was proposed Yesterday, and if it was now to be determined, I should be of Opinion to allow the Evidence; and if the Counsel for the Defendant should so please, they may take a Bill of Exceptions.

— Mr. JOHN GIFFARD sworn.

Q. Do you know the present Earl of Anglesea?

Mr. Giffard. Yes, Sir.

Q. Pray, Sir, do you know the present Plaintiff, Mr. Annesley?

A. Yes, Sir.

Q. Pray had you at any time any Conversation, and when, with the present Lord Anglesea concerning the Plaintiff, or his Title to the Lands in this Ejectment, or any other Lands?

A. It was some time between the 7th of December 1741, and May 1742, my Lord Anglesea had an Appeal from this Kingdom to the House of Lords in England between Charles Annesley, Esq; and him, which Appeal was heard on the 10th of March 1741.

Court. Answer the Question directly.

A. I am only giving you the Reasons of this Discourse.

My Lord Anglesea having that Suit, and a good many others, with my Lord Haversham, Francis Annesley, and Mrs. Simpson, he was very uneasy at it. He said, *he would be very glad to send to the present Plaintiff, and if he would give him 2 or 3000l. a Year, he would surrender up to him the Titles of Anglesea and Altham, and the Estate, and go over to France and live there; and then he should be much easier and happier than to be tormented with those People that were suing of him, for that he would rather his Brother's Son should have it than any other Person.*

D. Go on.

A. For if Jemmy had the Estate on those Terms, he should live much happier and easier in France than he was here, as he was tormented by Law; for it was his Right, and he'd surrender it to him, (for he did not value the Title) rather than Frank and Charles Annesley, and those that were striving to take it from him should have it; and that he would send for a Gentleman to teach him

him the French Tongue, is qualified him to live in that Kingdom; and accordingly he sent for one Mr. Stephen Hayes.

Q. What is he?

A. He was an Officer in the French Service, as *Ninety* himself and my Lord told me; and my Lord had him in the House a considerable Time, on purpose to converse with him in French.

Q. Did you ever see him there?—A. I did, my Lord, forty Times.

Q. Can you recollect any particular Time when this Conversation happened?—A. I told you, my Lord, it was about March 1741, when he had the Appeal in England.

Q. Was it before or after the Determination of that Appeal?

A. I believe it was both before and after; the Appeal was determined the 10th of March, and he continued in that Resolution till May 1742.

Q. And, pray, what altered his Resolution then?

A. Why, on the first of May Mr. Annesley had shot a Man at *Staines*; it was on Saturday, as appears by the Indictment and Coroner's Inquest; upon which, the second of May, my Lord sent for me, and ordered me to go to *Staines*, and to inquire into the Affair, and to collect the Evidence, and carry on the Prosecution, and to follow the Directions of Mr. Gordon and Mr. Gordon, with the Assistance of one Mr. Jans, who was a Surgeon; which I accordingly did. My Lord told me further, that I should follow their Directions, and in some small Time after (perhaps three or four Days) told me, That they had consulted together, and advised him not to be seen to converse with me, for that it was not proper for him to appear in the Prosecution, for fear of its hurting him in the Cause that was coming on between him and the Plaintiff; and, that he did not care if it cost him 10,000*l.* if he could get the Plaintiff hanged; for then he should be easy in his Title and Estate.

Q. After he told you that he did not care if it cost him 10,000*l.* if he could get the Plaintiff hanged, for then he should be easy in his Titles and Estates, who laid out the Money in carrying on this Prosecution of this unfortunate Man?

A. Money came privately from Mr. Jans; my Lord told me, He was determined, as he was advised, not to appear in it himself, but that I should apply, from Time to Time, to Mr. Jans, and Mr. Jans should, from Time to Time, supply me, for that he had ordered him to provide Money; and accordingly I had Money from him.

Q. What was Jans to my Lord Anglesea?

A. His Companion, and Manager, and Agent, and managed every Thing for him.

Cross-Examination.

Q. Repeat again the Time when you first had this Discourse with the Defendant, of his desiring Mr. Annesley to be sent to.

A. Some Time before the 10th of March 1741, we had the first Colloquium; we had the like Discourse, at sundry Times, between the 7th of December 1741, and May 1742.

Q. When was the first Colloquium, as you call it?

A. The first Time was some Time before the 10th of March, 1741.

Q. Where was Mr. Annesley at this Time?

A. I don't know, I never saw him at that Time.

Q. Do you know whether he was in the Kingdom of England or not?

A. I cannot tell. I believe he was.

Q. Do you know for what Purpose it was that my Lord said these Words to you? Was it with an Intent that you should apply to Mr. Annesley?—A. No, I don't believe it was.

Q. Pray now, Sir, do you know of any Steps that were taken in order to this Accommodation that my Lord desired?

A. I don't know of any, Sir.

Q. Pray, Sir, how soon after this 10th of March 1741, was it, that you first saw this Frenchman with my Lord?

A. Near about that Time; I cannot tell exactly. Frenchman he was not, I believe he was an Irish Gentleman, a Tenant's Son of my Lord's.

Q. How soon was it that my Lord said this after the 10th of March?

A. Near about the Time it was.

Q. Had my Lord Mr. Hayes in the House with him?

A. He had him in the House for that Purpose, of learning the French Tongue.

Q. Did you ever hear any Thing of my Lord's applying for an Accommodation?

A. It was very often talked in the House, Sir, that one Mr. Paterfon and one Mr. Mac Kercher should be sent to.

Q. Do you know of any Steps that were taken towards an Accommodation?

A. I know, of myself, of no Steps in order to an Accommodation.

Q. Sir, I see you have refreshed your Memory with Papers and Memorandums as to Periods of Time, are they of your own Hand-writing?

A. They are.

Q. I should be glad to know when it was that you put down those Periods of Time in Writing?

A. Sir, I put down the Days as they came on. I could shew you every Day where I was for seven Years last past.

Q. Were they wrote about the Time the Transactions happened?

A. I always did, since I was a Practitioner of the Law, keep a Day-book of every thing I did; and the first thing I do in a Morning is, to set down the preceding Day's Work.

Q. You say, my Lord used some Words to this Purpose, that he did not care if it cost him 10,000*l.* if he could get the Plaintiff hanged; and you were the Agent, under Garden and Gordon, to carry on that Prosecution?

A. I was.

Q. How came you to be employed?

A. The Reason I was sent for was, that I had been a Coroner myself in the County of Devon for some Years (a Dozen or Fourteen), and was thought a proper Person because of that.

Q. Did you go on with that Prosecution till there was a Verdict?

A. I did, Sir.

Q. Pray now, did you inform yourself of the Nature of that Fact at any Time before the Trial came on?

A. I attended the Coroner's Inquest, Sir, and did inform myself of it. I collected Evidences, and drew the Brief. I have the Brief here.

Q. Did you see, or had you a Copy of, the Examinations upon which the Indictment was found?

A. I was present at the Examination of the Witnesses before the Coroner, and took some Notes of my own at that Time, which I have with me.

Q. How was the Indictment found?

A. The Indictment was upon the Coroner's Inquest.

Q. Were there any Examinations upon which the Bill of Indictment was found?

A. The Coroner only took their Examinations short, as Memorandums. The Bill was found upon the Evidence of the Son of the Defendant and others, *vide* *ante*, before the Grand Jury.

Q. Were there, to your Knowledge, any Examinations taken in Writing?

A. I was told that Sir Thomas Reynell took some Examinations in Writing; I applied to him for them, but he refused me; I applied to him a second Time for them, when he told me that he had consulted with Sir John Gifford, and that no Examinations should be shown till they were produced in Court.

Q. Were the same Witnesses that were examined before the Coroner examined in Court upon the Trial?

A. Most of them were, and a great many more.

Q. Were they not all examined?

A. I believe they all were. A Matter of forty People were examined.

Q. Was your Brief framed from the Depositions of those People that were examined before the Coroner?

A. My Brief was framed from the Examinations of Witnesses that I took myself.

Q. Pray now, did the Case appear, for the most part, to be the same upon the Trial, as upon the Examinations before the Coroner?

A. No, Sir, it differed vastly.

Q. What was the finding on the Coroner's Inquest?

A. Wilful Murder.

Q. Recollect some one material Circumstance wherein the Evidence varied?—A. I tell you, Sir,---

Q. Was the Evidence stronger on the Coroner's Inquest than it was in Court on the Trial?

A. Yes, it was stronger against Mr. Annesley, because the main Evidence was taken off upon the Trial, for Reasons---

Q. Had my Lord Anglesea any Hand in taking off the main Evidence?

A. No.

Q. Who then took it off?

A. It was the Prisoner who took it off. His Evidence was rendered invalid; his Evidence was given in Court, but his Evidence was discredited in Court by Reason of his Character; and there was a strong Reason given for it in Court by a Witness.

Q. What was that Witness's Name?—A. It was Paul Keating.

Q. Were there any Persons produced upon that Trial to the Character of Paul Keating?—A. Yes.

Q. Was Paul Keating for or against the Prisoner?

A. He was for the Prisoner.

Q. Who was the main Witness that swore against the Plaintiff on his Trial?—A. It was John Egglestone.

Q. Had you any Conversation with that John Egglestone before the Trial, touching his Evidence?

A. I had. He was brought to me by one Williams, that keeps the White-Horse in Piccadilly, and he varied from his Evidence that he gave before Sir Thomas Reynell.

Q. Was you present when he gave that Evidence?—A. I was not.

Q. How do you know it?

A. It was declared so in Court, and you asked me what passed in Court.

Q. Tell us, whether this Fact, for which Mr. Annesley was prosecuted, was committed by Day or Night?

A. By Day. The Fact was committed at *Staines*.

Q. What Time of the Day was it?—A. As it appeared upon the Examinations, one or two o'Clock in the Afternoon.

Q. Did it appear to have been done in a publick Place?

A. In a Meadow.

Q. Did it appear on the Trial, that there were any Number of Persons present?

A. There were present, John Egglestone, John Fisher, and one John Bettefworth, and one more, I think.

Q. Were there any other of the Witnesses that appeared on that Prosecution that were discredited on account of their Character, besides Egglestone?

A. There was a Variation in their Testimony, but that they were discredited for their Character, I can't say.

Q. What Time was the Trial?

A. The Trial, I believe, was the 14th of July 1742.

Q. What Time was the Coroner's Inquest held?

A. The 4th of May 1742.

Q. Pray now, when my Lord Anglesea said to you, That he did not care if it cost him 10,000*l.* to get the Plaintiff hanged, did you understand that it was his Resolution to destroy him if he could?—A. I did, Sir.

Q. Did you advise my Lord Anglesea not to carry on that Prosecution?

A. I did not advise him not to carry it on; I did not presume to undertake to advise him.

Q. Did you say any thing in answer to my Lord, and what, when he told you, he did not care if it cost him 10,000*l.* if he could get the Plaintiff hanged?—A. I don't know any particular Answer that I made him.

Q. Did you approve or disapprove of his Expressions and Design together?—A. I can't say that I did either.

Q. Did not you go on as effectually after, with the Prosecution, as you could?—A. I did, to be sure, Sir. Indeed, I advised my Lord Anglesea not to appear upon the Trial.

Q. Since my Lord had told you, that he would agree with the Plaintiff, and go to France, and disappoint Charles Annesley, how came you to tell him, that if he hanged this Pretender, it would frustrate his Design and the Expectations he had?

A. In answer to what you say (that if the Pretender, as you call him, were hanged, there would be a greater Fund left than 2 or 3000*l.* a Year to go abroad with), it certainly would destroy that Project of disappointing Mess. Annesleys; but then it would put a greater Estate in his own Pocket.

Q. Was not the Intention of the Prosecution to disappoint the Annesleys?

A. No, the Intention was to put this Man out of the Way, that he might enjoy the Estate easy and quiet.

Q. When my Lord Anglesea said, that he would not care if it cost him 10,000*l.* so he could get the Plaintiff hanged, did you apprehend from the

Q. that he would be willing to go to that Expence in the Prosecution?
A. I did.
Q. Did you suppose from thence that he would dispose of that 10,000 l. in any Shape to bring about the Death of the Plaintiff?—A. I did.
Q. Did you not apprehend that to be a most wicked Crime?—A. I did.
Q. If so, how could you, who set yourself out as a Man of Business, engage in that Project, without making any Objection to it?
A. I may as well ask you, how you came to be engaged for the Defendant in this Suit.
Q. Was it before, or after, the Coroner's Inquest, that my Lord Anglesea told you, he did not care if it cost him Ten thousand Pounds to get the Plaintiff hang'd?
A. I can't charge my Memory; it was there, or thereabouts.
Q. Look in your Diary, and see.
A. I'll look in my Diary. I cannot exactly tell you, Sir. The Second of May was the Day I was sent for to my Lord, at the White Horse in Piccadilly; and I believe one Thompson Gregory was sent for me, and with a great deal of Joy they said, that Mr. Annesley had killed a Man, and would be hang'd. The 3d of May I went to Colebrooke, within three Miles of Staines. The 4th of May I went to Staines, and the Inquest was held there.
Q. Was it after that 4th of May it was held?
A. I came home the 5th, and I believe it was that Day; for my Lord met me at Hainlow, in his Coach-and-Six to know how Things went on.
Q. Was it at that Meeting he said this to you?—A. I cannot tell. It was within a Day or two, up or down. I did not take particular Notice.
Q. Did you ever enter down in Writing any Conversation between you?
A. I have made Memorandums about my Business, but private Conversation in Company I never entered in Writing.
Q. Was it not upon the Day he sent for you to go down to Staines that he said these Words?
A. I can't say more than I know. I believe it was not. And I believe it was after, or just upon, holding the Coroner's Inquest.
Q. Did not you understand from thence, that he would lay out that Money, in any Shape, to compass the Death of this Man?
A. I cannot tell. But my Lord is very apt to be flashy in his Discourse.
Q. Did not you apprehend it to be a bad Purpose to lay out Money to compass the Death of another Man?
A. I do not know but I did. I do believe it, Sir: But I was not to undertake that bad Purpose. If there was any dirty Work, I was not concerned in it.
Q. If you did believe this, I ask you, how came you to engage in this Prosecution without Objection?—A. I make a Distinction between carrying on a Prosecution, and compassing the Death of a Man.
Q. How came you to make that Distinction?
A. I may as well ask, How the Counsel came to plead the Cause?
Q. Did you ever mention to any of your Counsel, that my Lord made that Declaration?—A. I did not.
A. If you had told any of them that my Lord made that Declaration, would they have appeared for you?
A. I can't tell whether they would or not.
Q. Do you believe any honest Man would?
A. Yes, I believe they would, or else I would not have carried it on, Sir. And I do assure you, it is the only Cause I was concerned in at the Old Bailey in my Life, and shall be the last.
Q. Don't you believe, that my Lord's engaging in that Prosecution was, because the Man set up a Title to his Estate, and not on account of his killing the Man at Staines?
A. I believe it was; and believed it then, and do now.
Q. Do not you believe it was an unlawful Purpose?
A. I cannot help that. I was employed by the Church-warden of Staines to prosecute. I should not have been concerned upon any Account whatsoever, had not I the Sanction of the Coroner's Inquest for Wilful Murder, which I thought a Justification of the Prosecution.
Q. When was it that the Church-warden employed you?
A. The 8th of May, 1742. He wrote a Letter to me, "Pray prosecute James Annesley, &c." Signed Stephen Bolton.
Q. Was not this after my Lord declared he would spend Ten thousand Pounds to get him hang'd?—A. It was.
Q. Sir, I ask you, was there any Money given to any Witness to appear and give Evidence?—A. I don't know of any.
Q. What Sum was given for their Attendance?
A. About Half-a-Crown a Day for their Attendance. If there was any dirty Work, I knew nothing of it.
Q. Are you paid your Bill of Costs?—A. Not all of it.
Q. How much does it come to?
A. The Prosecution cost Eight hundred Pounds: But the Total remaining due to me is Three hundred and Thirty Pounds.
Q. Was there any body present, when you had this Conversation with my Lord?
A. No, I believe not; for we used to converse together alone frequently.
Q. Was Mr. Jans ever present?—A. No, never.
Q. Was Thompson Gregory present when he went and brought you to my Lord?—A. He came with me.
Q. Did he remain in the Room?—A. I believe he did, all that Night.
Q. Was this the 2d of May?—A. Yes.
Q. Had you that Day any Discourse about the Sum of Money that my Lord would spend?—A. No, not that Day.
Q. Was it by your Advice and Directions that that Letter was sent to you by the Church-warden of Staines?
A. No, it was by Garden's and Gordon's Advice.
Q. Was you privy to it?
A. Yes, I was. And this Letter was advised in order that the Defendant might not appear in the Prosecution.
Q. Did not you know this was to give a Colour?—A. I did.
Q. Did you think this was for a good Purpose?
A. Mr. Garden, Gordon, Jans, and Lord Anglesea had a Consultation, and it was thought proper that I should have another Person to my Assistance, because they would not appear, and my Instructions were, to send

this Order to the Church-warden and get it signed, that my Lord should not appear in it; and the Reason was, that if my Lord should appear in it, they thought it would be attended with ill Consequences.
Q. Did you know at the time of the Trial that Mr. Annesley intended to sue for the Title and Estate of Lord Anglesea?—A. It was reported he would, that he intended it; and this was in order to prevent it.
Q. Do you know one Mr. Thomas Smith?—A. Yes, Sir.
Q. I desire to know, if Mr. Annesley gets this Suit, whether you will be paid your Bill of Costs?
A. No, Sir, if he gets it, I shall lose every Shilling of it.
Q. Where do you lodge?—A. At one Parsons's in King-Street.
Q. Are you acquainted with Thomas Smith the Cabinet-Maker?
A. I am very well acquainted with him.
Q. Had you any Discourse with him about this Evidence that you have given To-day?—A. I have had some Discourse with him about it.
Q. Did not you tell him that you had been ill used, and that that provoked you to give in this Evidence?
A. No, I never did; for he knew that I had been ill used. I will tell you what I have said to him: That it was a wrong Step in my Lord; for this Bill of Costs of mine would never have come to light, had not I been obliged to sue for my Right. That my Lord filed a Bill in the Exchequer against me in England, to disclose what Business I had done for him, and that I was obliged in my Justification to annex in a Schedule this my Bill of Costs.
Q. Did not you look upon my Lord Anglesea as your real Client in the Prosecution of the Plaintiff?
A. He promised to pay me, but I did not look upon him as my immediate Employer; for my Lord told me he had directed Mr. Jans to employ me.
Q. Did you look upon Mr. Jans at this Time as your Client?
A. I did look upon him as my Client.
Q. Do not you believe that my Lord had these Discourses with you as his Attorney?
A. No, Sir; for I knew I was never to be concerned in the Cause.
Q. In what Light then did you look upon that Discourse?
A. I looked upon it to be a Discourse to me as a Friend.
Q. Was not the Discourse with you on the 4th and 5th of May, as his Attorney or Solicitor?—A. I looked upon him to be my Client.
Q. And therefore did not he look upon you as his Solicitor?
A. I cannot tell what he did.
Q. Did he meet you as his Friend, or Solicitor?
A. Sir, there was another Man with me.
Q. Were not you employed by him to see the Inquest held?
A. I was. I wish you would produce any Person to attempt to prove that I am a dishonest Man.
Q. How long have you been a Practitioner?
A. I have had a great many Clients in the Course of twenty and odd-Years.
Q. Do not you look upon it as a Rule of Prudence and Honour, for Attornies to keep religiously the Secrets of their Clients?
A. I do, indeed.
Q. Do not you think, that if a Solicitor or an Attorney discloses these Secrets, he is a very bad Man?—A. I think he is.
Q. And how came you to disclose this Secret?
A. I would not have disclosed this, if I had not been obliged to do it; and the Reason which obliged me to do it, was, my Lord's filing a Bill in the Exchequer to disclose what Business I had done for him; when I was obliged to answer the Interrogatories I am now asked.
Q. You said my Lord Anglesea was a very flashy Man in his Discourse; did not you say so?—A. Yes.
Q. Is not he a Man subject to Passion and Heat, and hasty and rash in his Expressions?—A. He is.
Q. At the Time that he talked to you about giving up these Things to Jemmy, was not he chagrined, and in a Passion?
A. He was far from being in a Passion, and asked my Opinion whether it was proper for him to do it.
Q. Was not the Reason he gave this, that he did not value his Titles, and should live easier in France?—A. It was.
Q. Was it a conscientious Scruple, or his Desire of Ease?
A. I believe it was both. The Reason of it was, he was extremely angry with the Annesleys, because they pulled away Money too fast from him.
Q. Was not this said out of the Effect of his Chagrin at this Time, or out of Spleen to Charles Annesley?
A. No, I believe he said it for his own Sake, for his own Advantage; for the Cause then coming on with the present Plaintiff, made him desirous to be easy.
Q. Was there any Intercourse or Treaty set on foot between him and Mr. Annesley?—A. I cannot tell: I have answered that already.
Q. At the Time this Discourse happened, about the 10th of March 1741, and several other Times, can you recollect whether any one was present?
A. None at all, Sir; we were constantly alone; but I heard Mr. Jans several times advise him to leave the three Kingdoms.
Q. In your Answer to the Bill in the Exchequer, did you insert that Declaration that my Lord made to you?
A. Sir, I wonder you would ask that Question; it has no relation to the Bill.
Q. Did you ever tell any Person that my Lord made that Declaration?
A. Yes, I have sworn it before in London.
Q. Before whom?—A. Before the Examiner.
Q. Did you mention it at any other time before you were examined?
A. Yes.
Q. To whom?
A. Upon having the Copy of this Bill, the Managers of Mr. Annesley came to me to know if I knew any thing of this Matter.
Q. What Managers?
A. Mr. Kercher, Mr. Paterfon, and two or three more.
Q. Was you served with a Subpœna?—A. I have it here.
Q. Where did you receive it?
A. Here, Sir. They applied to me to go to Ireland, and said I must go; and said, Will you give us the Trouble of sending you a Subpœna? and I told them I would not give them the Trouble.

Q. Did

Q. Did not you say that you would not have given Evidence here, except you had been forced to it?

A. Why, Sir, is not that a Force? If a Man applies to me, and says, he will subpoena me, must not I obey that Subpoena?

Q. Did you ever hear my Lord *Anglesea* say any Thing about the stealing of a Silver Spoon?

A. I have heard my Lord *Anglesea* say, that this Pretender, as he called him, was transported for stealing a Silver Spoon.

Q. When did you hear that?

A. At the Time of the first Discourse between us.

Q. Did you ever hear it more than once?

A. Yes, fifty Times, I believe.

Q. Can you recollect any one Time of those fifty Times, and who was present?

A. I cannot recollect; but it was between the 7th of December 1741, and the 14th of July 1742.

Q. Upon your Oath, did you ever, in any Conversation between my Lord *Anglesea* and you, hear my Lord say, that the Plaintiff was a Bastard?

A. I have. I have heard him say, he was his own Bastard. I have heard him say, that he was his Brother's Bastard. I have heard him say, That he got the Wench with Child, and made her lay it upon his Brother, because he was better able to maintain it than himself.

Q. Did you hear him say that as often as you heard him speak of the Silver Spoon?

A. That is not possible for me to charge my Memory with. I have heard him say both very often. When he said he got him transported, he said he stole the Silver Spoon.

Q. Was any one present when he said this?

A. Yes, I will tell you one, who said he was in the Bed with her along with my Lord, one *Rolph*.

Q. Was *Rolph* present?—A. *Rolph* was present.

Q. At what Place?—A. I believe in my Lord *Anglesea's* Lodgings.

Q. Where?—A. In London; either there, or at a Tavern.

Q. Who did you hear this from?—A. I heard *Rolph* say this.

Q. Was *Rolph* one of the Company at the Tavern?—A. He was.

Q. Did he sit down at Table with you?

A. I believe it was in the Morning, at my Lord's Lodgings in *Bury-Street*, at the Time of Breakfast, now I recollect me of it.

Q. What was it my Lord said then?

A. What do you say to this, says he? Here is *Rolph* says, he was in the Bed at the same Time, and knows the Pretender is a Bastard.

Q. Was this when he mentioned the stealing the Silver Spoon?

A. I believe it was at the same Time.

The Evidence closed for the Plaintiff.

Mr. Attorney General, (St. George Caulfield, Esq.) opens the Defendant's Evidence.

May it please your Lordship, and you Gentlemen of the Jury,

I am Counsel for the Defendant, the Earl of *Anglesea*. You have heard a great deal of Evidence carried on for several Days, entirely taken up in the Examination of Witnesses on the Part of the Plaintiff.

It is necessary, before I mention the Nature of our Proofs, to take Notice of the Method observed in producing the Evidence that has been already given, in order to attend the Gentlemen of the other Side in the same Method.

Though they were very sensible, that this Fact, if true, must admit of the clearest Proof in the Affirmative, yet, they were pleased to begin, as I thought, at a considerable Distance from the Point, and took up much Time in examining Witnesses to shew, that it was probable, or at least not improbable, that my Lady *Altham* might have a Child, and gave Evidence, such as it was, that my Lady *Altham* had been with Child, and had one or two Miscarriages before the pretended Birth of the Plaintiff.

They afterwards came more directly to the Question, and called Witnesses to prove the actual Birth of the Plaintiff; that it was at *Dunmaine*, in the County of *Wexford*, in April or May 1715, (though one of their Witnesses of the best Appearance swore it to be in September 1715, and gave very particular Reasons for it) that there were great Rejoicings, a publick Christening, who the Sponsors were, the nursing, and bringing home again of the Child, when nursed, to the House of *Dunmaine*, and his Stay there with my Lord his Father, 'till about three Years old; this seems to me a material, and indeed the most material Part of the Case; the Jury will therefore recollect the Inconsistencies and Contradictions of the Witnesses to these Facts, and judge of the Truth and Probability of the Evidence, by comparing the Nature of the Facts testified, with the Witnesses produced to prove them, how likely, how possible, that such Persons as these, and these alone, should be able to prove a Fact of this Nature.

They proceeded afterwards to give an Account of this Child in the several Places where my Lord *Altham* had resided after his Separation from my Lady; at *Kinna*, at *Carrickduffe*, and in *Dublin*, in the several Places where he lodged there, and I think one of the Witnesses produced, late last Night, gave some Account of him during my Lord's Residence at *Inchicore*: Whether this Evidence has Substance and Strength in it, or does not rather consist of loose Expressions, and the private Apprehensions of People, who knew but very little of the Family, is a Matter that will be observed upon by those Gentlemen, whose Province it is.

It was judged necessary, in the next Place, to shew, how this unfortunate, unoffending Child came to be forsaken and quite neglected by my Lord his Father; for they were sensible it would be proved, that my Lord considered him only as his Bastard, and even doubted, whether he was justly laid to his Door; you remember what Sort of Witnesses were called to give this Account, and what the Proof was. It is not my Business to make Observations.

I cannot but think the Evidence that ensued was produced, and judged to be necessary, from a Consciousness, that all their former Proofs were in themselves insufficient to establish this Fact; for after positive swearing, and so much of it, what Occasion could there be to enter into Evidence, that at most could induce but a Presumption? But this Evidence was, it seems, withal very proper to captivate, and therefore it was they called Witnesses to prove, that the Defendant, the Earl, did (not in any Hurry,

but about three Weeks after his Brother's Death) employ some Bailiffs to seize this Boy, then publick in Town, and at Noon-Day to carry him by Force on Ship-board, in order to be transported, and that my Lord himself assisted in it. But you, Gentlemen, will consider of the whole Proof as to this Transaction, and judge, whether it does not very plainly contradict and refute itself, and shew, that this Person did of himself desire, and in the usual regular Way procure an Opportunity of going abroad, without the least Interposition on the Part of the Earl. They then called a single Witness to shew my Lord was so sensible of the Plaintiff's Right, for this is the Turn they give it, that taking Advantage of a Misfortune that happened to befall him, his killing a Man by mere Accident, the Earl had him indicted and prosecuted for that Fact, in order to have him capitally convicted, and so to put him out of the Way; and to conclude all with a finishing Stroke, this same Witness tells you, that the Earl confessed the Estate, and Honours, and all were the Plaintiff's Right, and that he had a full Purpose to strike up a Bargain with him. If the Earl did at all interpose in this Prosecution, it will be shewn to you in proper Time, that the Inference drawn from such a Piece of Misconduct is by no Means just; and we shall insist, that the Witness being entirely unsupported as to this Fact, had, of his own shewing, too great a Share in the Transaction, to be capable of deserving of Credit, as to this, or any other Matter of Fact.

This then, in a few Words, is the Scope and general Tendency of their Evidence; but how these Circumstances and Facts have been proved, by whom, with what Circumstances of Probability, and how just their Conclusions, are Matters that might well deserve the Consideration of the Jury, though no Evidence was to be offered on our Part, by comparing it with what might be expected, and must have been in their Power, if the Fact really was, as they would now have it thought to be.

We apprehend it will be material to our Defence, before we enter into other Proofs, to state to your Lordship and the Jury the Pedigree of this Family, shortly to open somewhat of the Settlements in the Family, their Prospects and Expectations, as well as the Circumstances of the Fortune in Possession at the Time of this supposed Birth; which will shew that a legitimate Son of my Lord *Altham* (supposing there was a Desire to conceal it, which is not pretended) must have been a Matter of such Notoriety, as that the Proof of it at this Day could not possibly admit of the least Difficulty.

Arthur, the first Earl of *Anglesea*, had a considerable Family Estate, and upon the Settlement of the Kingdom at the Time of the Restoration made great Additions to it; his Credit at Court, and the Condition of the Times, gave him, as it did to many others, an Opportunity to do so: this Estate, taken together, does, as I am informed, far exceed any other now in the Kingdom: this Earl, *Arthur*, had Issue five Sons, *James*, *Altham*, afterwards created Lord *Altham*, *Richard*, *Arthur*, and *Charles*.

On the Marriage of his eldest Son *James*, with a Lady of the *Roland* Family, he settled the greatest Part of his Estate in the usual Manner, with Limitations over to his other Sons, and their Issue, successively, in Tail Male, and soon after died.

James, his eldest Son, also died, leaving Issue of this Marriage, three Sons, *James*, *John*, and *Arthur*.

Altham, the second Son of *Arthur* the first Earl, died without Issue, and his Honour devolved

Upon *Richard* the third Son; and this *Richard* Lord *Altham* had Issue, *Arthur*, late Lord *Altham*, and *Richard*, the present Earl of *Anglesea*.

Arthur, the fourth Son of the first Earl *Arthur*, died without Issue; and *Charles*, the fifth Son, died, leaving Issue Mr. *Charles Annesley*, whom we all know.

My Lord, *James*, the eldest Son of Earl *James*, and Grandson to Earl *Arthur*, being in Possession of the Honours and Estate of the Family, he levied Fines, and suffered Recoveries of a great Part of this Estate, and in the Year 1701 made several Wills and Codicils disposing of it. By the first of these Wills, dated May 14, 1701, after the Limitations to his Brothers, on default of Issue-Male in them, he devised his Estate to his Uncle *Richard*, Lord *Altham*, the Defendant's Father, and the Heirs-Male of his Body, and in default of such Issue, to his Uncle *Charles Annesley*, and the Heirs-Male of his Body. On the 9th of December following, he made another Will, and limited the Estate in the same Manner; after recollecting that his Uncle *Richard*, Lord *Altham*, died some little Time before, he apprehended it would be wrong to let his Name stand in his Will, and therefore, in the Will of December, drew a Line across his Name, and instead of *Richard*, wrote over it *Arthur*, and then the Limitation stood to *Arthur*, Lord *Altham*, and the Heirs-Male of his Body; by which Alteration *Richard*, the younger Brother, the now Defendant, stood excluded from the Succession. After this he made several Codicils, which I have not read, but by some of them, the Will of the 14th of May is recited and established, by others the altered Will that was in December, but by the last of these Codicils, the Will of May 14, 1701, is, as we apprehend, clearly set up and established. This we shall shew, if not admitted, from the Wills and Codicils that are now on the Table.

Soon after this, Earl *James* died without Issue-Male; his Brother *John* also died without Issue-Male, and *Arthur* the youngest Brother succeeded to the Honours and Estate. From this Confusion in these Wills and Codicils it remained a Matter of great Doubt, if the late Earl *Arthur*, the late Lord *Altham*, should both die without Issue-Male, of which there was no Prospect, who should succeed to the Estate, whether the present Earl, under the first Will of May 1701, or Mr. *Charles Annesley*, under the altered Will in December 1701; but the general Opinion was, and was the Apprehension of the late Earl himself, that the present Earl stood excluded. A Son of the late Lord *Altham* would have made this Question unnecessary, for clearly he must have succeeded to these great Honours and to this vast Estate. Such a Son, and such a Birth, must therefore be an Event, as of great Consequence, so of great Notoriety; how could it be unknown, or known only to such as you have seen, in a Country so peopled, and, as I may say, in the Midst of their own Estates?

But it will appear further, that the late Lord *Altham* was possessed himself of an Estate of about 1200 l. a Year; the Town of *New Ross*, in the Neighbourhood of *Dunmaine*, was Part of it; this Estate, on the Failure of Issue-Male in him, was to go, not to his Brother the Defendant, but to the late Lord *Anglesea*. It will appear, that this Estate,

of Lord Altham, was entered upon and enjoyed by the late Earl of Anglesea, until his Death.

Is it possible then there could be such a Son of Lord Altham, and the late Earl know nothing of it? Could he be such a Stranger to his own Family? Nay, though a Stranger in other Respects, the Lord Altham and his Family, and his Family-Affairs, made too much Noise in the World to suppose it possible. There is no Pretence, that the late Earl was concerned in any iniquitous Scheme. If he knew of this Child, can it be supposed he would do him such an Injury? In Policy, if from no better Principle, sure he would have more Regard to his own Character.

My Lord, we shall shew it further in Proof, that the late Lord Altham, for particular Reasons, was desirous to have a Son, and would very greatly have found his Account in it, being in Remainder to the Anglesea Estate; as I said, often in Distress for Money, one Method of raising it was by the Sales of Reversions of Parts of this Estate; the Validity of these Sales depended on his surviving the late Earl Arthur. Now upon his advising with Counsel, touching these intended Sales, we shall prove he was advised and informed, that these Sales, as Matters stood, could produce but little Money, because the Title depended on the Contingency of his surviving the Earl, who was judged the better Life of the two, as it really fell out. But if he had a Son, that something worth while might be expected, because then, by levying a Fine, the Estate would have stood assured to the Purchaser so long as there was Issue Male of his Body. This we shall prove by a Gentleman of undoubted Veracity and Reputation.

The Gentlemen on the other Side think, they have great Advantage against us, that the Proof on our Part is in the Negative; the Observation is partly just, that it is much more easy to prove the Affirmative in any Question of Fact; but they might carry it a little further; for as such Proof is more easy, so it ought to be in proportion more clear and satisfactory: But be that as it will, we apprehend this is a Fact of such a Nature as admits of Proof: in the Negative, and that such as may produce a full and clear Conviction; for this Purpose, therefore, we shall now proceed to give an Account of my Lady Altham from the Time of her Arrival in this Kingdom in the Year 1713, by a Person who attended her Ladyship into the Kingdom, continued in her Service as Woman to her all the Time of her being here, I think was never a Week together from her, went back with her again, and continued in the same Service and Attendance, till my Lady's Death. This Witness will prove, that my Lady Altham was never with Child, never had any Miscarriage that she knows of; and that it should be, and she not know of it, is, I think, next to impossible. She will prove my Lady's Expressions of Concern upon this Head, that she had not the good Fortune to bring a Child to this Family: She will prove to you, that my Lady lived some Years after her Lord, had an Account of his Death, of the late Lord Anglesea's going into Possession of her Lord's Estate, and the present Earl's assuming the Title of Altham; that she had at this Time Access to the Duchess of Buckingham, and other Persons of Quality in England, and was in a lonely, disconsolate Way; but as to her ever having had a Son, complaining of any Injury done to this Son, that not one Syllable to this Purpose was heard to proceed from her.

We shall produce also one Thomas Rolph, who was Butler to my Lord, and lived with him at the Time of this pretended Birth; my Lord's Gentleman likewise, and some other Servants of the better Sort, who were in the Family and Service at this Time; and they all agree in this, that my Lady was not with Child; that there was no Miscarriage or Birth that they ever knew or heard of: and this, we apprehend, will be far better Evidence than that of Murphy, Laffan, or Doyle, because these People testify what was properly within their Sphere, and must know, if there was such a Fact.

We shall produce Persons of the best Condition in the Neighbourhood of Dunmaine, between whom and my Lord Altham there passed a constant Intercourse of Visits, and with some of them you will find the Intimacy was very great: They have mentioned Mrs. Lambert as a Person extremely intimate with my Lady; we shall produce her, and her Husband Mr. Aaron Lambert; he had set Dunmaine to my Lord, lived himself at Ros; his Dealing, as well as Neighbourhood and Acquaintance, gave him and his Lady great Opportunities of knowing more of his Family than many others.

We will call Colonel Palliser, and also his Son, who was unfortunately made the Pretence of the Separation, and from him you will have a full Account of that Matter; and he will not only swear it, but shew you that what Laffan has testified is false.

That I may not mention all as to this Point, we shall call, in the last Place, Mrs. Giffard, a Woman of an exemplary good Life and Character; she will not only prove, as others, that there was no Child that she ever heard of; but she will prove further, that there being some Pretender's Men to be tried at the Assizes at Wexford, which were held in the Beginning of April 1715, and this being a Business of some Expectation, my Lord, my Lady, and several others, went to that Assizes; that my Lady was at all publick Places, and was in Court at the Trials of those People: This was so near the Time of the pretended Birth, 'tis plain her being with Child, if fact, must be visible and conspicuous to all the World. This therefore will be proved by Mrs. Giffard, and she will be corroborated herein by many others.

We shall also lay before you the frequent Declarations and Expressions, not only of my Lady, but of my Lord also, upon this Head. They have likewise, on their Part, given some Evidence of this Kind; you will compare together the Witnesses, and what they say: We apprehend there is little Strefs to be laid on this Part of their Proof, testified at

this Distance of Time, where the Omission or Addition of a single Word might invert the whole Sense. We think it strange that these Witnesses, if they knew and believed so much, neither said nor did any thing in consequence of it; and we think this Conduct can only be accounted for by their not believing, their not laying any Strefs upon what they had heard; and when we have shewn all this, I can't but think, for my Part, that we might safely rest our Case here.

But we shall go a great deal further, and give an Account of the Plaintiff from the Moment of his Birth. When my Lady returned to Ireland, my Lord was at Dunmaine; he came to Town, they were reconciled, stayed some time, and then they both went to Dunmaine. One Joan Landy was before, and at the Time of my Lady's coming to Dunmaine, Kitchen-maid there; and in a few Months she appeared so big with Child, that it came to my Lady's Knowledge; upon which she was turned off, and went to her Father's, who lived on the Land of Dunmaine, at a very little Distance from the House. As my Lord, as well as others, had, it seems, given Cause, so it was wisely resolved to make him the Father of this Child. We shall shew the Birth, the Christening, and Manner of Keeping this Child till the Separation of my Lady: We shall prove, that, on the Separation, the Child was suffered into the House, and the Schooling of it, while my Lord lived at Dunmaine; that the Pretence that Landy's Child died is false; that there was but this Child; that my Lord regarded it but little; that it was brought after him to Kinnea, Carrickduffe, and Dublin, and as it grew up gained some ground; but still treated, considered, and reputed as a Bastard, and no other. This we shall prove in those several Places, not by loose Expressions, but by those who knew my Lord and Family well: We shall prove to you the Reputation concerning him, when at those poor Schools that have been mentioned: We shall shew the Occasion of my Lord's Neglect of him; that he was untowardly, vicious, and incorrigible; that he rambled down to Ros, my Lord's Estate, where he and his Mother were well known, and was there treated and considered as my Lord's Bastard by Landy;—and shew him after in Dublin, for a great Length of Time, in a poor Condition, yet known and reputed by such as knew any thing at all of him, to be my Lord's Bastard; that he himself pretended no other; and being asked about his Parents, mentioned not only my Lord as his Father, but Landy also as his Mother.

And we shall shew, in the last Place, while he was thus neglected, and in this Distress, that my Lady was in Dublin, knew of his Condition, and that her Dislike of him was such, that she could not endure to hear him named; and from Persons of undoubted Character, and with whom she lodged and dined here, it will appear, that, amidst all her Complaints of Wrongs and Injuries, there never was the least mention of any, with respect to a Son or Child that she ever had. Her Silence upon this Head, at this Time, and under her Circumstances, we apprehend to be great Evidence; but much more so after my Lord's Death, when she saw one assume the Estate, and another the Honours of the Family. My Lord, we apprehend their Evidence, as to the spiriting away, and the Testimony of Mrs. Giffard, when considered, is in Truth already answered; but if thought to be necessary, I doubt not but we shall give you full Satisfaction.

You observe they don't produce Joan Landy, though in the List of their Witnesses, and in their Power: We charge her to be the Mother, they say the Wet-Nurse only; can there be a stronger Inference than that which must of necessity be drawn from the keeping back this Woman?

Gentlemen, I shall trouble you no more, but proceed to prove what I have now stated, and indeed a great deal more which has escaped my Memory; and when this is done, as we rest assured that this Cause will be tried uninfluenced by any Considerations that have not a Tendency to prove the Matter in Issue, and that the Purchasers from, and Creditors of the Family, and those who have a Right to succeed to the Honours and Estate, will receive no Prejudice from Considerations that do not properly relate to the Case, and certainly have no Relation to them; so we do not doubt but you will put an End to this strange Business, by finding according to our Plea, that the Defendant is not guilty of the Trespas and Ejectment in the Declaration mentioned.

The Names of the Witnesses produced on the Part of the Defendant.

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| 1. Nicholas Loftus, Esq. | in the Queen's County, Esq. |
| 2. Thomas Palliser the Elder, Esq. | 4. Aaron Lambert, Esq. |
| 3. Wm. Wall, of Maryborough | 5. William Elms. |

[Here a Dialogue between Joan Laffan and William Elms.]

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| 6. Mrs Anne Giffard. | 19. Michael Downes, Esq. |
| 7. (a) Mrs. Catherine Lambert. | 20. Patrick Furlong. |
| 8. Mr. John Kerr. | 21. (b) Arthur Herd. |
| 9. Mr. Thomas Palliser the Younger. | 22. Henry Brown. |
| 10. Thomas Rolph *. | 23. Thomas Strong. |
| 11. Owen Cavenagh of Kilkullen-Bridge. | 24. Thomas Barret. |
| 12. Anthony Dyer *. | 25. William Napper. |
| 13. Mrs. MARY HEATH *. | 26. George Brehon. |
| 14. Robert King, Esq. Alderman of Dublin *. | 27. Elizabeth Mac Mullen. |
| 15. Elizabeth Molloy. | 28. (c) Matthew Derenzay. |
| 16. Martha Neif. | 29. Dr. James Meddlitot. |
| 17. Anne Caulfield. | 30. Col. William Becket. |
| 18. William Rowles. | 31. Wentworth Harman, Esq. |
| | 32. Mr. Christopher Stone. |
| | 33. Mrs. Hannah Shaw. |

(a) Mrs. Catherine Lambert being asked, on her Cross-Examination, if her Husband did not put in an Answer to a Bill filed on her Behalf against Mr. Matthias Reilye, answered, Yes, he did. Then was asked, *Is he to be believed on his Oath?* The Defendant's Counsel objected, "That the Question is improper, and therefore not to be asked; and that a Woman ought not to give Evidence for or against her Husband, especially where he is interested. Should she answer this Question, it might prejudice her own Cause. The Husband is not to be affected by any Declaration of his Wife, even upon her Oath; and the only Instance where she can be examined against her Husband, is in High Treason."

The Plaintiff's Counsel waved the Question.

(b) On the Cross-Examination of Arthur Herd, the Counsel for the Plaintiff asked the Witness, *Whether he did not tell the Company that Lord Altham debauched Miss Gregory?* which Question was objected to by the Defendant's Counsel, as it might subject the Witness to an Action, and tend to defame her, who was a Witness for the Defendant in this Cause. And the Court were of Opinion the Witness might refuse to answer the Question; and the Witness refused.

(c) On the Examination of Matthew Derenzay, an Agent for Lord Anglesea, he was asked, *Whether, if my Lord Anglesea lost his Estate, he did not apprehend he should lose the Balance of his Account?* He answered, *I believe, if my Lord Anglesea has it upon Earth, he won't let me lose a Shilling.*

The Counsel for the Plaintiff objected to this Witness, *That he was consequently interested in the Fate of this Cause, as he might lose his Agency, or Receivership;* but the Court were of Opinion, that this did not go to his Competency, but might to his Credit.

These Witnesses prove, that several of them lived in the Neighbourhood of *Dunmaine*, (where it was said Lady *Albham* was brought-to-bed of a Son) and visited Lord and Lady *Albham* frequently; and they never heard Lady *Albham* had a Son, or ever was with Child, or that they ever saw her with Child. Several Servants of the Family swear, who lived with Lord *Albham* in the Year 1714 and 1715, that they never heard Lady *Albham* had a Son, or ever was with Child; or that any Midwife was sent for, or any Christening, or any Bonfires, or any Godfathers or Godmothers; or any Coach-road for Lord and Lady *Albham* to go and see their Child; and that there could be no Child born without their Knowledge: Others, that Lord *Albham* had a Bastard by *Joan Landy*, which he called his Bastard; but they never heard of any Son by his Lady. Others deposed, That Lady *Albham* went to the Assizes at *Wexford*, in April, 1715, and staid some Days (which was about the Time it was said she was brought-to-bed of a Son): Others, that Lord *Albham* would have been glad to have had a legitimate Son, because he could have raised Money on his Estate, and wished for a Son: Others, that Lady *Albham* lived two Years after my Lord, and never enquired after any Son of her's; and that if there had been any such, he would have been entitled to an Estate of 1200*l.* per Ann. and my Lady might have applied for the Guardianship of him, and had a good Allowance from my Lord Chancellor for the Trust, which she very much wanted, &c. But as the most material Witness for the DEFENDANT was Mrs. *Mary Heath* (Lady *Albham*'s Woman), we shall give her Evidence at full Length, with the Evidence brought to confront Mrs. *Heath*; and then close with the Judge's summing up of the whole.

Friday, November 18.

13. Mrs. MARY HEATH.

Sworn to the Voir Dire.

Q. Do you know the Plaintiff, Mr. James Annesley?—Mrs. Heath. No.
Q. Has he any Law-Suit with you?—A. He filed a Bill against me for the Effects of Lady *Albham*. I had a Subpoena given me in England.
Q. At whose Suit?—A. At Mr. James Annesley's.
Q. Have you any of the Effects of Lady *Albham* in your Hands?
The Question is objected to by the Defendant's Counsel, who say, that the Administrator will have the Right to recover them, let this Cause go which Way it will; and the Effects are no way relative to the real Estate which is now in Dispute.

The Witness sworn in Chief.

Q. Did you know Arthur late Lord *Albham* and his Lady?
Mrs. Heath. Yes, very well.
Q. What Time did you first become acquainted with the one or other of them?—A. I have known them a great many Years.
Q. Were you in any Service in that Family?
A. Never till the Time of my coming to Ireland.
Q. When was that?—A. In the Year 1713.
Q. At what Time?
A. In October I came over with my Lady as her Woman.
Q. How long did you live with my Lady after she came over?
A. I lived with her to the Day of her Death.
Q. When was the Day of her Death?
A. I can't justly tell; it was some time in October, 1729.
Q. During that whole Course of Time, was you ever out of her Service?—A. Never out of her Service.
Q. Did you constantly reside with her as her Woman?
A. I was one Week from her in Ireland.
Q. What Time was that?—A. When I come on further, I can tell you.
Q. Do you not remember that you were longer absent from her?
A. Not in Ireland, nor one Day, except she was out a-visiting. I was never from her a Night but that Week.
Q. Do you know a Place called *Dunmaine* in this Kingdom?
A. Yes, I do.
Q. Do you remember who lived at *Dunmaine*? Did my Lord and Lady *Albham* live there?—A. Yes, we went down there.
Q. At what Time, Madam?
A. We got down to *Dunmaine* the Christmas-Eve after we came over.
Q. How long did my Lord and Lady reside together at *Dunmaine*?
A. My Lord did come up, but I can't tell justly whether it was in May or June following; but I know he was there in April: He came to Dublin himself, and left my Lady and I at *Dunmaine*. Upon St. George's Day I know he was at *Dunmaine*, I am sure of that.
Q. How long in the whole did they live together at *Dunmaine*?—A. About three Years and two Months, to the best of my Remembrance.
Q. Do you remember in what Month they parted?—A. In February.
Q. In what Year?—A. I call it 1716-17.
Q. Had my Lady a Child at *Dunmaine*?
A. A Child! never had, nor never was with Child; I never had Reason to think she was with Child all the while I lived with her.
Q. Who dressed and undressed my Lady?
A. I always did, except the Week I was absent; while she was at *Dunmaine* I always put her to Bed, and attended her at her Rising in the Morning; for she was such a Woman, she would not permit any body else to do it.
Q. Could she then ever be with Child, or have a big Belly, unknown to you?—A. No, never.
Q. Was not you at *Dunmaine* at the Time of the Separation?
A. Yes, to be sure.
Q. To what Place did she go when they parted?
A. We went to one Capt. Butler's, in *Ros*.
Q. Did you go with her?—A. Yes, I went with her in a four-wheeled Chaise and a Pair of Horses.
Q. Did you get to *Ros* the same Day?
A. Yes, at Night, dark Night; for my Lady made it as late as she could; for she had no Mind to be seen coming in.
Q. Can you remember the particular Day this happened?
A. To the best of my Remembrance, it was on the 3d of February; but it was on a Sunday, I am positive.
Q. Did you live any Time there, and how long?
A. We lived about four Years in *Ros*, to the best of my Remembrance.
Q. Did my Lord and Lady come together again within that Period of Time?—A. No, never. I don't know whether she ever saw him.

Q. Will you recollect yourself, who were the Servants of the House when you came down to *Dunmaine*?

A. It is very hard for me to do so at this Distance of Time, there were so many. There was Mr. *Ralph* as the Butler, and there was Mr. *Anthony Dyer*, my Lord's Gentleman; there was one (I believe *Ralph* went down with us) *Savory*, the House-keeper, and there was *Michael*, but while his Surname was, I can't tell, but he was Cook, and there was *Joan Landy* that was the Kitchen-maid, big with Child.

Q. At what Time?—A. When we came down, my Lord, a Kind of Scullion under the Cook.

Q. Did you observe her to be with Child?

A. When we went down first, I went up to the Room to my Lady, and soon after I came down to speak to the House-keeper; and I turned about and saw this Woman with Child; What, says I to the House-keeper, you have got a Maid big with Child here! Yes, says she, an Officer was here some time ago, and his Servant got to Bed to her, and got her with Child. This was what I heard that Day; and the next it was buzzed about that it was my Lord that got the Child, and some said my Lord's Brother, and some the Dog-Boy, and several of the Servants had to do with her. This is what they told me, it was the Talk about the Family.

Q. Give an Account what became of this *Joan Landy* afterwards.

A. She staid two or three Months, till the House-keeper was afraid to keep her any longer, till we were afraid she would cry out; and then she went to her Father's; and I never saw her there; but I know he lived upon the Land.

Q. Did she go of her own Accord, or was she turned out?

A. I can't tell.

Q. Did you know of any Child this Woman was delivered of?

A. I saw the Child.

Q. Give an Account of that.

A. I spoke to the Coachman's Wife to bid her bring it up to the Gate that I might see it; and accordingly she did, and it was in Blanket then.

Q. Who brought the Child?—A. *Juggy Landy* herself brought it.

Q. About what Age might the Child be at that Time?

A. I can't really tell, whether six Weeks or two Months old when I saw it, I can't tell justly.

Q. Had this Child any tolerable Cloaths on it?

A. The Neckcloth it had on was what I gave it, it was a Cambric one, and a very fine one; I brought it from England among my own Things, and the Child was in a clean Blanket, and I gave her several other Things.

Q. How came it to pass, that you did not rather direct that the Child should be brought to *Dunmaine-House*, than to that Gate?

A. I would not bring it to the House.

Q. What was your Reason for that?

A. Because I would not have my Lord or Lady know any thing of it.

Q. What was your Reason for seeing the Child?

A. To know who it was like.

Q. How far was that Gate you mentioned from the House?

A. A little Distance.

Q. What was your Reason for seeing it there?

A. I did not care my Lady should know any Thing about it. My Lady would not care the Child should be brought into the House.

Q. Was there ever a Child either christened or living at that House while you were at *Dunmaine*?—A. No, never.

Q. Did my Lady ever talk to you any Thing of her being with Child, or having had a Child, during that Time?—A. No, never a Word.

Q. Ladies sometimes talk to Women in your Situation; had you any Discourse ever with my Lady about having Children, and what was that Discourse?—A. Yes, Sir, my Lady often wished she had a Child, on Account of a Quarrel she had with Mr. *Annesley*.

Q. Pray give an Account of that Quarrel.

A. I don't know how the Quarrel began; but she came up one Day after Dinner, and was crying. I asked her, what was the Matter with her Ladyship? She said, That *Brute below*, meaning the Defendant, had said, he wished she might never have a Child; and my Lady said, she wished she might but have a Child to inherit, and she did not care if she was to die the next Hour.

Q. You said, you had been an entire Week absent from my Lady, and no more; give an Account of that Week's Absence, and the Occasion of it; was it while you lived at *Dunmaine*?—A. My Lady was in Dublin the Week I was from her; I left my Lady in Dublin, and went to *Dunmaine*; I was never a Night from her in *Dunmaine*.

Q. Do you recollect how long that Quarrel was after you went to *Dunmaine*?—A. Not very long.

Q. Was it before they came to Dublin?

A. Yes, it was; this Quarrel was some little Time after our going down, and Mr. *Annesley* upon it left the House, and went to Dublin.

Q. Do you remember, during your Service, that ever you were at the Town of *Wexford*?—A. Yes.

Q. Give an Account at what Time, and on what Occasion you went there.

A. My Lady went there to hear the Trials at the Assizes, and it was about the Pretender's Men, as they were called; and my Lady told me that there was one *Walsh* tried, and how handsomely he pleaded his own Cause, and the Defence he made; and there was one Mr. *Magdalen* who was picked up in the Court at that Time, and tried.

Q. Can you recollect yourself the Time of the Year?

A. I know we came to Dublin the May after; and what I remember it for is, that it was King *George* the First's Birth-day that we were in Dublin in May; and I remember it for this Reason, that there were Fireworks in the Custom-house Yard, and this present Lord *Anglesea*, that was Mr. *Annesley* then, had Lodgings just opposite to it, and we went to his Lodgings to see the Fireworks.

Q. Did my Lady go to Mr. *Annesley*'s Lodgings?

A. She did, my Lord, and my Lord and I.

Q. Do you know what Day of that Month was the Birth-day of King *George* the First?

A. I can't tell whether it is the 28th or 30th; I know there is the *Reformation* next to it; but I don't know which it is, the Day before or after.

Q. Recollect how long a Time before your going to Dublin was it that you were at *Wexford*?

A. It

Q. It was not long indeed. I can't recollect: I know we were in Dublin some time before the Birth-day; I don't know, about a Fortnight.

Q. But what time from your Return from Wexford Assizes, did you go to Dublin?

A. I can't tell what time the Assizes were, not I, for I don't remember the Month.

Q. Do you remember the Season of the Year?

A. Yes, I know it was the Spring, and I know it was a little before we came to Dublin that the Assizes were.

Q. Recollect who was the Company that went at that time to Wexford with your Family.

A. Mrs. Giffard went in the Chariot with my Lady, my Lord went on Horseback, and I went on Horseback, and Ralph went on Horseback, and Mrs. Giffard's sister on Horseback, but what her Name was I cannot tell; but what other Servants went I cannot tell; and there were several more which I don't know.

Q. Do you remember any other Servants that went?

A. No, except the Coachman, one Weedon, and the Postillion, one Burke.

Q. You say, you lived at Dunmaine at the time of this unfortunate Separation?—A. I did.

Q. Give an Account of the Occasion of that Separation.

A. On Saturday Night, my Lord said, *he would go out somewhere to dine the next Day*, but I don't know where, indeed; but my Lady begg'd of him *not to go*, for she hated he should be out on a Sunday; but he said, *he would go*; and accordingly on Sunday Morning he did go from the House; and I heard a Noise, and was going down Stairs to see what was the matter, and I met my Lord coming up with his Sword in his Hand, and he said, *Heath, I have found Tom Palliser in Bed with my Wife*. I said, *It was impossible, and that he was set upon by a Sett of Villains*; upon that, my Lord said, *She should go out of the House*; and upon that, he sent for one Mr. Wilman from *Rosfs*, and he came and advised my Lord, I believe, to turn my Lady out; but she begged, *he would let her have one Room in the House, and he needed not come near her, till she wrote to my Lord Duke*; but he would not hear her; but he hauled her out of Bed, and I advised her to come out: Upon which we packed up some Things, and went into the four-wheel'd Chaise, and I believe it was duskish when we went out, and it was Night when we got into *Rosfs*.

Q. Was there any thing happened to you when you went away?

A. Mr. Taylor handed my Lady into the Chaise.

Q. Was there any Child brought to take leave of my Lady?

A. O no! no Child, indeed.

Q. Who was in the Chaise with her?

A. I was, my Lord; she got in first, and I after her directly.

Q. Did you know Jean Laffan?—A. Yes, I did.

Q. During your Residence at Mr. Butler's in *Rosfs*, was there any Child that my Lady received in that House as her Child?

A. No, no such thing.

Q. How long did you live at Mr. Butler's?

A. We were not long at Captain Butler's.

Q. Was he and his Family at home when you went there?

A. There was Nobody at home but the Servants: Mrs. Butler and Captain Butler were out of Town; there was one Mr. Walsal that was Clerk to the Captain, and he sent a Man and Horse to let Mrs. Butler know that we were there, and she came home the next Day; but Captain Butler did not come home for three or four Days after.

Q. Recollect the several Places in which my Lady lodged at *Rosfs*.

A. I believe she stayed two Months or more at Captain Butler's, and then we went to one Mr. Wright's, and then we went to one Mr. Croft's, and there we staid till we came to Dublin.

Q. During this time, was there any Child brought to my Lady as her Child?

A. No, never was; she had no Child. I can say no more, if they rack'd me to Death.

Q. Did you know one Jean Laffan?—A. Yes, I did.

Q. What was she?—A. She was what we call House-maid.

Q. Was it her Business to clean the Rooms?

A. Yes, to wash the Rooms, and make the Beds.

Q. What time did she come to live at Dunmaine?

A. Three or four Months before my Lord and Lady parted.

Q. During the time that you lived at Dunmaine, had she any other Employment in the Family?

A. No other, except she went to the Laundry, when the Business was done in the House, and help'd the Laundry-maid to wash.

Q. Who was Laundry-maid at this time?

A. I cannot tell, we had several.

Q. Did she dry-nurse any Child before the Separation?

A. No, we had no Child for her to dry-nurse.

Q. Did you ever see a Child in the Hands or Care of Jean Laffan while she was at Dunmaine House?

A. No, never, for we had no Child.

Q. Did you know one Edward Lutwyche, a Shoe-maker at *Rosfs*?

A. No, I don't know any thing of him.

Q. Who made your Lady's Shoes at *Rosfs*?—A. I don't know, indeed.

Q. Do you know of her buying any Shoes whilst she lived there?

A. I don't remember she did.

Q. What sort of Shoes did her Ladyship usually wear?

A. She wore braided Shoes.

Q. Of what Colour?

A. Several Colours, and several Pair of Shoes, I cannot tell what.

Q. Do you remember her ever bespeaking a pair of Shoes for a little Boy?—A. That I'm sure she never did.

Q. Had she a Pair of white Damask Shoes at *Rosfs*?

A. She never had, while I liv'd with her.

Q. Can you recollect what Persons were present when you saw my Lord come up Stairs with his Sword in his Hand?

A. Indeed, I don't know any.

Q. Where did you remove to from *Rosfs*?

A. We came to one Mr. Cavenagh's, in a Place called Stable Yard, I think they call it so, in Mary's Lane.

Q. There you came to a Lodging?—A. Yes, and boarded there.

Q. How long did you stay at that House?

A. I really cannot tell; but from thence we went to one Mr. King's.

Q. What was he?—A. An Apothecary in Charles-Street.

Q. Did you lodge and board there?—A. Both.

Q. How long might you stay there?

A. I cannot tell; from thence we went to one Mrs. Mac Mullen's, I don't know what the Street is, I think it is *Taft's Square* in *Mountath-Street*, it turns up by Mr. King's, and there we were a little while, two Months or more, before we went over to England.

Q. Can you recollect in what Year you went to England?

A. Yes I can, in the year 1724.

Q. In what Month?—A. I believe about September.

Q. Before Lady Altham went to Mr. King's, the Apothecary, had you, or any other Person, look'd out for other Lodgings?

A. Yes, I went somewhere upon the Quay, but I don't know whose House it was.

Q. Did you see the Owner of that House?—A. Yes, it was a Woman.

Q. Do you recollect her Name?—A. No.

Q. Did you come to any Agreement?

A. Yes, I gave her a Pistole in earnest; but afterwards we did not like the Place, and I went and told her so, that the Doctor did not like my Lady should live upon the Quay, and she gave me the Pistole again.

Q. Did you ever see that Woman afterwards?

A. Never, to my Knowledge.

Q. Did my Lady ever tell you, that she saw that Person?

A. My Lady never did see her in her Life, for my Lady never knew any thing of her, and never did speak to her, to my Knowledge.

Q. During your Lady's Residence either at Cavenagh's, or King's, or Mrs. Mac Mullen's, did any Boy visit or wait upon her, as her Child?

A. No, never, nor they could not.

Q. Did any other Person go with you, when you went to see this Gentlewoman about the Lodgings?

A. One Mr. Mac Mullen went with me.

Q. What was he?—A. He dealt in Linens.

Q. Did any Servant of Lady Altham's go with you?—A. No.

Q. Did you ever hear or know any thing of this same Boy, that you say was Jean Laffan's Child, from the time you left Dunmaine?

A. No, I never troubled my Head after him.

Q. Did you ever hear that he was in Dublin?

A. I had heard that my Lord had took him; but I know nothing of him.

Q. Do you know whether my Lord Altham was alive when you went to England?—A. I heard he was alive.

Q. Had you any Account afterwards of his Death?

A. I had a Letter from Mrs. Mac Mullen, giving me an Account that he did die.

Q. What was the Purport of that Letter?

A. I have the Letter in my Pocket.

Q. Did you communicate that Account to your Lady?

A. I went directly and shewed her the Letter.

Q. How soon after you received this Letter was it that you gave her the Account?—A. I went directly and shewed the Letter to her.

Q. What happened upon that? Did my Lady make any Reflections upon that Affair?—A. She said nothing at all.

Q. Had your Lady any Fortune come to her upon the Death of her Husband?

A. No, the Estate went to the late Lord Anglesea, she not having a Jointure settled upon her; had she a Child, the Altham Estate would have come to it.

Q. Did my Lady know that this Estate went to the Earl of Anglesea?

A. My Lady told it me, or else I should not have known it; I had all my Knowledge of it from her, otherwise I should not have known it.

Q. When was it, you had that Discourse; before, or after, my Lord's Death?—A. Both before the Account of his Death came, and after.

Q. Did you acquaint my Lady Altham of the Purport of that Letter?

A. I directly went up Stairs, and shew'd her the Letter as soon as I had read it.

Q. When did my Lady Altham die?

A. She dy'd in October, 1729; she has been dead fourteen years last October.

Q. Had my Lady any Account how, and where my Lord was buried, and any Circumstances relating to it?

A. No more than what is in this Letter.

Q. Did she go into Mourning?

A. No, she made no Mourning, she was in Mourning at that time.

Q. What Sort of Mourning?

A. A Norwich Crape that she had had for my Lord Duke, and which she made a Night-gown of when King George the first died.

Q. Were there any further Particulars in the Letter?

A. She told in the Letter, that my Lord died, and was miserably poor.

Q. Did you communicate the whole Contents of that Letter to Lady Altham?—A. Yes, I did.

Q. Had she any Discourse with you, or did she make any Observations touching any Part of the Contents of that Letter?

A. I do not know any thing that she said: she took no Notice of it, but she read the Letter as well as I.

Q. Was there any Conversation between you, about any other Person mentioned in that Letter besides my Lord her Husband?

A. No, she made no Reflection upon it, nor said any thing.

Q. Had my Lady any Maintenance or Allowance from my Lord after their Separation?—A. No, my Lord never sent her a Farthing.

Q. Who supported her then?—A. My Lord Duke.

Q. What Allowance did he give her?

A. There was 1200 l. Remainder of her Fortune in the Duke's Hands, for which he allowed her 80 l. a Year, gave her 20 l. a Year more, and when he died left her 100 l. a Year.

Q. Do you know a Gentleman whose Name is Mac Kercher?

A. He was once with me.

Q. Should you know him now if you should see him? Look about.

A. That is the Gentleman I am sure (pointing to Mr. Mac Kercher); he told me his Name was so.

Q. Had

Q. Had you any Acquaintance with him, and what was the nature of that Acquaintance?

A. He came to my House, I live in St. Andrew's Church, Dublin, and he came there; there is the Directions he gave me to find a Gentleman, and I put the Day of the Month upon it that he was with me. It was the 13th of April 1742. For he said, one of Captain Briscoe's Daughters was in Town, and told me her Name; and he wrote his Name upon it; that I should not forget it.

Q. Are you certain he wrote it?—A. He wrote it, and I saw him write it.

Q. What passed between you at that Visit?

A. When he first came in, he was a Stranger to me, begged my Pardon, and said he came to ask me some Questions about my Lady Altham, whether she had ever a Child? I told him, she never had one while I lived with her, I could take my Oath. Then he told me, how this Mr. Annesley was recommended to him by two Lieutenants, one of their Names was Lieutenant Simpson, but the other I do not know; and then he told me how he came to him, and that he, Mac Kercher, gave him Ten Guineas; and then Mr. Annesley told him he had no Lodging, and did not know where to get one. He said his House was small, but if he would lodge with him he might, and should be welcome, and took him in. He then shewed me a List of the Servants Names, and my Name was crowded in at the Top, and I laughed at it. There were several Names, some that I did know, and others that I did not; there was Martin Nieff, and Charles Magber the Butler after Ralph went away, and there was Juggy Laffan; and with that I said: What can she know of this Affair? Why, says he, Madam, she says that she saw old Parson Lloyd christen it; I suppose you know him, Madam? Aye, says I, I knew him very well, but I cannot think how she can know any thing. Why, says he, she says she came to Dunmaine about a quarter of a Year after my Lord and Lady came from Dublin. So she did, says I, but that was the last Time we came down from Dublin. He then thanked me very kindly, said, He was very well satisfied with what I had told him, that he would go home and wash his Hands of them, and turn them all out of Doors, and would not for a Thousand Pounds that he had not seen me; for, says he, if you were dead, my Lord Anglesea would lose his Estate and Title, as sure as you are alive, there would be such bloody Swearing. Says I, Sir, I am sorry you have been so imposed on, for I assure you my Lady had not a Child. He said, Madam, for what I have been at the Charge of, I do not value. And I told him farther, Do you suppose, Sir, if my Lord and Lady had had a Child born to such an Estate, that they would not have him registered? He said, That they lived in a Country Parish where no Register is kept, and could not have it done. But I told him again, Could he suppose if they had had a Child born Heir to such an Estate, that they would not have had his Birth registered?

Q. Did you acquaint Mr. Mac Kercher at the Time of this Discourse, or offer to shew him this Letter of Mrs. Mac Mullen's?

A. Yes; and he told me, that Juggy Landy did not deny that she had a Child by my Lord, but that it died young.

Q. Did Mr. Mac Kercher make any Application in relation to your giving Evidence?—A. There was not any.

Q. Did he promise you any thing?—A. No, he did not; for he said, he would have nothing further to say to them.

Q. When you returned to Dublin, after the Assizes at Wexford, where did Lady Altham lodge in this Town?—A. At Mrs. Vice's.

Q. Where was that?—A. In Essex-Street.

Q. Did you know one Mr. Maurice Annesley?—A. Yes.

Q. What Family had he?

A. There were three Daughters that used to come to visit my Lady.

Q. Name them.

A. One was named Cherry, one was named Sarah, and the other Dorothy.

Q. Did you hear of Mrs. Cherry's being married to any one since?

A. Yes.

Q. To whom?—A. I did not hear to whom.

Q. Was not her Name Blake?—A. I don't know, I never saw her after.

Q. Did they visit as Relations?

A. They did, and were Relations to my Lord.

Q. What Condition was your Lady in when she lodged at Mrs. Vice's, was she with Child?—A. No, she was not.

Q. Did you ever hear of any Miscarriage at that Time?

A. Never while I lived with her.

Q. Did your Lady at any Time keep her Bed at Mrs. Vice's?

A. I do not know; she might lie a-bed a Day or so.

Q. Did you ever tell any body that she miscarried?

A. No, I never did.

Q. Or that she was with Child?—A. No, never.

Q. Had she any particular kind of Shoes or Slippers made when she was there?—A. None particular.

Q. Was there any Woman-Servant in the House of the Name of Mac Cormack?—A. Yes, Mrs. Vice's Maid, one Catherine.

Q. Did you ever tell her that your Lady miscarried?

A. Never; I never had any Conversation with her in my Life.

Q. Did you ever tell her any thing relating to your Lady as a Piece of good News?—A. No, never.

Q. Did you know one Alice Bates, a Servant of Mrs. Briscoe?

A. There was one Ally, that waited on Mrs. Briscoe's Mother, but what her Name was I cannot tell.

Q. Had you any Discourse with her of my Lady's being with Child?

A. No, never, for we were not so long in Briscoe's House.

Q. Had she Access to my Lady Altham, did she use to visit her?

A. Visit my Lady! I never saw her out of Captain Briscoe's House.

Q. Did you never see her put her Hand upon my Lady's Belly?

A. No, I never did.

Q. Do you remember Alice Bates's going at any Time in a Sedan-Chair to see my Lady at Vice's?

A. No, nor I do not know that ever I saw her at Mrs. Vice's.

Q. Did you ever hear my Lord Altham call his Lady by any remarkable, familiar Appellation?

A. He used to call her Molly.

Q. Did he ever use to call her Moll Sheffield, in good Humour?

A. He used to call him say so.

Q. You are positive you never told any Thing to Alice Bates as a Piece of good News?

A. I am positive as to that, I never did.

Q. Do you remember at any Time, during Mrs. Briscoe's and her Daughter's being at Dunmaine, that you called Mrs. Briscoe out of her Bed?—A. No, never.

Q. Do you remember any Fright my Lady received during the Time they were there?—A. No, I never did.

Q. Do you remember any particular China in the House of Dunmaine, or any thing concerning them?

A. I remember, when we came to Dunmaine, that there were some Cups and Sawcers that had very ugly, nasty Figures on them, indecent Figures, and my Lady never cared to have them used; but one Day the House-keeper had got some of the Sawcers to put the Defect on, and there happened some Words at the Table, and my Lord threw them on the Ground, as I was told.

Q. Did that cause any Fright in my Lady?—A. No, none at all.

Q. Did you ever call Mrs. Briscoe and her Daughter out of Bed, and tell them that my Lady was very ill?—A. No, I never did.

Q. Do you remember one Mary Doyle in the Family?

A. No; Betty Doyle, I did.

Q. Was my Lady in any sort out of Order the Night that the Sawcers were broke?—A. No, she was not at all.

Q. Was you in my Lady's Room the next Morning?—A. Yes.

Q. Were there many Servants there?

A. No, not at all; the House-Maid might be there, that used to come and light the Fire.

Q. Was Miss Briscoe in my Lady's Room the next Morning?

A. I cannot tell but she might.

Q. Did you see her there?—A. She might be there, for my Lady always breakfasted in her Chamber, and she breakfasted with her.

Q. Do you remember Mr. Sutton the Surgeon?—A. Yes.

Q. Do you remember any Quarrel that happened about him?

A. Yes, my Lady never liked him, and he went from the House, and was away some time.

Q. Do you recollect any Occasion of sending for Sutton from Ross to my Lady?—A. I cannot tell whether there was or no.

Q. Do you remember any such Occasion as required a Surgeon?

A. I remember once she had an Inflammation as we thought in her Leg, and I do not know whether my Lord sent for him then; and once her Arm was cut, but Sutton was then in the House.

Q. Could he attend her in any Disorder of any Continuance without your knowing it?—A. No, I think not.

Q. Did he attend her in any Disorder after that Quarrel?

A. I do not remember any thing ailed her after that Quarrel.

Q. Was there any Confinement for about a Fortnight that required the Attendance of a Surgeon?

A. No, not that I know of.

Q. Did Sutton ever refuse to come when sent for?

A. I do not know that ever he refused to come.

Q. Do you remember the Chariot to be sent for him?

A. I do not know; he generally had a Horse.

Q. Did you know Mrs. Shiels, a Midwife?

A. I knew her at Ross.

Q. Did you ever see her at Dunmaine?

A. I never saw Mrs. Shiels at Dunmaine in my Life.

Q. Do you remember the Name of Dennis Redmonds?

A. No, not that I remember.

Q. Did you ever send that Man to Ross for Mrs. Shiels?

A. I never gave any Directions to him or any Servant to fetch Mrs. Shiels to my Lord's House.

Q. Did any thing particular happen after breaking of the Sawcers?

A. No, nothing particular.

Q. Did not you go to Mrs. Briscoe's Room, to tell her my Lady was ill?—A. I did not.

Q. Do you remember the Name of one Thomas Brooks?

A. I do not remember any such Name.

Q. Do you remember whether my Lady was, or was not, let Blood at that Time?—A. I cannot be positive whether ever she was let Blood.

Q. Do you remember any particular Person being sent for that Afternoon that the Sawcers were broke?

A. No, I do not remember that any Person was sent for.

Q. Recollect if you know Dennis Redmonds.

A. I do not remember any such Name.

Q. Was there a Huntsman in my Lord's Family?

A. Not a particular one, there was the Groom and other Servants.

Q. Do you remember any thing particular to be done at the Time of the Separation by any of my Lord's Servants to any Gentleman in the House?

A. They said that they had cut off Mr. Palliser's Ear; but I cannot tell any thing of it, not being present; I was waked with the Noise, and came down Stairs.

Q. Had you ever any Discourse with any to this Purpose, That if my Lady was to be affrighted at this Rate, she would never go on with a Child.

A. No.

Q. Did you ever expostulate with my Lord about giving my Lady ill Usage?—A. No, I never did about any such thing as a Miscarriage.

Q. Can you say that my Lady kept her Bed one Day or more during the Time of Mrs. Briscoe's being at Dunmaine?—A. No, I do not know that ever she kept her Bed a Day, or more, while they were there.

Q. Did you ever call Mrs. Briscoe out of Bed at any Time earlier than usual?—A. No, I did not indeed.

Q. Do you remember, whether my Lady took any Offence at my Lord's breaking the Sawcers?—A. No, I heard no more than what the Servants told me, I was not in the Parlour.

Q. Did you hear her express herself in any Manner concerning it?

A. No, not at all concerning those Sawcers, she never liked them.

Q. Cor-

Q. Consider whether the Night of that Day Mrs. Briscoe was called up by you?—A. No, I never called her up at all. I am sure of it.

Q. Recollect whether Sutton the Surgeon, after he quitted the Family, came and stayed any particular time?

A. Often after he was turned out; he went away because my Lady did not use him as pleased him.

Q. Did he come again and stay any time?

A. Often, may be a Fortnight, sometimes more, and sometimes less.

Q. Was he resident in the House?

A. He was only backwards and forwards.

Q. Recollect yourself, whether Sutton, about the time of the Sawcers being broke, came and lived there any time?

A. I do not remember that.

Q. Did he come and attend my Lady as a Surgeon?

A. Indeed I cannot say he did.

Q. Who was it first told you of that unfortunate Affair of Mr. Palliser's?

A. My Lord Altham himself.

Q. Do you recollect, whether Joan Laffan called you down to rescue Mr. Palliser from being murdered?

A. No, I am sure she did not; because my Lord came up, before I could get down on the Noise, and told me of it.

Q. Had you any Conversation with her that Day concerning that Accident?

A. No, for I was in too great a Fret to talk to her about it.

Q. Can you recollect how soon after my Lady came first to Dunmaine that Sutton quitted the Family?—A. I cannot tell indeed how long.

Q. How long was it after she first came that this Accident of the Sawcers happened?

A. It was whilst Mrs. Briscoe was in the House, and that was not long.

Q. Was you in the Room during any Part of the Dining-time?

A. No, I was not.

Q. Were you ever in the Dining-room during the Stay of Mrs. Briscoe there whilst they were at Dinner?

A. No, I cannot say I was, I had no Business there at Dinner-time, but went in with the Tea-things soon after Dinner.

Q. What was the Age of Miss Briscoe?—A. I cannot tell.

Cross-Examination.

Q. You say, Madam, you came over with Lady Altham, and she lodged at Captain Briscoe's?—A. Yes, we did.

Q. Was not Lord Altham brought to that House, and reconciled?

A. Yes, he was.

Q. Did not they stay some few Days after there?—A. Yes.

Q. Did not they go from thence, after four or five Days Stay, and lodge at Vice's in Essex-street?—A. No, they went directly down to Dunmaine.

Q. How many Days Stay did you make at Captain Briscoe's?

A. My Lord and Lady met the 4th and 5th of December, and we got to Dunmaine on Christmas-Eve.

Q. Did my Lady stay there all the time till she went to Dunmaine?

A. My Lady did not lodge out of Captain Briscoe's House at the first Meeting.

Q. How soon, after the first time that you went to Dunmaine, did my Lady come next to Dublin?

A. I know Mrs. Briscoe and her Daughter were at our House at Dunmaine on St. George's Day; afterwards my Lord came up to Dublin, I do not know in what Month, but she desired my Lord to make use of her House while he stayed in Dublin; for Mrs. Briscoe did not go to Dublin, but to some other Acquaintance. My Lord was at her House for some little time, and after went to Mrs. Vice's; and when we were at Dunmaine, we heard a great many Quarrels that my Lord was in; and my Lady, when she heard of such doings, came up. He sent down a running Footman, who came when all were in bed but me and Mr. Rolph; he knocked at the Door and alarmed us, for we were afraid he was come with some ill News about my Lord. I went down, and asked how my Lord did; he said, Very well; and he brought some Green Tea for my Lady. I carried the Tea to my Lady, the Man was to go to Ross the next day, and so return to Dublin; there was one Captain Nisack and his Lady at our House, and they persuaded my Lady to go up to Dublin.

Q. When was that?

A. In violent hot Weather, whether in July I cannot tell; but it was a little while before the Queen died, for I saw King George proclaimed at the Castle.

Q. Did not you lodge then at Mrs. Vice's in Essex-street?

A. Yes, we did.

Q. Were my Lady Altham and you ever before at Vice's?

A. My Lady Altham was one Day, but not to lodge there; she was there the Day after my Lord and she met, which was on a Saturday; my Lord took her out on a Sunday, and shew'd her where she was to lodge.

Q. Did not you continue in the Lodgings at Mrs. Vice's till the Christmas following?—A. No.

Q. How long then?

A. A little after the News of the Queen's Death my Lady got Mourning, and we stayed three Weeks, or a Month, or five Weeks, I cannot guess the time, after my Lady went into Mourning; and then we returned to Dunmaine.

Q. How long then were you at Dunmaine, after my Lady's Return, and after the Queen's Death, before you came to Town again?

A. Till the May following that was the first Birth-Day of King George Ist; may be a Fortnight or three Weeks, or thereabouts, in May.

Q. You named the Daughters of one Mr. Maurice Annesley?

A. I did.

Q. Now, recollect yourself very well, did they visit Lady Altham when she was at Vice's, in the Month of August, after the Queen's Death, the first time she lodged there?

A. I cannot recollect that, whether they did the first time, or not.

Q. Where did you lodge the second time?

A. At Mrs. Vice's again in May 1715.

Q. Did any, and which, of Mr. Maurice Annesley's Daughters visit Lady Altham at Vice's in May 1715, or at any time after?

A. In May 1715 they all did.

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Q. Now name them.---A. Cherry, Sarah, and Dolly. I know Cherry was the eldest; but which of the other was elder, I cannot tell.

Q. How long did you stay then in Dublin?

A. We stayed above a Year in Town, from May 1715, and better.

Q. Did my Lord and Lady leave Town during that time?

A. My Lord went down, but my Lady did not.

Q. Did you know Mrs. Charity Annesley?—A. I did very well.

Q. Was my Lady visited by Mrs. Charity Annesley, after she came to Vice's in Essex-street, in May 1715?

A. She was visited by her then, I am sure.

Q. You mention, Madam, that there were Instances of ill Usage from my Lord to my Lady; when he behaved in that manner, I suppose, you did not always escape; had you ever any Quarrel with my Lord at Vice's, or any where else?

A. I cannot say I had at Mrs. Vice's. I know one Night he was making a great Noise with a Chair, and I went to take away the Chair, and he took hold of my Head-clothes.

Q. Which of the times you lodg'd there did this happen?

A. I cannot tell.

Q. Was it in the Year 1714, or 1715?—A. I cannot tell.

Q. Did he make a great Noise?

A. Yes, and I went to take the Chair from him, that he might not disturb the Family.

Q. Did my Lady Altham scream out upon that Occasion?

A. No, I do not believe she did; for she would rather have been killed, than any one should have heard it.

Q. Did you know any one that was called Lucas?

A. I had no Knowledge of any such.

Q. Did you ever hear any Person, in that Family of Mrs. Vice's, name the Name of Lucas?—A. I remember some Quarrel there was, that I heard my Lord make use of the Name of Lucas.

Q. My Lord and Lady were both in bed at that time, you say?

A. Whether they were or not, I cannot say.

Q. Did either of them get out of Bed?—A. I cannot tell.

Q. Suppose either of them should have opened the Window, and called out of the Window, must not you have heard it?

A. I cannot tell; I remember one Night my Lord was going towards the Windows, and my Lady held him.

Q. Was it that Night that you took the Chair from him?

A. I don't know whether it was; but I believe not. My Lord said, That he would send for one Mrs. Lucas, to see whether my Lady was with Child; for if she was not, he would turn her off, and would not live with her; but he would know whether she was with Child before he turned her away.

Q. Can you be positive, whether, immediately after this, my Lady was confined to her Chamber?

A. I do not remember that she was confined to her Chamber; she was out of order with a Cold or so.

Q. Was there any Discourse the next Morning about a Miscarriage?

A. I am sure there was not; for I am certain there was no Miscarriage, and therefore there could be no Discourse of it.

Q. You are sure you heard the Name of Lucas mentioned?

A. Yes, I did by my Lord.

Q. You mentioned your having gone to take a House upon the Quay?

A. Yes, when we went from Mr. Cavenagh's.

Q. And you gave a Pistole in Earnest?

A. Yes, which the Gentlewoman returned.

Q. You say this Woman never saw your Lady that you know of?

A. No.

Q. Might not she have seen her, without your Knowledge, in the House of Mr. King?—A. No, never that I know of; she might have gone there when I was out of the way.

Q. Was there any Conversation with Lady Altham and you, about the returning of that Pistole?—A. Not that I know of.

Q. Did she ever tell you that she had seen the Woman?

A. She never did; and I believe if she had, she would have told me of it.

Q. Did you ever tell any body that that Pistole was returned?

A. I spoke of it; I made it no Secret.

Q. Did you ever hear of that Pistole being returned?

A. One MacMullen went and received it, and not I.

Q. And who did MacMullen give it to?

A. He gave it either to me, or my Lady.

Q. Did MacMullen go with you both times to the Lodgings you took on the Quay? Did not you say, you went and told the Woman that the Doctor said the Air of the Quay was not fit for my Lady?

A. Really, I do not know whether I went with MacMullen or no; I do not believe I was with him.

Q. Was it you that made the Excuse to the Woman?

A. Indeed I do not know whether I did or no, I believe it was he that went.

Q. Where did Mr. Annesley, now Lord Anglesea, live in 1715?

A. Opposite the Custom-House I think; it was so that I could see the Fire-works.

Q. How far was that Lodging from Essex-Bridge?

A. Indeed I cannot tell how far.

Q. Do you know whose House it was in?—A. No indeed.

Q. Did you know the House where Sir Alexander Cairnes and Mr. Henry lived?—A. I do not know where any of them lived.

Q. What kind of an Apartment was there for Lord and Lady Altham to be entertained in?—A. There was a Dining-Room and a Bedchamber, the Supper was in the Bedchamber set out.

Q. Did not you go over Essex-Bridge to go to these Lodgings?

A. We did.

Q. Did you turn on the right hand or the left?—A. On my right hand.

Q. How far did you drive on the Quay?—A. I went in a Chair.

Q. How far did you go then?—A. I cannot tell.

Q. Was it up one or two Pair of Stairs?—A. One Pair.

Q. Was that Mr. Annesley's Lodging?—A. It was.

Q. Was it a very handsome Apartment?—A. Indeed I cannot tell.

Q. You mentioned in your going to Wexford a Sister of Mrs. Gifford?

A. Yes.

Q. Did she ride behind any body? — A. No, she rode single.
 Q. What was her Name? — A. I cannot tell.
 Q. Was she a Maiden, or a married Woman? — A. I cannot tell.
 A. She was unmarried.
 Q. Was she Part of Lady Altham's Company? — A. I do not know.
 A. She was when she came there.
 Q. Did she lodge with Lady Altham? — A. Yes.
 Q. At whose House did Lady Altham live? — A. At Captain Sweeney's.
 Q. Did my Lady go there to visit Mrs. Sweeney? — A. I cannot tell whether she did or no.
 Q. Was it not to hear the Trial of the Pretender's Men? — A. I cannot tell, for I did not know of any particular Trial.
 Q. Was there any particular Trial expected? — A. My Lord and Lady might know it, but I did not know it.
 Q. What Clothes did my Lady wear at Wexford? — A. Indeed I cannot tell you what Clothes.
 Q. Had not my Lady a Silver Silk? — A. No, not then; she did not wear it at Wexford, because she was in Mourning for the Queen.
 Q. Pray, what Servants attended my Lord at that Time? — A. I cannot tell what Servants, but his own Servant Anthony Dyer was ill.
 Q. But you are sure Ralph went there? — A. Yes.
 Q. What Colour was the Horse he rode? — A. Indeed I cannot tell, nor what coloured Horse I rode myself.
 Q. Did Ralph lodge in the same House with my Lord? — A. No, he did not.
 Q. Did he come to my Lord at Mrs. Sweeney's? — A. I cannot tell, for my Lord was a Justice of Peace, and Ralph had some Informations to deliver.
 Q. Did he attend him as a Servant? — A. I do not know but he might, for my Lord never dressed in my Lady's Room, and I cannot tell who attended him.
 Q. Was it the Day after you came down that you mentioned Juggy Landy's being with Child? — A. The very Night. It was said that Night that it was an Officer's Servant's, and the next Day that it was my Lord's, or his Brother's, or the Dog-Boy's, or some else of the Servants.
 Q. How long did this Woman continue in the House after? — A. I cannot tell.
 Q. And pray, Madam, could your righteous Spirit bear that this Woman should stay so long in the House? — A. Indeed I did not concern myself about her.
 Q. Do you know the Lady Blessington? — A. I do not know Lady Blessington; what Lady Blessington do you mean? There was one Capt. Boyle, I've seen his Lady.
 Q. She is the Lady I mean; did you ever see her visit Lady Altham? — A. I am sure I've never seen her.
 Q. Do you remember one Mrs. Pigot? — A. Yes.
 Q. Did she visit Lady Altham? — A. Yes, she did.
 Q. Was there an Intimacy in the Family? — A. She visited us more in Rosi than at Dunmaine.
 Q. Did she visit my Lady at Dunmaine frequently? — A. She did, but not often.
 Q. Where did you dine the Day of Palliser's Affair? — A. No where.
 Q. Did you get any thing to eat when you came into Rosi? — A. I know we had some Tea there, I cannot tell whether we had any thing else.
 Q. Did you eat nothing else that Day? — A. I cannot tell, for there were none but the Servants there.
 Q. Did not Crowds gather about to see my Lady come into Rosi? — A. There was a Crowd of People, but it was so dark, I could not see who they were.
 Q. Was it dark when you left Dunmaine? — A. It was dusky when we left Dunmaine, but it was dark when we came into Rosi.
 Q. What happened upon the Quarrel between my Lady and Captain Annesley, did he leave the House upon it? — A. Not immediately, but he never came up to dine with my Lady after.
 Q. Did they never come into Company at Dunmaine after? — A. They never did; my Lady sent for him the next Day to come up to Dinner, but he would not; she then sent to know if he would have something sent down, and he would not.
 Q. Did he ever come to Dinner after at Dunmaine? — A. Not up Stairs into the Parlour.
 Q. Did he ever come to Dunmaine after he left it while my Lady was there? — A. He never did.
 Q. When was it they first met after this Quarrel? — A. When we came to Dublin afterwards; when we came, my Lady took a Chair to Mrs. Vice's, and she met Mr. Annesley in Essex-Street: he said, Your Servant, my Lady; your Ladyship is welcome to Town; and after that he came to Mrs. Vice's.
 Q. Do you recollect what Month that was in? — A. It was violent hot Weather, I believe in July, for it could not be a Month before the Queen died.
 Q. Do you know one Mr. Hufsey? — A. I do know him.
 Q. Did you see him at your House in London? — A. I did.
 Q. Did you ever discourse with him relating to this Affair? — A. Yes; and told him several Times that my Lady had not a Child.
 Q. What Mr. Hufsey is this? — A. I know nothing but that he was an Acquaintance of an Acquaintance of mine that brought him to my House.
 Q. Did not you tell Mr. Hufsey that the Plaintiff was greatly wronged, and that you knew more of that Affair than any body? — A. No, by the Virtue of my Oath, I never did.
 Q. Did not you see Mr. Hufsey at your House, when the Report was that this Mr. Annesley was on board the Fleet with Admiral Vernon? — A. Indeed I do not know what Time.

* Before the Evidence of the Defendant was closed, the Counsel for the Defendant offered to give in Evidence the Record of the special Verdict in Ejectment, in the King's Bench, wherein the late Lord Anglesea was Lessor of the Plaintiff, and Graham, who held under Lord Altham's Title, was the Defendant, which special Verdict found that the late Lord Altham died without Issue.
 Court. That Record cannot be Evidence against the Plaintiff, who was not a Party to it; nor could the Admission of either of the Parties in that Cause be Evidence against the now Plaintiff.

Q. Pray recollect your self, I ask you, was not this immediately after that Mr. Annesley was on board Vernon's Fleet? — A. I do not know what Time.
 Q. Was it a Month after you heard the Report? — A. I do not know indeed.
 Q. When was it you first heard that Report? — A. The first Time I heard of it, I believe, will be three Years ago, in January.
 Q. Who first informed you of it? — A. The Duchess of Buckingham sent her Woman for me; I could not think what she could want, and I said nothing to her Woman, but went with her, and when I came, and went up Stairs, and sat down, her Woman was the first that told me of it.
 Q. Was it not immediately after that, that Mr. John Hufsey came to your Lodgings? — A. I cannot tell what Time he came.
 Q. Is it three Years ago since he came to visit you? — A. I believe it is three Years and more; I cannot tell what Time.
 Q. Was it not two Years ago? — A. I have seen him several Times within these two Years; he has had the Discourse about this Plaintiff several Times.
 Q. Was it two Years since you saw him last? — A. Yes, it will be two Years — I cannot recollect.
 Q. Was it before the Duchess of Buckingham sent for you? — A. No, I knew nothing of it till the Duchess sent for me.
 Q. What State of Health was Lady Altham in when she came to Rosi from Rosi? — A. She was lame.
 Q. Was not she troubled with a Dead Palsy? — A. I cannot call it a Dead Palsy.
 Q. Did not that Disorder deprive her of her Limbs? — A. She lost her Limbs by that Disorder, it came by Degrees; but when she came from Rosi, she could go about with holding by the Hand.
 Q. When she went to London, what State was she in? — A. She had lost the Use of her Limbs; she could not stand; when I first went to London, with one Hand I could lead her about the Room, and then with both Hands, and then not at all — I was forced to put her in a Chair and wheel her about.
 Q. How did she come by that Disorder? — A. Indeed I cannot tell.
 Q. Did not that Disorder come on her after there was a Report that she had a Child? — A. A Child! The Disorder began at Rosi.
 Q. Was there any Report, that you know, of my Lady's being with Child? — A. Yes, there was a Report before I lived with her; I heard of such a Thing.
 Q. Was there any such Report after you came to live with her? — A. No, I do not know, Sir, that there was at any Time after I came to live with her.
 Q. Was not she bed-ridden of this Disorder before her Death? — A. No, she never was.
 Q. Was not she impaired in her Senses? — A. No, she never was; she was well in her Chair the Night before her Death, and she took a Fit, and we put her to Bed, and she died the next Night, but till that Time she had her Senses as perfect as any body in the Court, and could manage all her Affairs, for I never kept any Account for her.
 Q. Was not that 100 l. a Year left her by the Duke to cease upon the Death of my Lord Altham? — A. Yes, it was.
 Q. How was she supported then to her Death? — A. Because my Lady Duchess gave her 100 l. a Year, for the Interest of the 1200 l. after the Duke's Death.
 Q. Where have you lived since the Death of Lady Altham? — A. In the House I now live in.
 Q. What Business do you follow? — A. I take in Plain-work, and I have some Money at Interest.
 Q. Are not you a Washer-woman? — A. No, I am not.
 Q. What Time did the Duke of Buckingham die? — A. I do not know, he was dead before my Lady and I went to England, he was dead before we left Rosi.
 Q. What is your present Way of living? — A. I have the Interest of some Money left me, and I take in Plain-work, and Clear-starching; my Daughter and I live together, and we have the Interest of about 700 l. between us, but the greater Part of it is my Daughter's.

Monday, November 21.

Serjeant Marshall.] My Lord, the Gentlemen have by their Defence, made it necessary for us to give some new Evidence. It has been insisted on by them, and they have endeavoured to prove, that Lady Altham was at the Spring Affizes 1715, at Wexford, without any apparent Sign of Pregnancy; that being a new Point, your Lordship will give us Leave to controvert, because the Credit of the Lessor of the Plaintiff's Birth may, in some Measure, depend upon it. They have gone a Step farther, and have attempted to impeach the Credit of Joan Laffan; we apprehend it will be material to defend the Character of that Witness, and to shew that some of the Witnesses produced on their Part, have been prepared for this Trial.

The six Evidences, on the Plaintiff's Reply, were:

1. Caesar Colclough, Esq. who swore, He was at Wexford Affizes, in April 1715; did not see Lady Altham there; and if he had been there, should have known her; believes she was not in Town that Day.
2. John Hufsey, confronted with Mrs. Heath; their Evidence afterwards.
3. Mr. Thomas Higginson, Receiver to Arthur Earl of Anglesea, who swore he was at Dunmaine the Beginning of April 1715; that Lady Altham made him drink a Glass of Wine; he saw she was big with Child; and her Face lank, and he drank to her happy Delivery, and went from thence to Wexford Affizes.
4. William Stephens, to contradict Arthur Herd, who said to him (meaning Mr. Annesley) This is the right Heir, if Right takes place.

William Hughes swore, *Hard* told him *Mrs. Annesley* was the true and lawful Son, and Heir to the Estate.

6. John Ryan, brought to contradict *Michael Drumm*, who declared to him he was to get 200*l.* for swearing that *Gentleman* away. *Drumm* denied this, or having any Conversation of that kind, and appealed to Colonel *Palliser* and Colonel *Leftin*, &c. for a Character. Colonel *Leftin* being called, was asked whether *Drumm* bore a good Character, and to be believed on his Oath, replied, Yes; but being asked whether under that Circumstance he should be believed, answered, *I cannot say that*.

2. JOHN HUSSEY, confronted with *Mrs. Heath*.

Q. Do you know *Mrs. Heath*?—*John Hussey*. I do, Sir.

Q. Had you any Conversation with her about the Plaintiff being, or not being the Son of *Lady Altham*?—*A.* I had.

Q. How long ago is it since you had the Conversation with *Mrs. Heath*?—*A.* I think about two Years and a half ago.

Q. Give an Account of what passed between you?

A. About two Years and a half ago, I went with a Gentlewoman to *Mrs. Heath's* to drink Tea in *Holbourn*, within thirty or forty Yards of *Saint Andrew's Church*, and as *Mr. Annesley* was the common Conversation of the Coffee-houses then, we began to talk about him; I do not know whether she or I introduced the Discourse, but she said, to the best of my Memory, *Nobody knows that young Man's Affairs better than I, because I long lived with his Mother, the Lady Altham*; and she expressed a great deal of Concern for him, and the Circumstances he was in: she told me withal, *That the Dukes of Buckingham sent for her three times, and that she was in private with her*. And I have no more to say, my Lord.

Q. Did she tell you the Import of the Conversation between her and the Dukes of Buckingham?

A. I do not remember she did, nor I never asked her.

Q. Did she say concerning whom, or what the Dukes sent for her?

A. To the best of my Remembrance, she did about *Mr. Annesley*.

Q. I ask you again, and recollect and consider very well before you give an Answer, Are you sure that *Mrs. Heath* said that *Lady Altham* was the Mother of this young Man; or was it only this, *that I have long lived with Lady Altham*?—*A.* She said, my Lord, that she had lived a long while with his Mother, *Lady Altham*.

Q. Are you sure she called her his Mother?—*A.* Yes, I am, my Lord.

Q. Recollect whether you heard *Mrs. Heath* say any thing concerning any Person's being much wronged or injured.

A. She did say, *That the young Gentleman was very much injured, and that Nobody knew better than her, because she had lived long with the Lady Altham his Mother*.

Q. Pray, Sir, had this *Mrs. Heath* any Discourse concerning her coming to Ireland, or that she expected any thing?

A. She said she believed she should come into Ireland, but I do not remember that she said she expected any thing; it would have been very imprudent of her to tell me so, if she did.

Mrs MARY HEATH.

Q. *Mrs. Heath*, do you know that Gentleman that sits down there?

Mrs. Heath. Yes, I have seen him several times.

Q. Do you remember about two Years ago, that he drank Tea at your House, with one *Mrs. Simpson*?—*A.* He has several times.

Q. Did he drink Tea with you after the Account came concerning *Mr. Annesley*?—*A.* He has several times.

Q. I ask you then, whether you had ever any Conversation with him in relation to the Plaintiff, and what was it you said?

A. I have several times talked about it, and said, *What a vile Thing it was to take away the Earl's Right, and that my Lady never was with Child*; and I cannot say no more if you rack me to Death.

Q. How long have you known that *Mr. Hussey*?

A. Whether three Years or how long I can't say.

Q. Can you say any thing of his Character?

A. I can say no more than that some said he was a Gentleman's Servant, and some said he lived by Gaming.

Q. Do you believe him an honest Man?

A. I can say nothing of him; but if he says that I said my Lady had a Child, I cannot say he is an honest Man.

Q. Did you ever say that *Nobody knew that young Man's Affairs better than you*?—*A.* No, my Lord, I never did.

Q. Did you ever give it, in his Presence, as a Reason why you should know the young Man's Affairs, that you had long lived with *Lady Altham*, his Mother?—*A.* No, my Lord, I never did; and if I was to be torn to Pieces, I would say no such Thing.

To Mr. HUSSEY.

Q. Repeat the Words you heard her say.

Mr. Hussey. She told me that the Dukes of Buckingham had sent for her herself, and I cannot say who introduced the Conversation first; but *Mrs. Heath* said, *Poor Gentleman, I am sorry for him from my Heart; for no one has Reason to know his Affairs better than I do; for I lived long with Lady Altham his Mother*.

Mrs. Heath. By all that is good and great, I never said any such Word; I never thought that you was such a Man; I have heard People say that you were a Gamester, and lived in an odd way, but I could never believe it till now, but I always took your Part, and said you behaved like a Gentleman.

Mr. Hussey. I am a Gentleman, I can bring several People to justify me to be a Gentleman, and a Man of Family; indeed I have heard you say it, and speak it with all the Regret and Concern imaginable.

Q. When *John Ryan* was cross-examined, the Counsel for the Defendant asked him, Do you follow any Business, or are you of any Profession? The Court said, You need not answer that Question, if you think it will criminate yourself; and he refused answering it.

Q. After the Evidence for the Plaintiff on the Reply was closed,

Mr. Serjeant Marshall, of Counsel for the Plaintiff, stated the Title of *Arthur Lord Altham*, from the Wills and Codicils of *James the first Earl of Anglesea*, to shew that *Arthur Lord Altham* was only Tenant for Life; the Counsel for the Defendant having insisted, that he was Tenant in Tail under the said Wills and Codicils; upon which the Wills and Codicils were in part read.—But the Court were pleased to interpose, and said, That this was a Question of Law that might require great Consideration, and was not necessary to be determined at this time; the only material Point being, what was the Opinion of *Lord Altham* concerning his Title; that is, at the Time mentioned by *Col. Wall*, in his Evidence, (which was, that he never heard *Lord Altham* had a Child by my Lady; for in 1725, Counsel gave an Opinion that he had an Estate Tail, in the Remainder of the *Anglesea* Estate. *Col. Wall* told my Lord, that he could sell the Reversion of the *Anglesea* Estate better if he had a Son; for he could by a Fine bar his Issue; but that he could not bar the Remainder, not being in possession; and that he often heard my Lord wish he had a legitimate Son; and that he had an illegitimate one) therefore whether *Arthur Lord Altham* considered himself as Tenant in Tail, or only Tenant for Life, of the *Anglesea* Estate, for, according to his Opinion, concerning his Title in that Estate, it was his Interest to own or disown his having a lawful Son.

Q. Do you remember the Time that *Lady Altham* went to *Wexford* Affizes?—*Mrs. Heath*. Yes.

Q. Was that for the Trial of one *Doyle*?

A. I do not know any other that was tried, but *Mr. Walsh*, my Lady came home and told me how handsomely *Mr. Walsh* pleaded for himself.

Q. Do you remember what Day of the Week it was you went to the Affizes?—*A.* Indeed, my Lord, I do not.

Q. Did my Lady *Altham* lodge at *Mrs. Vice's* more than twice?

A. No more than twice.

Q. Would you be understood then, that the first time was when she came from *Dunmaine*, after she went down from *Mrs. Briscoe's*?

A. A little before the Queen died the first time was, and the second a little before *King George's* Birth-day.

Q. What time of the Year was it after the *King's* Birth-day that you went into the Country?—*A.* Some time in the Summer.

Q. Did you ever come up to Town after the Separation?

A. Not till the Time we left *Ros*.

Q. Was the Affizes begun before you went to *Wexford*, or did they begin after?—*A.* I believe they begun after, I don't know.

Q. Do you know one *Mr. Higginson*, that was Receiver to *Arthur Earl of Anglesea*?—*A.* No, I do not.

Tuesday, November 22.

The Court ordered *Mrs. Henrietta Cole*, and *Mrs. Heath*, to confront each other.

To Mrs. HEATH.

Q. *Mrs. Heath*, you said, as well as I remember your Testimony, that *Rolph* was Butler at *Dunmaine*?

Mrs. Heath. Yes, when I first went down.

Q. Can you recollect how long he continued there?

A. No, but I remember he went away when we were in *Dublin*.

Q. When?—*A.* The last time that we came up.

Q. You mentioned that you saw the Fire-works, the first Birth-day of *King George* the First, from *Captain Annesley's* Lodgings?—*A.* I did.

Q. Had you left *Rolph* in the Country then, or had you not?

A. I left him in the Country, in the House.

Q. Did you find him in the House when you returned?

A. No, for my Lord hired a Butler in *Dublin*, one *Charles Magher*, and sent him down.

Q. Was he sent before my Lady went back?

A. He was sent while we were at *Mrs. Vice's*, and hired there.

Q. Was there any Account that *Rolph* had quitted the Family before *Magher* was hired?

A. I cannot tell; but there was a Quarrel between *Rolph* and the Gardener, and he was ordered to quit it.

Q. What Time of the Year did you go back with my Lady to *Dunmaine*?—*A.* It was above a Year we staid in Town.

Q. Did *Magher* act as Butler during that Time?—*A.* He did, my Lord.

Q. You came over with my Lady from *England*?—*A.* I did.

Q. You first came to the House of *Captain Briscoe*?

A. We came there to lodge.

Q. Where did you go immediately after you left *Captain Briscoe's*?

A. We went down to *Dunmaine*, and got there on *Christmas-Eve*.

Q. Did not you go first into other Lodgings?

A. We did not go at all to any House to lodge.

To Mrs. COLE.

Q. Do you remember the Time of *Lady Altham's* coming to your House, when the Reconciliation happened?—*Mrs. Cole*. I do.

Q. What became of my Lord and Lady afterwards?

A. To the best of my Knowledge, they did not stay in our House above four or five Days, and they went and took Lodgings at *Mrs. Vice's*.

To Mrs. HEATH.

Q. Do you know this Gentlewoman?

Mrs. Heath. I do remember her.

To Mrs. COLE.

Q. Did you ever visit, after they had left your House, while they remained in Town?

Mrs. Cole. I cannot tell, but I believe we might.

Q. Recollect yourself and fix, whether you are certain that they went to *Vice's*, or any other Place from your Father's?

A. Indeed, my Lord, I believe they went to *Mrs. Vice's*.

Q. Can you be positive that they lodged in any other House in *Dublin* but your Father's, before they left *Dublin*?—*A.* I am positive.

Q. What do you found your Opinion upon?

A. I believe I have seen them in *Dublin*.

Q. Well, but what Reason have you to think they went to *Vice's*, before they went to *Dunmaine*?

A. The Reason I can recollect is, that after my Lord and Lady came together, my Father was still uneasy, though they were come together, till my Lord took her to a Lodging of his own; and he thought if they went to lodge at some other Place, it might have a better Face or Air of a Reconciliation.

Q. Did you understand your Father to mean by that, that it would become more public and notorious to Mankind, that Lord and Lady *Altham* were really reconciled?

A. Yes, I did understand that to be his Meaning.

Q. How long was *Lady Altham* at your House, in the whole?

A. A Month or six Weeks before my Lord came and was reconciled, and not above four or five Days after the Reconciliation, at our House.

Q. What Religion he was of? He answered, I am a Roman Catholick. Then they asked him, Do you think it will criminate yourself, if you think it will criminate yourself; and he refused answering it.

Q. After the Evidence for the Plaintiff on the Reply was closed,

Mr. Serjeant Marshall, of Counsel for the Plaintiff, stated the Title of *Arthur Lord Altham*, from the Wills and Codicils of *James the first Earl of Anglesea*, to shew that *Arthur Lord Altham* was only Tenant for Life; the Counsel for the Defendant having insisted, that he was Tenant in Tail under the said Wills and Codicils; upon which the Wills and Codicils were in part read.—But the Court were pleased to interpose, and said, That this was a Question of Law that might require great Consideration, and was not necessary to be determined at this time; the only material Point being, what was the Opinion of *Lord Altham* concerning his Title; that is, at the Time mentioned by *Col. Wall*, in his Evidence, (which was, that he never heard *Lord Altham* had a Child by my Lady; for in 1725, Counsel gave an Opinion that he had an Estate Tail, in the Remainder of the *Anglesea* Estate. *Col. Wall* told my Lord, that he could sell the Reversion of the *Anglesea* Estate better if he had a Son; for he could by a Fine bar his Issue; but that he could not bar the Remainder, not being in possession; and that he often heard my Lord wish he had a legitimate Son; and that he had an illegitimate one) therefore whether *Arthur Lord Altham* considered himself as Tenant in Tail, or only Tenant for Life, of the *Anglesea* Estate, for, according to his Opinion, concerning his Title in that Estate, it was his Interest to own or disown his having a lawful Son.

Q. You

Q. You remember the time of your going down to *Dunmaine*?—A. I do.
 Q. What time was it?—A. It was in the Winter.
 Q. Do you remember any Thing concerning the Lady's being indisposed there?—A. Yes, I do.

Q. Tell that again.
 A. There was an Accident happened, which frightened and fretted my Lady, upon which she became indisposed, and I remember a Servant's being sent up by my Lord to desire my Lady to come to Supper, and my Mother was with her two or three times to call her, and yet she excused herself.

Q. Do you remember any thing that happened upon that?
 A. My Lady miscarried.
 Q. Who gave that Notice first to your Mother?—A. Mrs. Heath.
 Q. At what Time?—A. My Mother was called up in the Night.
 Q. By whom?
 A. By Mrs. Heath, who came to my Mother's Room, and said, *For God's Sake, Madam, get up as soon as you can, for my Lady is exceeding ill.*

To Mrs. HEATH.

Q. Do you remember that Fact?
 Mrs. Heath. No, my Lord, there was no such thing happened, for my Lady never miscarried.

Q. Do you remember that you called up Mrs. Briscoe in the Night?
 A. No, I never did; I don't know what I should call her for.
 Q. Did you ever tell Mrs. Briscoe that your Lady had miscarried?
 A. No; for if I had, I should have told a false Thing; and I never lay a Night in any House in *Dublin* but Captain Briscoe's, till we came to *Dunmaine*.

To Mrs. COLE.

Q. Was you, after that Time, in my Lady's Bed-chamber?

Mrs. Cole. I was.

Q. How soon after?—A. The next Morning.

To Mrs. HEATH.

Q. Was she in my Lady's Bedchamber the next Morning?

Mrs. Heath. I do not know but she might, for my Lady always breakfasted in her Bedchamber.

To Mrs. COLE.

Q. Who was it that shewed to you that, which you took to be the Abortion?

Mrs. Cole. My Mother, my Lord.

Q. Where was Mrs. Heath then?

A. Indeed I cannot tell whether she was there or not.

Q. How old was you when my Lady came into *Ireland*?

A. I was either thirteen, fourteen, or fifteen, I cannot remember.

Q. How old are you now?

A. I believe I am either forty-five, or forty-six.

Q. How old was you when at *Dunmaine*?

A. I say, I believe I was either thirteen, fourteen, or fifteen, I cannot recollect.

Q. Do you remember how long my Lord and Lady stayed in *Dublin* after they left your Father's House, before they went to *Dunmaine*?

A. Not very long: I cannot exactly tell.

Q. Did you see them in that Time seldom or often?

A. I cannot tell how often.

To Mrs. HEATH.

Q. Did my Lady keep her Bed, or not, the Day after that Accident of the Saucers?

Mrs. Heath. No, my Lord, it never disturbed her, for she was glad they were gone.

Q. Did she keep her Room the next Day?—A. No, my Lord.

To Mrs. COLE.

Q. Did my Lady keep her Room the Day after?

Mrs. Cole. She did, and for some Days after.

Q. Who was Butler when you was there?—A. One *Rolph*.

Here the Evidence on both Sides closed.

Friday, November 25.

The Court being met according to Adjournment, and the Jury having appeared as usual, the Lord Chief Baron *Bowes* summed up the Evidence in the following Charge.

Lord Chief Baron's Charge.

Gentlemen of the Jury,

We are now come to the last Period of this very important Trial, and after having attended to a longer Evidence than ever was known upon a Trial at Law, You, Gentlemen, by your Verdict, must determine a Question of as great Consequence both as to Property and Title, as ever came before a Jury.

I did apprehend when this Trial began, that it would run out to a great Length, and therefore apprized you of what I thought must be the Consequence, that the Court would not be able minutely to sum up the Evidence upon this, as upon like Occasions; and therefore recommended it to you to make and enter your own Observations, as the Evidence should be laid before you: But when I consider your exemplary Behaviour during the Course of this long Trial, the Attention you have given, and the Desire you have expressed to do Justice; I think it incumbent upon the Court, as far as they can, to be aiding and assisting to you, in this your Search after Truth. To this end I shall, though very briefly and imperfectly, lay before you what hath occurred to me; which I shall do in this Method. I shall endeavour by way of Narrative, to collect the Facts that have been sworn to on both sides; I shall next mention the Objections, as far as I have taken them, that have been made to the Credit of the respective Witnesses, together with some Observations that may assist you in judging how far those Objections ought to weigh with you. And as it will appear in the Course of this Evidence, that there have been Inconsistencies, and, in the most material Facts, direct Contradictions; I shall therefore take notice of those Circumstances attending this Case which may throw a Probability or Improbability upon the Testimony you have heard.

The Action to be tried is, an Ejectment brought for Lands in the County of *Meath*; and by the Admission of the Counsel for the Defendant the Plaintiff's Title is brought to a single Question, Whether the Lessor, Mr. *James Annesley*, be the legitimate Issue of *Arthur* late Lord

Altham? It is admitted on both Sides, that the Plaintiff and Defendant claim the Lands in question, under the Will of *James* Earl of *Anglesea*; and that by such Will, the Limitation to the Heirs Male of the Body of *Arthur* late Lord *Altham*, is prior to the Remainder limited to the Defendant; and therefore if the Plaintiff can prove that he is the legitimate Issue of *Arthur* late Lord *Altham*, a Verdict must be found for the Plaintiff; but if he fail, then there is an undoubted Title in the Defendant, being the Person next in Remainder under the Will of *James* Earl of *Anglesea*; and a Verdict must be found for him.

Gentlemen, The Question being a mere Matter of Fact, the Plaintiff's Counsel have proceeded to lay their Evidence before you in the following Manner: They have given Evidence to induce a Probability, that *Mary* the Wife of *Arthur*, late Lord *Altham*, might have had a Child, and that, by examining Mrs. *Dorothy Briscoe*, and Mrs. *Henrietta Cole*, alias *Briscoe*, to shew that there was a Reconciliation between the Lord and Lady *Altham*, some time in the Year 1713; that they came together and cohabited at the House of their Father in *Bride-Street*, from whence they went to one Mrs. *Vice's* in *Essex-Street*, and from thence to *Dunmaine*; and there another Circumstance arises, which is, that Mrs. *Cole* and her Mother being invited to *Dunmaine*, went thither, and while they were there, upon an Accident, which has been so often repeated that I shall not go into the Particulars of it, Lady *Altham* was frightened, and in consequence of that Fright miscarried; and the same Witness, Mrs. *Cole*, swears that she saw an Abortion. They have also produced *Catherine Cormack*, to shew a second Miscarriage, in the same Summer with that mentioned by Mrs. *Cole*; the Circumstances of that likewise have been so often repeated, that I only mention the Fact. Having done this, the Plaintiff proceeded to shew an actual Pregnancy in *Mary* Lady *Altham*. The Evidence for this was *Alice Bates*, the Servant of Mrs. *Briscoe*, who was admitted to Intimacy with Lady *Altham*, and to whom it was told by Lord *Altham*, and acknowledged by Lady *Altham*; and who further swears the Pregnancy was such that she did observe it, and by laying her Hand upon the Belly of Lady *Altham*, she took upon her to say that Lady *Altham* was big with Child. I do not, as I go along, take notice of the Objections to the respective Witnesses, intending to consider them together. In the next place, they have endeavoured to prove Circumstances preparatory to the Delivery of Lady *Altham*. *Dennis Redmond* tells you, that he was sent for the Midwife, and *Thomas Broots*, that he was sent for as a Surgeon to let her blood at the time of her Labour; and *Dennis Redmond* and *Philip Breen* both speak to her observing that Lady *Altham* was pregnant before this time: And, Gentlemen, it did appear that these two were Servants about the House, though in a very low Station; the one, I think, a Helper in the Garden, the other in the Stables.

The next Period is the actual Delivery; and for that, they have produced two positive Witnesses; the one *Mary Doyle*, a Servant in the Family; the other *Eleanor Murphy*, who calls herself Chamber-maid; both these swear they were in the Room at the time of the Delivery; and as far as their Testimony shall avail, are positive Witnesses to the Fact. The next, are the Circumstances consequent upon the Delivery, that were Evidences of it. The first is spoke of by *Breen* and one or two more, and that is, the Rejoicings that were made upon the Birth of this Heir. The next was the *Christening*, which is sworn to by the two Maids that I mentioned before; who also swear, that Mr. *Colclough* and Mr. *Cliff* were Godfathers, Mrs. *Pigot* Godmother, and that Mr. *Lloyd* was the Clergyman that officiated in the christening of this Child. The next is *Christopher Brown*, who was a Servant attending upon one Mr. *Anthony Cliff*, not the *Cliff* that was the Godfather, but an invited Guest; and he speaks to the being there at that Time, and attending his Master at the Table, at the Entertainment that was made on the Occasion. *John Scott*, a Servant, I think, of Mr. *Pigot's*, he speaks to a subsequent Time after the Delivery, and says, that after his Return with his Master from *England*, he was sent a dozen Times, as he has sworn, to this House with Messages, and Compliments to the Lady, and to know how the Child did.

Gentlemen, it will be material for you to observe that the Birth to which this Evidence has been applied, has been fixed by the Witnesses, and admitted by the Plaintiff's Counsel, to have happened in the Beginning of Summer, 1715; which the Witnesses have also explained to be about the Month of May. There were two Witnesses more, proper for me to take notice of, but I shall not give you their Evidence by way of Testimony, because they seem to differ from all the rest. The one was that of *Charles Mac Carthy*, who was brought to prove the Pregnancy of Lady *Altham*, and something further, but he set out from a Period of Time so different from the other Witnesses, that the Counsel for the Plaintiff did not think proper to proceed in the Examination of him; nor have the Counsel for the Defendant made any use of him. The next I shall lay aside, is Major *Fitzgerald*, whose Evidence was to the Declaration of Lord *Altham*, the Day my Lady was in Labour, and the Invitation he had to go and tap the Groaning-drink, and his Excuse for not going, as it was an improper Time; the Invitation he had to go the next Day; that he went, dined there, but did not lie there; that the Child was brought down to him, and that he gave the Nurse half a Guinea; but then he fixes this in Harvest, and therefore no Advantage has been taken of that Examination by the Plaintiff; the Defendant indeed has made use of it, which I shall take notice of in the Objections.

The next Evidence, Gentlemen, has been to shew the Dispositions that were made relating to the Child thus brought into the World; and, indeed, I should have mentioned before, the Evidence of *Matthew Furlong*, who applied for having his Wife employed as Nurse to that Child; but, Gentlemen, the same Evidence for the Plaintiff that swore to the Christening, the same Evidence that were about the House, and present at the Birth, have gone farther, and told you that one *Joan Landy* was appointed the Nurse for this Child; and they have all of them given this Account of *Joan Landy*, that she was a Person unmarried, that was with Child, and supposed to be so by Lord *Altham*, that was turned away, as some say, upon my Lady's coming down; as others say, before my Lady came into that Country: This Person was chose to be the Nurse. She had a Place of Residence, the Cabin that was built for her Father, a Quarter of a Mile from the House of *Dunmaine*; which, as the Witnesses for the Plaintiff tell you, was fitted up upon the Occasion of receiving her and this Child. *Laffan* has told you that a Room was added

that the Child was white-washed and beautified, but speak not of the Room; but all agree that this Nurse had the Child there, and that for the Convenience of sitting this Child, a Room for the Coach was made from *Dunmain* to this Place. They tell you that the Child remained with her, till *John Laffan* comes into Play as dry Nurse: And *John Laffan* says, he came into the Family when the Child was three or four Months old, and he has fixed her coming to Harvest after the King came to the Crown; and that it was put into her Care about three Months before the Separation of Lord and Lady *Altham*, and continued in her Care so long as it continued at *Dunmain*; and that the Child was carried from her to *Kinna* in the County of *Kildare*; and that it was about three or four Years old at the Time it went to *Kinna*. They have introduced as Evidence the Declarations of Lord and Lady *Altham*, in respect to Lady *Altham's* having a Child, and in respect to Lord *Altham's* acknowledging that Child. The earliest in point of Time is that of Alderman *Barnes of Kildare*, who says, that it was in the Beginning of the Summer, and by his Account not long after the Birth; he tells you the Occasion of his going to *Raf*, and that there he met with Lord *Altham*; that my Lord took him into an upper Room, and disclosed his Mind, by telling him, "Tom, I will tell you good News, I have a Son by Moll Steffeld;" that he went next Day to my Lord's House, but that he did not see the Child, nor did he hear either my Lord or Lady speak of it whilst he was there; but at last did say, that he believed the Child's Health might be drunk at the Table. The next Witness that I shall mention upon this Head, was *Edward Lutwidge*, and he speaks to the seeing of a Child at *Raf*, for whom my Lady *Altham* had bespoke two Pair of Shoes, which he was to make, and when he brought them Home, he inquired for the young Lord, and they told him he was gone back to *Dunmain*; upon which Lady *Altham* broke out into this Exclamation, "It had been better for me to have been the Wife of the poorest Tradesman in *Raf* than my Lord *Altham's*; for then I could see my Child every Day, but now I can see him but by Stealth." Gentlemen, the Witnesses for the Plaintiff that were in the House, and conversant in the Family, tell you, that my Lord did always acknowledge this Child to be his lawful Son; that this Child was shewn as such to the Persons that came to the House to visit, and some tell you, that they often saw the Child in and about the House.

I mentioned, Gentlemen, the Child's being removed to *Kinna*, in the County of *Kildare*, and this was after the Separation of Lady *Altham* from my Lord. When the Child was brought to *Kinna*, they have gone on by Evidence, to shew you, that there he was treated as the Son of my Lord by Lady *Altham*. For this, they have produced Mr. *Misset*, who tells you, that there was a Child that he took to be about six Years old; that he went to a School in the Neighbourhood, and was considered as the Child of Lord *Altham*; that it was called the young Lord; that it was sent to School with a Servant, and that he remembers it particularly by an open Lace upon his Hat, which he believes was the first and last that had ever been at that School. Whilst he was at *Kinna*, as that Witness says, the Child was treated by my Lord as his Son; and Mrs. *Annesley*, a Relation of the Family, who lives in the Neighbourhood of *Kinna*, tells you, that her Brother Colonel *Goffry Paul*, a Gentleman well known to most Persons here, used to visit my Lord, and my Lord to visit him, and that her Brother used at Table to drink the Boy's Health as my Lord's Son; and says, that she was sure, from the Knowledge she had of her Brother, that if he had suspected that he was the illegitimate Son of Lord *Altham*, he would not have done him the Honour to have drank his Health; and that she never heard he was the illegitimate Son, till of late that he has been called so, on account of this present Dispute.

The next Place the Child was carried to was *Carrickduff*, in the County of *Carlow*; and there you have had several Witnesses to prove him the legitimate Son, viz. *Two Covenaghs*, *James Dempsey*, and Mr. *Charles Byrne*; who all swear to this Child's being there acknowledged as my Lord's lawful Son, and that they had no Doubt upon them, at that Period of Time, concerning his being so; and it appears, that *Dempsey* was taken in to teach the Child, and afterwards kept School where the Child was constantly sent.

From hence, they have carried him to *Dublin*, to my Lord *Altham's* House in *Cross-lane*; and here *Catherine O'Neil*, who was the Person that brought him, gives you an Account of the Identity of the Person, and likewise of his being acknowledged as the Son of Lord *Altham*. And *Nicholas Duffe*, who kept a Publick-House, and was a Chairman in this Town, who was frequently with my Lord (and I think I may, once for all, observe, that this unhappy Nobleman did not distinguish his Company as became one of his Rank and Quality) tells you, that my Lord has mentioned this Boy to him, as one that would one Day be Lord *Altham*; and another Time, in Discourse, told him, he would be Earl of *Anglesea*. From *Cross-lane* (there is something mentioned of *Stephen Green*, but I could not collect at what Period of Time he was there), the next Place he is removed to with Certainty, is *Frappier-Lane*; and there he is some time with his Father, is put to School to one *Carth*, and is known to several People in that Neighbourhood: To this you have the Evidence of the two *Byrnes* and *Matthew Plunket*, who swear that he was treated as the Son of Lord *Altham*, though the Care of him seems to lessen at that Place; for in *Cross-Lane* you hear of Miss *Gregory*, and more of her in *Frappier-Lane*; and to her they have imputed the Neglect shewn to this Son. From hence my Lord moves to *Inchicore*, about the Month of August 1724, at which Time the Child, then about nine Years of Age, was left by his Father. The Evidence speak of his being sent immediately to the House of one Mrs. *Cooper*. Here the Evidence begins to be less connected than before; but I shall mention it as given. *Michael Waldron* and *Dunn* say, he was put to School to the said *Dunn*, who also swears to the Person, and that he was put to School by one *Covenagh*, a Dancing-Master; that he afterwards saw Lord *Altham* at *Covenagh's*, and that Lord *Altham* promised to pay him for his Care of him. It was before this Period of Time, that *Byrne* junior speaks of his coming to him, and the Care he took of his School-fellow, and the destitute Condition he was then in. After this, the first Account that I think is given of him, is that of Mr. *Amys Bushe*, who speaks of him as a Boy loitering about the College, who got his Subsistence by running of Errands, by the Name of a Scull; that, moved by his Story, he was taken in by the Humanity of this young Gentleman, and that he had Intentions to do for him, if his

Grandfather would have permitted him to keep the Lad. The next Account we have of him is from *Purcell*; he tells you, that he received him for a little while into his House, and that at the Request of his Father; and gives an Account how he handed him over to *Purcell*; and *Purcell* tells you the Care he and his Wife took of him, and that they both considered him as the lawful Son of Lord *Altham*. The Boy left *Purcell's* ungratefully, after the Treatment he met with there; and the next News of him was at the House of Mr. *Tighe*, taken in by his Son; this in Point of Time must have been soon after the Death of Lord *Altham*, which happened in November 1727; and in the February following, this Boy, about thirteen Years of Age, was missing, without any previous Quarrel, and, as the Witness soon after heard, was sent to the *West-Indies*.

Gentlemen, the Plaintiff, after this, thought it necessary to give some Evidence, to account how a Child that had been acknowledged by the Father as his lawful Son, came to be treated in this manner; and you will observe, that one of the Witnesses, *Plunket*, says, that in *Frappier-Lane* Miss *Gregory* lived with Lord *Altham* as a Mistress, that she complained of this Boy, and that he was corrected: Indeed, he does say, that the Boy owned the Fault that he was charged with; and a Witness produced for the Defendant, *Arthur Herd*, tells you what the Offences were, and the immoderate Correction that was given to this Boy. And other Witnesses have told you, that my Lord, Miss *Gregory* and the Boy did not agree, and that Lord *Altham* could have no Peace whilst the Boy was in the House.

Gentlemen, the next Fact that the Counsel for the Plaintiff have thought proper to apply their Evidence to, has been to shew that this Boy, at the Time he was taken from Mr. *Tighe's*, was sent out of the Kingdom by the Procurement of the now Defendant, and that by Force, about five Months after Lord *Altham's* Death. He, as has been said, died in November 1727, and the Boy was taken away the February following. And, Gentlemen, as this seems to be a controverted Fact, I shall mention the Evidence particularly. The first Account is that which *Purcell* gives. That after the Child had the Small-Pox, the present Defendant came to his House, enquiring after this Boy; that he there called him the Son of Lord *Altham* his Brother; that the Boy cried, and said he was afraid of his Uncle Captain *Annesley*; and that Captain *Annesley* told *Purcell* he would speak to my Lord, and induce him to make him a handsome Consideration for his Care of the Child. Some Time after this, and after my Lord *Altham's* Death, the Boy came to *Purcell*, and told him, his Mistress had sent him, for that a Man had come to his House from his Uncle, desiring him to go to the House of one *Jones* in the Market; and that she desired Mr. *Purcell* to go along with him: He tells you, that he went thither, and that he met this Captain *Annesley* there, and the Expressions that were made use of by him in order to take away this Boy; and he tells you that he rescued and carried home the Boy. The next Account that they give you, is by one *Marks Byrne*, a Constable at that Time, who tells you, that he was applied to by one *John Donnelly*, who told him that he had a Job, for which he was to have a Guinea, which was to fetch this Boy, and bring him to Lord *Altham*; that accordingly they carried him to the House of this same *Jones*; that Lord *Altham* was there; that he accused him of stealing a Silver Spoon, and ordered them to take away the thieving Son of a Whore; that accordingly they took him away, and in carrying him to *George's Quay*, as they were directed, that there was a Crowd gathered; that the Boy cried; that they put him in a Hackney-Coach which they met near *Effix-Bridge*, and carried him to the Place appointed on *George's Quay*; that my Lord followed on Foot; and there he tells you, that he saw one *Reily*, a Servant of Lord *Altham's*, and that my Lord went into the Boat with *Reily*, the Boy, and *Donnelly*; that they went off, and that he saw them go to the End of the Wall. The next Person produced was *Reily*, and he agrees in the material Circumstances, which were, that he saw this Boy on *George's Quay*, that he went into the Boat with my Lord and the Boy, and that my Lord and the Boy went on Board the Ship; that the Boy was left behind in the Ship, and by the Time the Boat returned it was Night. Gentlemen, there is, to be sure, a Difficulty to reconcile the Testimony of this *Reily*; but I shall speak to that, when I speak to the Objections made to the Witnesses.

The next Evidence they produced on this Head was, to shew that a Ship called the *James of Dublin*, *Thomas Hendry* Master, failed over the Bar of *Dublin*, the 30th of April 1728; the Ship was entered in the Custom-House Book the 18th, and the Evidence afterwards shew that it failed the 30th. Mr. *Babe*, the proper Officer, produced the Book, and there this Entry did appear, with this Addition, that the Entry was made by Mr. *Stevenson*, a Merchant in this Town. The next Step they took was to shew from the Books of Mr. *Stevenson*, that this Boy did actually sail on board that Ship, and produced Mr. *Cromie*, at that Time Clerk to Mr. *Stevenson*, in order to shew you that this Boy did actually sail on board this Ship: He tells you, that this Ship was partly freighted by Mr. *Stevenson*, that it was bound to *Philadelphia*, that the principal Part of the Cargo were Men and Maid Servants; he produced Mr. *Stevenson's* Book of Entries, and this Book being read as Evidence, the Title of it was, *An Account of Men and Women Servants on board the Ship James, which went over the Bar of Dublin the 30th of April 1728*. Gentlemen, there was a long List of Names, and among the rest was that of *James Annesley*; and, Gentlemen, this *Cromie* was cross-examined as to the Manner of putting Servants on board, in order to shew you that it was impossible this *James Annesley* could have been put on board without his free Consent; for that the Way of Dealing was to have Servants indentured before the Lord Mayor, and the Custom was to have one Part of the Indentures delivered to the Servant, the other to the Master of the Ship, and the Name enrolled in the Tholfel-Books: But it appeared from his Evidence, that the List produced and kept by the Merchant, was not taken from the Indentures, or the Books of the Town Clerk, but that the Method of taking such List was, that the Night before the Ship failed, the Clerk of Mr. *Stevenson* went on board, and the Master gave him the Names of the Persons on board, and from that List this Entry was made in the Merchant's Books: So that from this Account, it was very possible for Persons to be sent away that had never indentured. In order to shew that this Boy was really indentured, the Counsel for the Defendant produced the original Book kept by the Town-Clerk, in which are entered, by the Town-Clerk, the Names of the Per-

sons who indent for foreign Service, before my Lord Mayor; in which was entered the Name *James Annesley*, and insisted that it was the same Person, tho' wrong spelt; and that the Plaintiff had indented in the regular Way, and was carried off, not by Force, but according to Law. But, Gentlemen, I must observe to you, that the Manner of Indenting is such, that wherever a Person of tender Years, as this Child was, being about thirteen Years old, was to indent, it is always expected that the Parent, or some body that can answer for that Child, should be there consenting to that Indenture, or that some Account should be given concerning him. I mention this, because no Evidence has been produced by the Defendant, to shew who were present; and you will consider whether it was not in the Power of Lord *Anglesea* to have produced the Town-Clerk himself who made the Entry, and is now living, and whose Knowledge of the *Anglesea* Family was such, that upon his Memory he might have given some Light into this Affair, and probably could not have mis-spelt the Name of *Annesley*, with which he was well acquainted.

But, to put this Fact out of doubt, the Plaintiff produced *Shelcrofs Apshe*, an Attorney of the Court of Common Pleas, who had been employed by the Defendant the Earl of *Anglesea*; who tells you, that upon the Defendant's coming to the Title of Lord *Altham*, by his Brother's Death, the Boy was mentioned to his Lordship by a Gentleman in *Apshe's* Presence; that his Lordship complained of the Reproaches he underwent on the Boy's Account; and in particular, said that *Hawkins*, who was King at Arms, had refused to enroll his Title as Lord *Altham*, upon the Clamour made by this Boy; and thereupon called him Impostor, Vagabond, and he believes, Bastard. That *Apshe* then told his Lordship, if the Boy were a Vagabond, he might be obliged to indent before my Lord Mayor at the *Tholsel*, and be transported. And *Apshe* further says, that some Time after, he was again in Company with the Defendant at a Tavern, with others of the Defendant's Intimates, when my Lord *Anglesea*, then Lord *Altham*, told the Witness he was gone, meaning the Boy; which, coupled with the former Evidence, shews, as was insisted, that the Defendant intended to put the Plaintiff out of the Way; and gives Credit to the Witnesses, who for his Lordship executed such Intention, as before related.

The Plaintiff went further, to shew that the Defendant not only occasioned this Person's being taken away, but upon the Plaintiff's Return into England, a Misfortune befalling him, by the accidental killing a Man at *Strains*; that Opportunity was laid hold of to prosecute him, and under that Colour to take away his Life; for which Purpose one *John Giffard* has been produced. He appears to have been an Attorney of the Court of Common Pleas in England, and Agent for the Defendant. Some Difficulty was made whether his Evidence should be received; but the Court having admitted him to be examined, with Liberty to disclose what did not come to his Knowledge as Agent for the Defendant; You, Gentlemen, will not consider whether the divulging Conversation be what is called honourable between Man and Man, or whether the ill Treatment this Person received from the Defendant has induced him to appear to give Testimony in this Cause, but whether what he has sworn be true.

This Witness speaks to the Declarations made by my Lord *Anglesea*, at the Time an Appeal was depending between him and Captain *Annesley*, before the Lords in England; upon which Occasion, the Defendant said, that it was better for him to throw up his Titles, which he did not value, and to give up them and the Estate, upon Terms, to *James Annesley* the Plaintiff, whose Right they were; that he would go over to France, and live there, where he should be much easier and happier than he was at that Time. He tells you, that this was repeated more than once; that it was not a sudden Resolution, but the Result of deliberate Consideration, accompanied with another Act, which was that of taking a Person into his House, to teach him the French Tongue, to qualify him to live in that Kingdom. And the Witness tells you farther, that the Reason why this Project was dropt, was the accidental Homicide committed by the Plaintiff; upon which Lord *Anglesea* changed his Purpose, and resolved to prosecute him; and frequently declared, that he would give 10,000*l.* if he could get him hanged; for then he should be easy in his Titles and Estate; and that this Prosecution cost Lord *Anglesea* Eight hundred Pounds. As I shall not touch this Part of the Evidence again, I must desire you, Gentlemen, to consider, whether the Words sworn to be spoke by Lord *Anglesea*, as to giving up his Estate, may not be accounted for as the rash Expressions of a Man distressed in his Circumstances; but, Gentlemen, if you believe the other two Facts, that is, that Lord *Altham* did spirit away this Youth, and that he did carry on this Prosecution against him, the Question will then be, what Influence they ought to have upon this Cause? And how far they ought to conclude against the Defendant as to the Fact in Question, will deserve your Consideration, that the Plaintiff may not suffer by the illegal Acts of the Defendant, nor the Defendant be injured by your relying too much upon presumptive Evidence. If the Defendant did send away the Plaintiff, that Absence must be imputed to the Defendant. The Suppressor and the Destroyer of Evidence are to be considered in the same Light the Law considers a Spoliator, as having destroyed the proper Evidence; and against him defective Proof, so far as he has occasioned such Defect, shall be received, and every thing presumed to make it effectual. Nay, I think you may by Law go farther, and if the Plaintiff has given probable Evidence of his being the legitimate Son of Lord *Altham*, the Proof may be turned on the Defendant, and you may expect Satisfaction from him, that Lord *Altham* his Brother died without Issue; and this on account of that Evidence which the Plaintiff must be supposed to have lost, by the Defendant's having so many Years put it out of the Plaintiff's Power to assert his Right. And you will also consider whether these Acts are not Evidence to satisfy you, that the Defendant, in his own Thoughts and Way of Reasoning, considered the staying of the Boy here, as what might some way prejudice his Title. But whether, as insisted upon by the Plaintiff's Counsel, you ought to take this as an Admission on the Part of the Defendant, that the Plaintiff was the lawful Son of Lord *Altham*, will deserve further Consideration. Undoubtedly, there is a violent Presumption, because no Man is supposed to be wicked without Design, and the Design in this Act must be some way or other relative to the Title; but whether or no it was the Opinion of the Trouble he might have from this Lad, that induced him to do this Act,

or a Consciousness that the Lad was the Son of Lord *Altham*, must be left to your Determination; keeping in your Mind, that it, though violent, is but a Presumption, and that the Defendant has an undoubted Title; unless it be proved that there be a Son of his elder Brother now living.

Taking the Influence of these wicked Acts with you, I shall now briefly mention the Nature of the Defence; which has been, first of all, by many Witnesses to shew that the Reputation of the Country was against there being such a Child. Col. *Leffas*, who lived within eight Miles of *Dunmain*, who was a Person of that Rank and Distinction in the Country as was likely to hear it, says, he never heard of it. Col. *Palliser*, Mr. and Mrs. *Lumbert*, Mr. *Palliser*, Mrs. *Giffard*, have all gone likewise to the same Point, and say, that they never heard of a Miscarriage. But their not hearing of a Miscarriage, has little Weight, because things of that Nature are conducted with Privacy, and the Report of them seldom reaches far. In the next Place, they have produced the Persons, who, they say, were the Servants of the Family at the Time that this Birth must have been: Mrs. *Heath*, my Lady's Woman, *Rolph* the Butler, who was there during that Time, *Anthony Dyer*, who was a Gentleman to my Lord, *Martin Nief* and *Owen Cavenagh*, Servants in the Family. Gentlemen, Mrs. *Heath*, *Rolph* and *Dyer*, are all positive that there was no Child, and that there could be no Child without their Knowledge; and Mrs. *Heath* goes so far as to say, there never was so much as a Pregnancy. These are positive Evidence, that stand in direct Contradiction to the Plaintiff's Witnesses. They have also produced *William Knapper* and *William Elms* to the same Point, both conversant at *Dunmain*: *William Knapper* in particular tells you, he was employed by the late Earl of *Anglesea* to sell the *Ross* Estate, which came to him upon Lord *Altham's* Death without Issue, and that though he made a hundred Articles for Leases of the *Ross* Estate to the Tenants, he never heard one Objection made that there was a Son. They then went into another Piece of Evidence, which, if true, stands in the Place of positive Evidence, because inconsistent with Lady *Altham's* being delivered of a Child at the Time deposed; and that was, my Lord and Lady *Altham's* going to *Wexford* at the Spring Assizes, held the 16th of April, 1715; and returning from thence to *Dunmain*, and going soon after to *Dublin*: Mrs. *Giffard's* Account is this; that there being some Men to be tried as Pretender's Men, the Curiosity of Lady *Altham* proposed a Journey to *Wexford*; that she accompanied my Lady in the Chariot; that my Lord, Mrs. *Heath* and *Rolph*, rode; she says, when they came to *Wexford*, they lodged at the House of one *Sweeney*; that they went into Court and stayed there during the Trial, and that Mr. *Cesar Colclough* sat by them part of the Time; that they stayed a Week in *Wexford*, and then went Home; and, as appears by the Examinations of *Heath* and *Rolph*, they went to *Dublin* in a very short Time after, and stayed there all the Summer; *Heath* swears it positively, and *Rolph* that they stay'd there till he went away. Now, Gentlemen, if this Fact could be established, it would undoubtedly put an End to the Controversy of this Day; because, if Lady *Altham* was at the Assizes of *Wexford*, which appears to be the 16th of April; that she continued there a Week, and went back and stayed but two or three Weeks at *Dunmain*, and thence went to *Dublin*, where she lived the Remainder of the Summer; and this being at the Time when she was supposed to have been delivered of the Plaintiff; you will consider if both can be true. But this Fact has been disputed, and in this Manner; first of all, *Kir*, who was Clerk to my Lord Chief Justice *Foster*, who went that Circuit, tells you, that he does not remember to have seen any Ladies there; this is not a positive Proof, but is a circumstantial one: The next is *Cesar Colclough*, who swears that he does not remember to have seen them, and from the Business he was engaged in, the Gentleman on Trial being his Relation, he does not believe he sat by any Woman that Day. There were also two positive Witnesses produced to prove Lady *Altham* was not there, which were *Turner* and *Higginson*. *Turner* tells you, that he was at the House of *Dunmain*, when my Lord went to that Assizes; that he saw him get into the Coach, and that he saw my Lady in the House after my Lord was gone. *Higginson* tells you likewise, that on the Tuesday of this Assizes, he was at *Dunmain*, and the Occasion that brought him thither (which makes him certain to the Time) was, to desire Lord *Altham* to send somebody to *Lancashire* for the 28 Pounds Arrear of Rent, which his Son was to bring them. He tells you, that he saw my Lady, that she was undressed, and that he believes she was with Child, and drank to her safe Delivery. And there is one Circumstance further, which you should take with you, that Mrs. *Heath* says in her Account, the Sister of Mrs. *Giffard* went with them; tho' Mrs. *Giffard* said, No one went with them but the Persons she named, but did not name her Sister.

The Defendant has also, in order to account for what has been said by the Plaintiff's Witnesses, as to the Child taken in by Lord *Altham* after the Separation, and who was carried by him from Place to Place, and treated as his Son, examined the several Witnesses produced by them, who were acquainted with Lord *Altham* and his Family, during the Time the Boy was with him, to prove that the Boy kept by Lord *Altham* was the Son of *Joan Landy* by Lord *Altham*, as was supposed; and that he was always considered and treated by that Lord as his Bastard. And thus, Gentlemen, you see how the Witnesses produced in this Cause stand, as to the material Circumstances, in direct Opposition to each other; so that the one or the other must speak false; which of them have done so, God only knows. You, Gentlemen, must, after taking the whole into your Consideration, say which, in your Opinion, deserves Credit. I shall now take notice of the Objections to the Witnesses on each Side.

The Objections that have been made to the Plaintiff's Witnesses, as to their Uncertainty with regard to Time and Place, and other Circumstances to which they were examined, were also made to the Witnesses for the Defendant; and if an Imputation arises from thence, you will consider whether it be not equal on both Sides. In the next Place, an Objection is made to the Condition of the Evidence for the Plaintiff; that they are Servants of the lowest Stations, and meanest Condition. You will consider how far that Objection ought to lessen, much less take away the Credit of their Testimony: Servants about the Family, tho' in the meanest Stations, were likely to know such particular Facts as they have given Evidence of.

But on the other Side, you will consider that the Fact in Question, is a single Fact, which might be put in the Mouth of any body, and which has been affirmed and denied on Oath by the respective Witnesses. You will therefore, I think, find it necessary, with Caution, to attend to the Objections made to the Credit of the several Witnesses that stand in Opposition to each other: For Instance, if the Credit of Mrs. Cole can engage your Belief as to the Circumstance of the Miscarriage, then Mrs. Heath has not sworn true; because she has sworn the contrary, and that to a Fact which must have been observed by her. Again, if Mrs. Cole obtains Credit, Mrs. Heath must be mistaken in another Fact, though not of that Consequence, and that is, the Removal to *Dunmaine*: Mrs. Cole says, and Mrs. Briscoe too, that my Lord and Lady *Altham* went to Lodgings in *Essex-Street*; Mrs. Heath, that they went directly from Capt. *Briscoe's* to *Dunmaine*. Now, Gentlemen, as to Mrs. Cole's and Mrs. Briscoe's Testimony, there is no Imputation, other than what arises from their Age, at the Time to which their Testimony relates, when the eldest of them could not be above Thirteen by her own Account, and she speaks to a Fact, which Mr. *Prime-Sergeant* thinks was not likely to engage the Attention of so young a Person, I mean the Place to which they removed; but you will consider, whether the Removal of my Lord and his Lady from their Family to another Place in *Dublin*, especially as an Intimacy was kept up between them, be not sufficient to answer that Objection. As to the Circumstance of the Miscarriage, there she is extremely positive, and probably the Curiosity of Girls of her Age, in these Matters, exceeds that of grown Persons. There was an Observation made as to the Word *Abortion*, but I think there can be no great Weight laid upon that, the Term may have been learnt since. There has been also a Witness produced to discredit Mrs. Heath, as to the very Substance of her Testimony; what he has said must be fresh in your Memory, but you will remember the seeming Art made use of by him, to shew he was compelled to give his Testimony. Besides, his Testimony is not supported by Circumstances, but is another Instance of Oath against Oath.

Gentlemen, The next Witness I shall take Notice of, is *Rolph*: (I don't speak regularly to them, intending only to take up the most material) He certainly delivered his Testimony in a very clear Manner; he gave an Account of his coming to and living in the Family, and of his Continuance in it, and Manner of leaving it; and there is one Circumstance that gives Credit to *Rolph*, as he is the only one that can be said to receive Credit from the Witnesses on the other Side. The Plaintiff's Witness, *John Sitts*, has said, That *Rolph* was Butler before, and continued after my Lady's Delivery; which agrees with *Rolph's* Evidence, but varies from all who have spoke to the Birth; who say, that *Rolph* was gone; that *Margher* lived there at the Time of *Doyle's* and *Murphy's* being there. *Dennis Redmond* does say, there was such a Servant as *Rolph*, but that he was gone before the Delivery. But then you will consider what Figure this *Rolph* made on his Cross-Examination; such an absolute Uncertainty as to every Thing but what he was brought to disclose, and his Readiness to give Evidence on one Side of the Question, necessarily induce Suspicion; and you will consider his Attempt to throw a Reflection on the Plaintiff, as if those concerned for him would have tampered with *Rolph*: But the Story carries an Improbability in it, that a Man should send Victuals before him, and come and offer to a Stranger what was not in his Power to give, and that in such an open Manner.

[Here Mr. Baron Mounteney spoke to the Lord Chief Baron.]

Gentlemen, My Brother Mounteney mentions one Thing, which I am mistaken in, if he is right; he says, That when Mr. *Mac Kercher* made the Offer of a Lieutenantcy to *Rolph*, his own Company were only present; I do apprehend there was not only the Company of *Mac Kercher*, but the Company that was with *Rolph*. Gentlemen, if I mistake the Evidence on either Side, impute it to my Memory, for I have no Intention to misrepresent, and should be extremely glad if any Body would set me right: When you come to look upon your Notes, you will see how this Fact stands. But there is one Thing I would observe as to the Testimony of *Rolph*, and that is, that Mrs. *Giffard* and he differ: *Rolph* has said, that the new Road leading from the House of *Dunmaine* to the Cabin, was made for the Benefit of going to Mrs. *Giffard's* and Colonel *Palliser's*, and that Mrs. *Giffard* always went that Way: Mrs. *Giffard* says, that she never went that Way, but always by the Bridge. These are slight Circumstances; but however, where Witnesses stand in such direct Opposition to each other, they deserve some Attention.

Anthony Dyer, Gentlemen, is another material Evidence for the Defendant. But you will consider how far his Credit is affected by what I am going to mention. The Witnesses on both Sides have said, that after the Separation of Lord and Lady *Altham*, the Child, be it legitimate or illegitimate, came into the House of *Dunmaine*. *William Elmes* fixes it to three Weeks after, and another to a Month; but this Man says, that he was there at the Separation, and three Quarters of a Year after; and swears, there was no Child in the House during that Time. As to the positive Evidence on the Part of the Plaintiff, *Doyle* and *Murphy*, the Observations on them as to their coming into the Service, have been made, and are extremely strong. *Murphy* did say, that *Doyle* came there first; she afterwards changed, and said, she came there before *Doyle*: You will consider also the Manner in which they give their Evidence. And in regard to Mr. *Palliser*, Mrs. *Lambert*, and those People that spoke to the Pregnancy on the Part of the Defendant, they have gone so far, that if you believe them, there could not have been a Miscarriage. There is one Thing I forgot to mention, to strengthen the Evidence of Mrs. *Cole*, and weaken that of Mrs. *Heath*, which is, that *Lambert* said, that *Sutton* the Surgeon was sent for to *Ross*, and staid at *Dunmaine* a Fortnight: Now when you come to compare the Times of his being sent for, and the Miscarriage, you will consider, whether it does not tally pretty near with the Time when Mrs. *Cole* gives an Account of the Miscarriage; and yet Mrs. *Heath* says, he never did attend my Lady.

There is one general Observation to be made on all the Evidence; and that is, that there is a Forwardness, an Inclination to go on to serve their Party, on both Sides, and that they want that Candidness which gives a Credit to Witnesses; I say not this on either Side, but you will consider whether it is not an Observation that runs thro' the whole. I shall not trouble you with respect to the Surgeon. The Objection to him arises from the Improbability of his own Testimony. As to *Christopher Brown*, who was one of

the Servants attending at Dinner at the Christening, supposing what he says could be credited, you will consider how that Man was mistaken in the Description of the House. And you will permit me to observe, that there is a great Difference between not recollecting Circumstances, and a Witness swearing to those that are false; the not recollecting may consist with Integrity, the swearing to a Falshood never can, nor can you give any Credit to such a Witness; because you cannot say that he is wrong as to this, and right as to that Part of his Evidence. With regard to the several Witnesses who say the Child, from first to last, was not only reputed, but called a Bastard, and *Jean Landy's* Child, and that the Boy knew it, and sent his Duty to her as his Mother; you will consider how consistent that is with what *William Elmes* and others have said, who would have it understood that my Lord would not for five hundred Pounds that the Child should know his Mother; and that my Lord ordered them to set the Dogs upon her if she came near the House; and yet those who speak of him at *Kinnea* and *Carrickduff* say, that my Lord has often cursed him, for having too much of his Mother's Blood in him. How these different Accounts can be reconciled, you must consider. There is one Witness more on this Head that I must take notice of, and that is *Elizabeth MacMullen*; and she would have it understood, that out of the Mouth of the Boy himself, at the Funeral of his Father, upon being asked by her, who was his Mother, he said *Jean Landy*. Gentlemen, you will compare this with the Testimony of Mr. *Bushe* and Mr. *Tighe*; the Boy, when he lived with Mr. *Bushe*, persisted that he was my Lord's own Son, and the same at Mr. *Tighe*: Now, if the Boy had once received the Notion of his being the lawful Son of Lord *Altham*, you will observe the Improbability there is of his saying to her, a Stranger, I am the Son of *Jean Landy*. I will carry this a little farther, and that with regard to the Letter, she says, was wrote by her, giving an Account of Lord *Altham's* Death; if this Circumstance be false, that Letter must have been fictitious, and of later Date.

I have now mentioned the Evidence on both Sides; and from what I have observed to you, it does appear, that here is such a Clashing of Witnesses, such contrary Evidence, that though some Circumstances might be reconciled, yet others will remain irreconcilable; and therefore I must, and I think, you Gentlemen will be obliged to consider the Circumstances that will throw a Probability or Improbability upon the Testimony you have heard. The strong Circumstances which induce Probability in Favour of the Plaintiff are those I have mentioned, of spiriting him away, and afterwards attempting, by an unjust Prosecution, to take away his Life; to which I have before spoke at large, and need not repeat. On the Part of the Defendant, the Circumstances are of a different Kind; and those are such as relate to this Family, from the Beginning of the Transaction to the End, and arise from the Quality and Circumstances of the Persons; which, as has been urged, must have rendered a Fact of this Kind too notorious ever to have been doubted, especially in this Kingdom: That it must have been known to the Relations of this Family in *England*, whose Estate and Honours were to be enjoyed by that Son; that my Lord *Altham* himself ought to have made it publick; and that it was the Interest of Lady *Altham*, that the Duke of *Buckingham*, her Father, should know that she was with Child. Again, you will consider the Improbability arising from the Place where he was born; at *Dunmaine*, in a remote Part of the Country, attended by a Country Midwife and the Surgeon you have seen. Ladies, say they, of her Rank would not submit to it, and are usually placed, on such Occasions, where they can have the best Assistance; and the Consequence of a Child to this Family particularly required it. In the next Place, you will consider, whether there be not a farther Improbability arising from the Nurse; that a poor Body should be employed is no Wonder, but that an infamous poor Body, rendered infamous, as was supposed, by my Lord, and in that very Place, should be taken by my Lady to nurse her legitimate Child, is scarce to be accounted for. There is nothing said to reconcile this, but the Testimony given by *Laffan*; and she tells you, that this was a Secret not disclosed to my Lady, till after the Separation: Indeed, if you believe this, the Improbability will decrease; but you will find it difficult to suppose my Lady the only Person in the Family to whom this was a Secret. The Place where the Child was nursed has been also urged; but the Difficulty is not that a Nobleman's Child was nursed at a poor Man's House, but whether that House was fit to receive a Child intended to be preserved; and therefore the Probability or Improbability in this Instance, will depend upon the Credit you shall give to the different Accounts of the Cabin where this Nurse lived. It has been further said, that the Sponsors at the Christening of this Child, ought to have been of high Rank, and from among the Relations of this Noble Family. Again, this Child, after the Separation, was removed from Place to Place, and we have not heard that Lady *Altham*, either by herself or Friends, took any Care or Notice of him, except the single Instance at *Ross*. Was it not Lady *Altham's* Interest to have acquainted the Duke of *Buckingham* that she had a Son by her Lord; that he had sent him away, and put this Child into the Care of his Whore? And was it not probable, if this Notice had been given, that Care would have been taken of this Child by some of the Family? The little Care taken of his Education by my Lord, has also been urged. In Answer to which, you have been reminded of the Character and Circumstances of Lord *Altham*. Again, my Lord's parting with this Child, or rather exposing him, in the Manner you have heard, cannot, as it is said, be accounted for, supposing him to be the real Son of Lord *Altham*: But this is also attempted to be answered, by the Influence of Miss *Gregory*, and her representing him as a Bastard, in respect to my Lord, though born in Wedlock: But, say the Counsel for the Defendant, supposing the Plaintiff to be, what they have endeavoured to prove, a Bastard, the whole may be reconciled. But if the Inhumanity of exposing this Child raises the Objection, you, Gentlemen, will consider, whether a Person capable of treating his own Bastard in that Manner, may not be supposed capable of being worked up, by a bad Woman, to turn his legitimate Child out of Doors. The Inhumanity seems equal in both Cases, as both are entitled to the Care and Protection of the Father. I had almost given the Preference to the natural Child, as the legitimate does not stand in equal Want of it; the Mother, the Family may take care of him; but the other is a Cast-off. But, Gentlemen, though this Objection may be removed, with respect to the Father, it makes the Objection

tion very strong when applied to the Mother: The Suffering of the Child in this Manner, were what one would expect should have excited and called for the Mother's peculiar Care: That she was not ignorant of it, you will gather from the Testimony of *Gatherine O'Neil*; and you will consider the Manner in which the Mother is supposed to treat that Child: "I should be glad to see my Son, but I know it would cost the Barren that brought him his Bread." It must be a weak Affection that could, for that Reason, be prevailed on not to see the Child. This Lady lived two Years after the Death of her Husband, and we do not find any Evidence of her Care for this Son; which has been urged also to shew, that he was not her Son. Again, it was her Interest to take notice of this Child; it has been mentioned, and not denied, that there was an Estate of Twelve Hundred Pounds a-Year that went away on the Death of Lord *Altham*, and would have gone to this Son, if legitimate. It was insisted upon, that Lady *Altham* might have applied for the Guardianship of her Son, and have had a good Allowance made by the Lord Chancellor, for the Discharge of that Trust, which she wanted. I must also observe the additional Weight they gave to this Objection, from the Testimony that *Wells* gave, of her declaring that her Heart would break, were it not that she had a promising young Son, who would be a Support to her in her old Age. Alderman *King*, at whose House she resided fourteen Months, a Man of Integrity and Truth, whose Credit cannot be controverted, says, he never heard her mention her having a Son, though the Intimacy of dining at one Table for that Time, must probably have afforded frequent Opportunities of doing so. And whether a Woman, under the Affliction of a Separation, and her unhappy Circumstances, could have concealed such a Fact, is worthy your Attention.

There was another Matter urged, as an Improbability, from the Testimony of Colonel *Wall*. I shall state to you how that Fact stands. Colonel *Wall* said, he had taken an Opinion for Lord *Altham*, as to the Power he had over the *Anglesea* Estate: That, according to that Opinion, Lord *Altham* was Tenant in Tail, and might have barred his Issue, and by that Means, have had it in his Power to raise more by the Sale of his reversionary Interest, supposing he was only Tenant for Life, expectant on the Death of the then Earl. But the same Witness also said, that he would not, upon the Credit of this Opinion, carry the Title to Market, and that, notwithstanding this Opinion, he was very angry with his Brother, the now Defendant, for refusing to join with him in selling their Reversions. So that Lord *Altham*'s reversionary Interest being certain, and his other depending on an undecided Question in Law; you will consider, whether, upon these Views, he was more likely to have made publick, or concealed his having a Son.

Having now gone through with what I proposed to say upon the Evidence, I shall only in general take notice, that it will be proper for you, Gentlemen, while you are considering this Case, to take with you the Characters of the Persons Actors in it; and thence to judge what was, or was not to be expected from them. Again, if there are, as I suppose there will be, of the Plaintiff's Witnesses to whom you will not give Credit, you will consider, whether the Plaintiff in justice ought to be affected thereby: You will consider him as reduced, by the Defendant, to the Necessity of making use of such Evidence as offered; and in such Case, bad Witnesses may have obtruded themselves, or Art may have been used to put them in his Way; so that unless it appeared that the Plaintiff made use of them, knowing them to be bad, they ought not to be placed to his Account. You will also consider, that though you have only the Defendant before you, yet the Remainder-men, who do not derive under the Defendant, are to be affected by your Verdict, and ought not to be postponed, unless you are satisfied that the Plaintiff is the legitimate Son of Lord *Altham*: Therefore you must consider, (taking the Proofs, the Probability and the several Things together) whether the Plaintiff be the lawful Son or not? If he be, you must find for the Plaintiff; if not, for the Defendant.

Gentlemen, I forgot to mention the Evidence of my Lord *Mount-Alexander*, and of Mr. *Medlicot*, concerning Lord *Altham*'s Declarations, as to his having a Son. Lord *Mount-Alexander* told you of an Expression of Lord *Altham*'s to one Mr. *Crow*, an Expression not very easy to be understood: "My Wife has got a Son, which will make that Rake my Brother's Nose swell." Which has been applied to the Son now in question: You will consider, whether it concludes necessarily to that, or whether Lord *Altham* might not have, in his Imagination, some other Child begot on the Body of my Lady. There was an Intimation of a Son by one *Seymour*, who might be then living; how far this Rumour was in my Lord's Mind, is hard to say; but if this was not in his Thoughts, the Expression is extraordinary: "My Wife has got a Son." This might be said of such a Son; but you will consider, whether it was a Manner of Expression for a Son of his own, born in his own House. As to Mr. *Medlicot*, the Words sworn to by him were, that my Lord should say, "I have no Child, nor know not that I ever shall, I do not care if the Devil had the Estate." If my Lord looked upon the Son by his Lady to have been begot by another Man, consider, if the Words import more than this: I have no Son, no Son that I suppose to be my own, I do not care if the Devil had the Estate.

But taking each Sett of Words as contended for by each Side, all that can be said is, that my Lord has at different Times varied his Manner of speaking on this Subject; whether you can find out the Motives inducing him so to do, or can draw any Conclusion therefrom, must be left to your Consideration. I shall think myself happy, if any thing collected by me can assist you in the Discovery of Truth.

Mr. Baron *Mounteney*.] Gentlemen of the Jury, My Lord Chief Baron hath summed up this Evidence in so full, so judicious, and so masterly a Manner, that it would be a very improper Talk for me to attempt to go again with you over the Evidence at large.

I shall therefore confine myself to some of the more capital Parts of the Case: and (although I am extremely sensible in how inaccurate and disjointed a Manner I shall lay my Thoughts before you, yet) with the Hope of striking out even the smallest Spark of Light, which may help to guide you through this dark Affair, I shall endeavour to recollect a few Remarks on those Parts of the Evidence which strike my Understanding in the most forcible Manner.

And, Gentlemen, I shall take up the Case where the Evidence for the Plaintiff, and the Observations of the Defendant's Counsel, closed; I

mean, the Testimony of the Plaintiff, and the Prosecution for

Altham against me against him by the Defendant. The latter of these two Facts I shall consider last: It is proved by *John Giffard*, the Attorney employed to carry it on; and in the Course of his Evidence, Gentlemen, several Things occur, which though not relating to that Prosecution, are yet extremely material for your Consideration.

In the first Place, Gentlemen, he relates to your Conversation between the Defendant and himself in long ago on the Month of *March* 1741, and the Occasion upon which that Conversation happened. He tells you, that at that Time it was the common Topic of Discourse, that Mr. *Annesley* was returned from the *West-India* to assert his Right; and that the Defendant my Lord *Anglesea* was at that Time embarrassed with a Variety of Law-Suits—that my Lord expressed great Uneasiness upon both Accounts—and thereupon told him, that "he should be very glad to send Mr. *Annesley*; and if he would allow him 2 or 3000 *l.* a-Year, he would surrender up to him his Titles and Estates, and go live in France; for he should be much happier than to be so tormented, and had rather his Brother's Son should have it than any body else; for if *Jeremy* had the Estate, he should live easy in France, for it was his Right, and he would surrender it to him;—that he did not value the Title—he would go live in France; and that he might live the easier there, would send for a French Master to converse with him in that Language."

The Counsel for the Defendant, Gentlemen, with great Art and Ingenuity endeavour to avoid the Force of this Evidence: And in the first Place, they represent this Declaration of my Lord with regard to a Compromise and his going to France, as an hasty, passionate Expression, flowing from his Uneasiness of Mind, on account of the ill Situation of his Affairs, and his Resentment against the *Annesleys*.

But, Gentlemen, upon *Giffard*'s Evidence, this could not possibly be the Case; for he tells you, it was my Lord's Resolution—that he continued in that Resolution from the Time of the first Conversation, which was before the 10th of *March* 1741, to *May* 1742—that in pursuance of that Resolution, he actually did (as he had declared he would) send for a Person, one *Stephen Hayes*, and had him in the House, to converse with him in French; and that he, the Witness, was present forty Times.

The next Thing, Gentlemen, suggested by the Defendant's Counsel was, that my Lord *Anglesea* (in his then uneasy Situation, and so angry with the *Annesleys* as *Giffard* said he was) might possibly be induced to wish for such an Accommodation as was mentioned with the Lessor of the Plaintiff, not through a Consciousness of his being the legitimate Son of the late Lord *Altham*, but with a View of gratifying his Resentment by disappointing the *Annesleys*, and at the same Time of promoting his own Interest by securing to himself a larger Share of the Estate than would otherwise remain to him.

But, Gentlemen, when you consider the following Part of *Giffard*'s Evidence, you will find, that neither can this Interpretation hold: Because, if this had been the Scheme, my Lord must certainly have persevered in it. Whereas, upon the unhappy Accident of Mr. *Annesley*'s killing a Man, this supposed Scheme is abandoned, and another (much more beneficial, as *Giffard* told you, for the Defendant, and absolutely destructive of the other) is immediately embraced; which was, to carry on a Prosecution against Mr. *Annesley* for that Fact, and if possible, to get him hanged.

Consider now, Gentlemen, the Evidence concerning that Prosecution, and the Circumstances attending it.

The first of *May* is the Day on which the Murder is in the Indictment laid to be committed:—On the second, Lord *Anglesea* retains *Giffard* to go down to *Staines* to collect Evidence, and to carry on the Prosecution:—On the fourth, the Coroner's Inquest finds it Wilful Murder:—Before *Giffard* returns from *Staines*, my Lord goes down to *Hounslow* to meet him, in order to learn how Things went on; and declares to him that he did not care if it cost him 10,000 *l.* if he could get Mr. *Annesley* hanged.

Two *Anims* are these Things said and done by the Defendant? Upon what Grounds was it that the noble Lord thus officiously interposed upon this Occasion? that he shewed so much Impatience to learn how Things went on? that he actually expended such large Sums of Money as *Giffard* expressly tells you he did (I think no less than 800 *l.*), and declared himself ready to expend much larger, in carrying on this Prosecution?—Was it for the Sake of Justice?—If so, Why all those Precautions, that Contrivance, which you were told of, that my Lord might not appear to be concerned in it?—If not for the Sake of Justice,—then, Gentlemen, you are to consider upon what other Principle and Motives this extraordinary Conduct can be accounted for.—And this will be the less difficult for you to do, when you shall compare these Facts and Circumstances with the Reason given by my Lord for that remarkable Declaration of his as to the 10,000 *l.* which *Giffard* swears positively my Lord mentioned to him—viz. He did not care if it cost him 10,000 *l.* if he could get him hanged; for then he should be easy in his Titles and Estates."

There is another Part of *Giffard*'s Evidence, which, as it strikes me strongly, I shall mention for your Consideration; and that is, that my Lord told him (fifty Times, I think he said, between the 7th of *December* 1741, and the 14th of *July* 1742, which was the Day of the Trial) that this Pretender, as he called him, was transported for stealing a Silver Spoon.

You will consider, Gentlemen, what Weight this Circumstance may have when coupled with the Complaints made against him by Miss *Gregory* of thieving—with what the Witnesses, who prove the several Attempts upon the Boy, and at last the actual Transportation of him, have told you of my Lord's repeatedly calling him a thieving Son of a Whore—and with the particular Charge which one of them swears my Lord made against him of having stolen from him a Silver Spoon.

I have endeavoured to state to you, Gentlemen, the main Substance of *Giffard*'s Evidence: In order to avoid the Force of it, the Counsel for the Defendant have strongly insisted upon two Objections to his Credit.

The first is, that understanding, as he owns he did, that my Lord *Anglesea* by his Declaration as to the 10,000 *l.* meant, that he intended to destroy Mr. *Annesley* if he could, and that he would expend that Sum in Means to have him hang'd, he did not decline being farther engaged, but still continued to carry on the Prosecution.

And indeed, Gentlemen, it does to me carry with it an Imputation upon *Giffard*, that he did not immediately fling up any Concern in this, or any

other Business of my Lord's, and publish this Declaration to all Mankind. But, Gentlemen, you will consider, on the other hand, what Giffard hath said in excuse of himself. He tells you,—"If there was any dirty Work, he had no Hand in it. He distinguisheth between a bad Purpose and the carrying on a legal Prosecution--and he tells you, that the Coroner's Inquest having found the Fact wilful Murder, he thought that a sufficient Foundation for him to proceed."

The other Objection to his Credit is, that being an Attorney retained by Lord Anglesea to carry on this Prosecution (in any Suit between Mr. Anglesey and my Lord, he swears positively he never was, nor ever expected to be retained), he comes here voluntarily to disclose the Secrets of his Client.

Now, Gentlemen, as to the Prosecution, you will observe, that the original Discovery of my Lord's being concerned in it was not voluntarily made by the Witness; for he tells you, that he found himself under the necessity of suing my Lord for a large Sum of Money, which remained due to him upon his Bill of Costs; and that, upon his so doing, my Lord filed a Bill against him in the Court of Exchequer in England, in his Answer and Schedule to which he was obliged to set forth the particular Items of his Bill of Costs--that by this Means (as he supposeth) Mr. MacKercher got knowledge of it, and thereupon applied to him to give his Testimony in this Cause.

As to the Conversation between my Lord and him, I have already declared my Sense so fully, when the Point was debated, whether Evidence of it should be admitted or not, that I shall trouble you with a very few Words only upon it now.

Gentlemen, I can by no means allow it to be any Objection to the Credit of the Witness, that he voluntarily disclosed that which the Court hath unanimously determined he was compellable to disclose. And I must say this farther, that, in my Apprehension, Giffard could not have justified himself, either to God or Man, if he had not disclosed it; especially, as it was a Declaration wantonly made to him, not under the Seal of Friendship, nor of that Confidence which is necessary between Client and Attorney.

Gentlemen, you are the Judges, and you will carefully consider what Degree of Credit to give to this and every other Witness who hath been produced upon this Occasion; and God forbid, that any Part of the Evidence, any Argument, or any Observation, should have more, or less Weight with you than it will bear.

If you believe the Evidence of Giffard, you will then consider, that you have an express Acknowledgment of Right in the Lessor of the Plaintiff from the Mouth of the Defendant;--that, independently of this, you have Declarations and Facts which strongly import a Consciousness of that Right. And lastly, you will consider what Strength this Evidence of Giffard adds (if any Strength is wanting) to the Evidence of the Kid-knapping in 1728.

That Fact, Gentlemen, stands positively and fully proved by a Multitude of Witnesses, neither discredited, nor, as it was promised by the Defendant's Counsel, contradicted. And, indeed, if that Fact was not so clearly proved, the Evidence of Mr. Shelrofs Asbe is, in my Apprehension, sufficient to silence the least Doubt about it.

You will then consider, Gentlemen, if you believe that Evidence, whether there does not from thence arise the most violent Presumption of the Defendant's Knowledge of Title in the Lessor of the Plaintiff.

It is represented to you by the Defence, that it was notorious to every body conversant in that noble Family, that Lady Altham never had a Son in Ireland--that she never miscarried--that she never was with Child. On the other hand, that it was equally notorious, that my Lord had a Son by Joan Landy--and that the Lessor of the Plaintiff was that Son. Now, if this was the Case, for Heaven's sake, Gentlemen, what Apprehensions could the Defendant possibly be under from a Boy, who, if he had set up any Claim to the Title and Estate, must inevitably have been detected as a most notorious Impostor?

But if, on the other hand, this Boy was the legitimate Son of Lord Altham (and whether he was or not, must certainly lie in the Knowledge of the Defendant), then, Gentlemen, you will consider whether this Kid-knapping and this Prosecution will not be easily and naturally accounted for; and whether any other adequate Cause than a Knowledge of his being so, can, with any Degree of Probability, be assigned for this extraordinary, this iniquitous Behaviour of the Defendant.

But, Gentlemen, the Counsel for the Defendant have told you, that the material Fact in this Case is the Birth; and unless that is incontestably proved, that the Plaintiff cannot possibly avail himself of any Presumptions (an ingenious Gentleman chose generally to call them Suspicions) which arise in this Case.

Gentlemen, I differ entirely from them upon that Head. If that, which to be sure is the material Fact, were proved to you incontestably, the Plaintiff would then have no Occasion for Presumptions. Presumptions then only are, or can be, of use, when the Fact in dispute is not, nor can be, proved incontestably.

Gentlemen, as this Assertion hath been so strongly insisted on, and hath had so much Strefs laid upon it, by every one of the learned Counsel, let me detain you a little to make a few Observations upon the Subject of Presumptions.

Presumptions, Gentlemen, have at all Times, and in all Laws which I have ever heard of, particularly in our own, been allowed to have great Weight in doubtful Cases. Some are of so high a Nature, that the Law will not admit of any Proof to the contrary:--and these are called Presumptions *Juris & de Jure*.--Again, there are Presumptions of Law; as likewise what the Writers upon this Subject call Presumptions of Man (such as are collected occasionally by Man's Understanding from given Facts), which, though they fall short of that Strength and conclusive Force which the others have, are yet to stand in the Place of full Proof till the contrary is proved.

"*Violenta Presumptio* is many times *Plena Probatio*," are the express Words of my Lord Coke; and the Case which that great Oracle of the Law puts upon it, is this: "A Man is run through the Body with a Sword, in an House, whereof he instantly died--A Man is seen to come out of that House with a bloody Sword, and no other Man was at that time in the House." Upon these Circumstances, Gentlemen, a violent Presumption arises, and

shall stand for full Proof, unless the contrary can be proved; that that Man was the Murderer.

Now, Gentlemen, you will observe, that in the Case put (and many others of a like, or even inferior Kind, may be put, in which great Numbers of the King's Subjects daily suffer capitally), the Jury from Circumstances infer a criminal Fact committed by the Person accused. A *fortiori* it should seem reasonable, from a criminal Fact proved, to infer the Circumstances and Motives leading to that Fact.

Mr. Serjeant Marshall very properly mentioned to you the Case of the Spoliation of a Deed.

In that Case, Gentlemen, it is an established Maxim, "That all things are to be presumed in Disfavour of the Spoliator." And you will consider, whether a Parity of Reason will not operate strongly in the present Case. Mr. Serjeant's Reasoning on this Head was entirely agreeable to what I remember to have heard laid down by one of the greatest Men who ever sat in a Court of Judicature, viz. That Circumstances were, in many Cases, of greater Force, and more to be depended upon, than the Testimony of living Witnesses.

Witnesses, Gentlemen, may either be mistaken themselves, or wickedly intend to deceive others. God knows, we have seen too much of this in the present Cause on both Sides! But Circumstances, Gentlemen, and Presumptions, naturally, and necessarily, arising out of a given Fact, cannot lie. And, Gentlemen, it must be left to your Consideration, whether in this Case the Presumptions arising from the Kid-knapping, and the Prosecution for Murder, do not speak stronger than a thousand Witnesses.

The next Observation, Gentlemen, which naturally ariseth from the Kid-knapping, is, that the Lessor of the Plaintiff is thereby thrown fifteen Years back in his Evidence. If his Case had come under your Consideration, or that of any other Jury, soon after the Death of the late Lord Altham, it would not have been attended with the Difficulties it now is, but must have received a very easy and clear Determination. Mrs. Shiells, who is sworn to have brought him into the World,--the Clergyman, who is sworn to have christened him--the Persons, who are sworn to have been Sponsors (with many other material Witnesses) were probably all, or most of them then living, and might have borne their Testimony. The Account which you now have of them is, that they are all dead.

In the next place, Gentlemen, you are to consider the Dangers to which this Gentleman lies open in asserting his supposed Right;--on the one hand, from Witnesses officiously obtruding themselves, and on the other, from Witnesses who may have been industriously obtruded upon him. And if you believe that these Difficulties have been occasioned by the wicked Act of the Defendant, you are then to consider whether a much slighter Evidence, than might otherwise have been required, will not satisfy you, in a Case thus circumstanced, of the Truth and Justice of his Claim.

But, Gentlemen, the Counsel for the Defendant farther tell you, "that although you might possibly be induced to think the Defendant capable of committing a wicked Act, yet that ought not to influence your Judgment as to the Determination of his Property."

And, Gentlemen, I must agree that a wicked Act, nay repeated wicked Acts, in general, ought not to influence your Judgment. But if the Defendant hath committed a most wicked Act against the Person, who then asserted himself to be the Son of Lord and Lady Altham, and who is now contesting with him his Title and Estate--if he hath done another very extraordinary, though legal, Act against him,--in a clandestine Manner,--and coupled with a Declaration highly criminal,--This, in my Opinion, may, and ought to have great Weight with you upon this Occasion.

Another Thing, Gentlemen, insisted upon by the Defendant's Counsel was, that if the Case be doubtful, the present Possession ought to turn the Scale in Favour of the Defendant.

Now here I must again differ from the learned Gentlemen. If indeed upon the whole Evidence the Case stands doubtful, they say well: But if upon the direct positive Evidence the Case is balanced, then, Gentlemen, the Kid-knapping and the Prosecution will, in my Apprehension, turn the Scale in favour of the Plaintiff. For a violent Presumption is to stand for Truth 'till the contrary is proved. Now if upon the positive Testimony on both Sides, the Mind remains in *Equilibrio*--then, Gentlemen, the contrary is not proved, and consequently the Presumption stands.

I cannot help saying, that I think it pretty extraordinary in this Case, that so many Objections should be raised, and so much Strefs laid upon them, against your being influenced in your Judgment by Presumptions--by Suspicions--by Probabilities.

Gentlemen, their whole Defence is built upon Probability and Improbability.

They first tell you, you are to judge not upon Probabilities, but upon positive Proof of the material Facts; and to that positive Proof, when given, they tell you, you ought to give no Credit, for it is improbable.

There was one Objection of this Sort which I forgot to mention, and that was as to the Proof of the Kid-knapping; they told you, Gentlemen, that although the Defendant could be supposed wicked enough to commit such a Fact, yet it was inconceivable that he should be so weak as to do it at Noon-day--that he should carry the Boy through a public Market--nay, by the very Stall of Purcell, who had before protected him--(by the bye, Gentlemen, you will remember that the Boy was charged with Felony, and carried off by known Constables) and the same Objection, I think, was before made to Giffard's Testimony, that it was utterly incredible, that any Man living should be so weak as to put himself into the Power of any other Man, by making such Declarations as Giffard swore my Lord made to him.

I must own, Gentlemen, that this Objection does not to my Understanding carry any great Weight with it.

Wickedness and Weakness generally go hand-in-hand together; and upon the repeated Observation of their doing so, is founded that well known Saying,

"*Quos Deus vult perdere prius dementat.*"

The next Part of the Case which I shall speak to, is the Evidence of Mrs. Heath, as it stands opposed to that of Mrs. Cole; and the Evidence of Rolph, opposed to that of Mrs. Colclough, Turner, and Higginson.

It was my Desire that Mrs. Cole and Mrs. Heath might be confronted, because I did then, and do still think, that this Case may receive great Light,

and may be greatly narrowed for your Determination, by a careful Consideration of *Cole's* Evidence, as it stands in direct Contradiction to the Testimony of *Heath*, whom I look upon as a capital Witness; and one of the main Pillars of the Defence.

In other Parts of the Case, Gentlemen, you meet with many Variations between the Witnesses, as to Periods of Time, and other minute Circumstances; which will not be of much Consequence in the Cause, or tend to impeach the Credit of those Witnesses on the one Side, or the other:—But when once you come to a Fact in which two positive Witnesses flatly contradict each other—*a Fact*, the Truth or Falseness of which the Witnesses on each Side must with as much Certainty and Exactness know at the Time she gives her Testimony, as she did at the Time that Fact is said to have happened, let it be ever so long ago—so that one of them is, to Demonstration, perjured; then, Gentlemen, it becomes exceedingly material for you to consider which of two such Witnesses you will give Credit to; and your Determination of that Point may go a great way towards enabling you to form a Judgment upon the whole Case.

The first material Circumstance which occurs to me, in which *Cole* and *Heath* differ, is as to the going or not going away of Lord and Lady *Altham* from Captain *Briscoe's* (at whose House the Reconciliation was brought about) to my Lord's Lodgings at *Vice's*, in *Essex-street*.

Mrs. *Heath* swears positively, that during their Stay in *Dublin*, they never lodged one single Night out of the House of Captain *Briscoe*—Mrs. *Cole* (supported by her Sister, Mrs. *Briscoe*—by *Alice Bates*, a Servant in her Father's Family—and by *Catherine Mac Cormick*, *Vice's* Servant) swears as positively, that after staying four or five Days at her Father's, they went to Lodgings in *Essex-street* (as to the Person's House she is not positive, but she takes it to be *Vice's*), and there continued a considerable Time, I think about two Months, before they left *Dublin*, and went to *Dunmaine*. And, Gentlemen, you will remember that Mrs. *Cole*, when she was a second time produced, gave you a particular Reason why she could be so positive as to that Fact, which was, “that, notwithstanding the Reconciliation between my Lord and Lady, her Father still continued uneasy about the Matter; and was very desirous and pressing, that they would leave his House, and go to other Lodgings, because he thought it would have a better Air of their being well together;” which she explained afterwards, by saying, that it would become more publick and notorious to Mankind; that my Lord and Lady were in fact reconciled.

This Circumstance, as soon as it was mentioned, I thought, struck some Light into this Affair—it did to me explain clearly two other odd Circumstances, which I shall mention to you presently.

The next Fact, concerning which Mrs. *Cole* and Mrs. *Heath* stand in direct opposition, is, the supposed Miscarriage at *Dunmaine*. Mrs. *Cole* swears positively, that about the Middle of the Night, after the Accident of Lord *Altham's* breaking the Saucers, Mrs. *Heath* came into the Bed-chamber of her Mother, Mrs. *Briscoe*, with whom she lay, alarmed her with Account of my Lady's being extremely ill, and begged that she would immediately rise and go to her, which her Mother accordingly did; that the next Morning she (the Witness) was in my Lady's Bed-chamber, where were present her Mother, Mrs. *Heath*, and several of the Servants—that her Mother there told her, that my Lady had miscarried, and shewed her the Abortion in the Basin.

Mrs. *Heath*, on the contrary, swears as positively, that she did not, either upon that or any other Night, call up Mrs. *Briscoe*—that she does not remember, that Mrs. *Briscoe*, or her Daughter, was in my Lady's Room the next Morning—and she swears positively that my Lady did not then miscarry, nay, that she was not, either then, or at any other Time, with Child.

It was insisted on strongly by the Defendant's Counsel, that this Evidence of *Cole* was attended with great Improbability—that it was incredibly strange, that a Mother should shew an Abortion to her Female Child of such tender Years. And, indeed, Gentlemen, I think that Fact does, *prima Facie*, appear to be extremely odd, and to carry with it a strong Air of Improbability.

There was another Fact, proved in the very Outset of the Cause, which (though it had not the same Remark made upon it by the Counsel) struck me in a very odd Light; and that was, that upon the Reconciliation of Lord and Lady *Altham*, at Captain *Briscoe's*, Mrs. *Dorothy Briscoe*, then not above Ten, and her Sister, Mrs. *Cole*, not then above twelve Years of Age, were, with the rest of the Family, called into the Room, to see my Lord and Lady in Bed together.

But Gentlemen, you will consider, whether the Reason which Mrs. *Cole* tells you her Father had for pressing Lord and Lady *Altham* to leave his House, and lodge elsewhere in *Dublin*, viz. that their Reconciliation might become more notorious to Mankind, does not fully explain, and strongly corroborate the Proof of, those two odd, and otherwise unaccountable Facts.

Gentlemen, you will consider further, whether from these three Circumstances connected and compared together, there does not arise a strong Probability, that Captain *Briscoe* (who I think appears to have been the Person employed by the Duke of *Backingham* to bring about the Reconciliation) had some Apprehensions, that although the Reconciliation was effected, and although, in consequence of it, Lady *Altham* should have Issue by my Lord—yet, that in some future Time, and for some Reasons or other, Lord *Altham* (whose Character and Conduct appear pretty extraordinary upon the Evidence in this Cause) might be induced to bastardize that Issue.

And, Gentlemen, you will consider further, whether such an Apprehension in *Briscoe*, as I have supposed, would have been unnatural or ill founded, when you have compared these Circumstances (which, as I have mentioned, seem to render it probable, that he had such an Apprehension) with the Evidence of *Palliser* the younger. He relates to you a very extraordinary Conversation which passed between my Lord and him, about five Days before the Separation, as they were returning from *Bourkestown* to *Dunmaine*. He tells you, that my Lord called to him in a familiar Manner, and said, “Tom, I will tell you a Secret, as I have no Son by my Wife, nor ever expect to have any, and as my Lord *Anglesea* is very angry with me for keeping this Woman—I am determined to put her away, not to disoblige my Lord *Anglesea*.” The same Witness had before sworn positively that he never had—that he never attempted to have—that he

believes in his Conscience, that my Lord did not suspect he had committed any Crime with Lady *Altham*; and that my Lord only made use of him as a Colour and Pretence for putting away his Lady.

Now, Gentlemen, you will observe, that upon this Testimony even of the Defendant's Witness (who, indeed, is a very material Witness for the Defendant in some other Parts of his Evidence, if you give credit to him), Lord *Altham* was a Man capable of putting away his lawful Wife, to whom he had lately been reconciled—upon a mere Pretence—and for no other Cause than that he might not disoblige Lord *Anglesea*—If he were so, will then consider, whether it be at all an unnatural and strained Supposition, that he was capable of abandoning, and bastardizing his lawful Son in order to oblige some other Person or Persons.

This Supposition, Gentlemen, will, I think, appear still less unnatural, when you recollect how Miss *Gregory's* Behaviour to the Boy stands upon the Testimony of another Witness for the Defendant: I mean *Hard* (who, in his Account of the Boy's Treatment by my Lord before they came to *Dublin*, differs totally, as my Lord Chief Baron hath already observed from all the Gentlemen of that Part of the Country who have been produced before you).

Hard tells you, that when my Lord lived in *Frappin's Lane*, great Complaints were made to my Lord against the Child, by Miss *Gregory*, of his Thieving—that he cannot tell whether the Boy was really guilty or not, but that he confessed himself so—and that upon this my Lord (whom the Witness had never once seen strike the Child upon any Occasion in the Country) corrected him more severely than ever he had seen any Child corrected in his Life.

When the Witness was asked by my Lord Chief Baron, what those Things were, with the Thieving of which this Boy (who is admitted on all hands to be the Son of my Lord, though his Legitimacy is disputed) was charged by this Lady, and for which he was so cruelly corrected by his Father, he tells you they were “a Jockey Belt and a Pair of Pigeons.”

These are Circumstances which, I must own, strike my Understanding strongly: You, Gentlemen, are the Judges, and you will well consider, what Weight they carry, when connected with the rest of the Evidence, and what Light may be collected from them to guide your Judgments on this Occasion.

I forgot to mention to you one thing, which I think is very remarkable, upon *Heath's* Evidence; and that is, that she accompanies some of the Plaintiff's Witnesses in all the preparatory Steps, and separates from them only, when they come to the critical and material Facts themselves.

She recollects distinctly with *Mac Cormick*, *Vice's* Servant, “That my Lord came home late one Night disordered with Liquor—that he made a great Noise with the Chair—that he quarrelled with her—that he jumped out of Bed from my Lady, and ran towards the Window—that he called for Mrs. *Lucas* the Midwife—swore he would send for her to see if my Lady was with Child, and with another Oath declared, that if she was not with Child, he would turn her away.” All these Circumstances she recollects minutely, and exactly agrees in them with the other Witnesses—but as to my Lady's screaming upon this Occasion—there she separates.—She says, my Lady would have died first. As to her miscarrying, or to any Discourse in the Family the next Day that she had miscarried—this she positively denies.

With regard to the Miscarriage at *Dunmaine*—she agrees with *Cole* in the Fact of my Lord breaking the Saucers, that those Saucers had ugly or indecent Figures on them, and that my Lord had forbid their being brought to Table.—But that my Lady was the least disordered upon this Occasion, she denies—that she called up Mrs. *Briscoe*—that my Lady miscarried—that she kept her Chamber for several Days, or even one Day after—all this she positively denies, in direct Contradiction to what has been sworn by *Cole*. And here, Gentlemen, it will be extremely material for you to recollect that, pretty exactly to the Time at which *Cole* swears this Miscarriage happened, and my Lady kept her Chamber at least five Days, it appears from the Evidence of the Defendant's Witnesses (Mr. *Aaron Lambert*) that *Sutton* the Surgeon, whom my Lord brought over with him from *England*, but had turned out of his House, on account of some Misbehaviour which he had been guilty of in the Family, was sent for to *Dunmaine*; that he twice refused to go, being picqued at his having been turned out of the Family—that being sent for a third Time, and my Lord's Chariot coming for him, he went, and continued attending my Lady at *Dunmaine*, to the best of the Witness's Remembrance, for a Fortnight. This Evidence was produced in order to discredit *Brooks*, the Piece of a Surgeon (as he called himself), produced on the Part of the Plaintiff, who in my Opinion sufficiently discredited himself. You will consider, Gentlemen, whether it does not go strongly in support of the Testimony of Mrs. *Cole*, in contradiction and discredit of *Heath*; with regard to whom, an Observation was made by the Defendant's Counsel which I was exceedingly surprized to hear from that Side of the Table. They took notice of the peculiar Excellency of our Law, especially with regard to Trials by Jury, on which Occasions the Witnesses are examined *vide voce*; that from confronting Witnesses who contradict each other, and carefully observing their Appearance, and the manner in which they give their Testimony, some Light is to be collected; and the Court and Jury may in some measure be enabled to form a Judgment upon a doubtful Case.

The Observation, Gentlemen, is undoubtedly just, but what I little expected to have heard from that Quarter.—For, Gentlemen, when you recollect and compare together the outrageous Behaviour and *voliferous Assertions* of *Heath*, with the calm, sedate, and modest Demeanour of *Cole*—You will consider whether all the Weight which can be laid upon an Observation of that Sort does not lie entirely on the other Side.

Another Point which hath been strongly, and indeed very properly insisted upon by the Defendant's Counsel, is this:—They say it is extremely improbable, if this Person were really the Son of Lady *Altham*, that my Lady, who is proved to have lived two Years after the Death of her Lord, should make no Enquiry about him.

But, Gentlemen, if you will compare the Time of Lord *Altham's* Death with the Time of Kid-napping the Boy, you will find, I think, that there is very little, if any, Weight in this Observation.

Lord *Altham* died in November, 1727—the Letter which *Mac Mullen* swears she sent to Mrs. *Heath*, notifying my Lord's Death, (and which *Heath* swears

the 18th of that Month
the Letter must be some Days at least going to England.—On the
6th of the March following, the Boy appears from the *Thames* Book to
be intended to *Thomas Henry* by the Name of *James Henry*, and on the
6th of April, the next Month, it appears from *Stevenson's* Book, that
he passed over the Bar of *Dublin*—So that taking that to be Truth,
which, I think, is liable to strong Objections of Improbability, that
Mac Mullen sent that Letter) there will be very little more than five
Months between Lord *Altham's* Death, and the Transportation of the
Boy.

When *Alice Bates* appears, and gives you an Account of her joking with
Lady *Altham* about her being with Child, you are told by the Defendant's
Counsel, that this is highly improbable.—That Lady *Altham* was a very
haughty Woman.—That it is incredible she should condescend to such
Familiarity with a Person so much her Inferior.

Will it not appear to you equally improbable at least, that this haughty
Lady should condescend to receive Visits once a Week, as *Mac Mullen*
tells you she did, from her—the Daughter of an Ale-house Keeper?

It must be allowed that my Lady's living with Alderman *King* for
thirteen or fourteen Months, conversing with him about her Family Af-
fairs, and yet never mentioning to him her Son, does *prima facie* carry
with it a great Improbability of her having at that time a lawful Son.

But considering that my Lord had put her away upon a Suspicion (either
real or pretended) of her Virtue, and had aspersed her Character, it
might not be so prudent, nor perhaps so probable, that she should dis-
course with him, or any other Person, upon the subject of Child-bearing.

However, allowing this to be improbable—will it not be equally im-
probable, that the Care of communicating so material Intelligence as the
Death of Lord *Altham*, should be intrusted, not to this Alderman *King*,
or any other Person of some tolerable Figure in this Town, but to such
a Woman as *Mac Mullen*?

These, Gentlemen, are Circumstances which in my Apprehension
weigh strongly against the Credit of *Mac Mullen's* Evidence. But taking
that Evidence to be true, you will consider, whether the small Distance
of Time between Lord *Altham's* Death and the Transportation, does not
greatly lessen the Force of this Argument, which has been so strongly
insisted upon by the Defendant's Counsel,—especially if you add to it,
the Circumstances both of Health and Fortune, in which Lady *Altham*
appears to have been at this time.

And here, Gentlemen, will come in very materially for your Consider-
ation the Evidence of Mrs. *Deborah Annesley*, a near Relation of this
noble Family.

She who had before told you that her Brother frequently visited my
Lord at *Kinnea*—that whenever he returned from thence, and whenever
my Lord visited at their House, it was their common Practice to drink
the Health of my Lord's Son—that they all considered that Boy as my
Lord's lawful Son, and the future Earl of *Anglesea* (so that it is not Fact,
as you have been told, that none of the Relations of the Family ever
heard of Lady *Altham's* having a Son); this Lady, I say, tells you, that
upon the Death of Lord *Altham* she and her Sister made frequent En-
quiries after this Boy: That for some time they could learn no Account
of him, and at last they concluded that he was dead. Now if it became
a general Reputation that he was so, then, Gentlemen, tho' Lady *Altham*
likewise might have made frequent Enquiries after this Boy (*non constat*
upon the Evidence whether she did or not, and she might have made fev-
eral, not at this Day capable of Proof), and might receive an Account,
and give credit to it, that he was dead; and this might put a Stop to any
Further Enquiry, consistently with Lady *Altham's* Knowledge of this
Boy's being her legitimate Son.

These Parts of the Case, independant of the other, which have all
been fully laid before you by my Lord Chief Baron, seem to me to have
great Weight in them.

You, Gentlemen, will consider what Strefs you will lay upon the Ob-
servations I have thrown out to you, and what Light may be collected
from them.

There were several other things, Gentlemen, which I designed to have
mentioned to you; but the Fatigue which we have all undergone hath
been so very great, and the Time I have had for Recollection so very
short; that my Thoughts are too much dissipated to proceed, and indeed
I have already trespassed too much upon your Patience; considering the
great Attention which you have all along given, and the careful Notes
you have taken of the Evidence; I shall therefore now conclude with
that which I at first set out with, the Kidnapping and the Prosecution.
If the Case be doubtful, upon the other Parts of the Evidence (whether
it be or not you are the proper Judges), I must then leave it to your Con-
sideration, whether the Evidence of those two extraordinary Facts may
not be sufficient to determine you what Verdict to give upon this Occasion.

Mr. Baron *Dawson*.] Gentlemen of the Jury, my Lord Chief Baron
and my Brother *Mountney* have summed up the Evidence, and observed
upon it in so judicious and clear a manner, as makes any further Obser-
vations from me unnecessary; I shall therefore only require your Patience
for a few Minutes, to shew you how I would consider this Case if I was
upon the Jury, and my Reasons for so doing. There are such Contra-
dictions on both Sides of the Question, that it would not be hard to shew,
that several Witnesses on each Side are not entirely to be credited. Sev-
eral of the Witnesses on each Side, not only contradict the Witnesses on
the other Side, but also, in some Instances, themselves, and therefore, in-
dependent of other Things proper to be consider'd, one could not tell
where to settle. If I was upon the Jury, and to determine this Question,
I should lay before me and consider the Story as told on each Side; I
should consider how far the Story on one hand, independent of the Wit-
nesses, exceeded the other in point of Probability: if on either hand the
Story told appeared extremely improbable, I should then require from
that Side, the strongest Proof imaginable; and that because Probability
ought to weigh, except it be contradicted by Testimony not to be doubted
of; and therefore, if on either Side, the Story should be extremely im-
probable, and probable on the other Side, I should give my Opinion on
the Side of Probability. How far any thing of this kind appears in this
Case, will come under your Consideration.

This is the longest Trial ever known at the Bar, this is the 15th Day

since the Trial began. Trials at Bar are usually determined in one Day,
and the Policy of the Law hath taken care that no Person should speak to
the Jury after any Evidence given in Court; there is no Occasion, I am
persuaded, Gentlemen, to remind you that any thing heard out of Court
is not to govern you, you are to be governed by nothing but the Evi-
dence laid before you.

In the first place, the first Stage is the Time of the Birth. You will
take into your Consideration the Number of Witnesses and their Stations
that swear to that Birth, and also the Number and Station of the Wit-
nesses that swear in direct Contradiction to them; if you cannot deter-
mine that Question by comparing them together, you will then have re-
course to the other Part of the Testimony, which is, the Reputation of
the Country, and the Persons that visited constantly at that House; you
will consider the Probability or Improbability that a Fact of this kind
could have happened, and the People visiting not know of it. This
could hardly be in a Family of less Consequence than my Lord *Altham's*,
but when you consider this Family and the Estate that was to fall to it,
you will consider if there could be a Birth, and Persons visiting the Family
not knowing of it. There have been Proofs on the one hand, laid before
you of my Lady's being with Child, and on the other hand of her not being
with Child; either of these Parties may swear false; but then you must
take into your Consideration, if they that swear she had a Child swear
Truth, whether it could be possible that that could be kept a Secret.
There was not any Interest or Reason that it should be kept a Secret. If
it was not industriously kept secret, how comes it that all those Persons
that visited there should never have heard of a Child?

To go to positive Testimony, *Laffan* swears positively the Child was
presented to several Gentlemen and Ladies; and often to Mrs. *Lambert*.
Mrs. *Lambert* swears positively the Child never was shewn to her. Which
is to be credited? There are several Circumstances you will take into
your Consideration, concerning the Probability or Improbability of the
Birth of this Child, whether the Preparations for my Lady's Living-in
were suitable to her Rank? Whether *Dunmaine*, a small Village, distant
from any Assistance necessary on such an Occasion, was a proper Place?
Whether my Lady *Altham* would be easily brought to lye-in in the Coun-
try, especially of her first Child? These are Considerations worthy your
Attention. There have been many Gentlemen who gave Evidence to
there not having been a Child; they swear not only that they never saw,
but that they never heard of a Child. I won't enter critically into every
particular Period of Time sworn to by them; but if in three Years those
Persons were three or four times a-piece at *Dunmaine*, and they swear
Truth, it will be of Weight in the Question whether there was a Child
or not. For admitting Colonel *Palliser* and the other Witnesses to be
there four times a-Year, you are the Judges whether it is probable that
there was a Child there, and unknown to them. The Separation is
agreed on all hands to have been in the Year 1716, and some little
time after that, the Child was brought home to my Lord *Altham's* House.
Dyer swears the Child was not brought to *Dunmaine* in his Time; but
the Witnesses for the Plaintiff say, either from the Separation, or soon
after; and that the Child continued in the House with Lord *Altham* till
about the Year 1724. You are to observe, that my Lord left *Dunmaine*
about Summer 1717; the Separation was in February 1716-17, and Lord
Altham came up to Parliament, and after that went to *Kinnea*; the Par-
liament sat down the 27th of August 1717; then you will consider what
has been sworn to of my Lord's Behaviour to this Child all that Time.
During this Period of Time at *Kinnea*, *Carrickduffe*, *Cross-Lane* and
Frappier-Lane, there are many Witnesses on both Sides that give a most
contrary Testimony to one another; there are Witnesses on both Sides
that I cannot say how to disbelieve, there are many of them that
I cannot disbelieve, who swear to his being treated as a legitimate
Son; there are many of them whom I also cannot disbelieve, who give a
contrary Testimony, and say that he was treated as an illegitimate Son;
and Colonel *Harman*, Doctor *Medlicott* and Colonel *Wall* give an Account
of my Lord's manner of calling him his Bastard Son. And in my Appre-
hension, if the Witnesses deserve Credit, my Lord *Altham* did during
that Time treat him to some Persons as his lawful Son, and to others, as
his illegitimate Son. You will consider the Temper and Disposition
of Lord *Altham*, and the Circumstances he was in; he was a Man not
of Prudence, either as to the Management of his Fortune or Family;
you will please to consider in what manner to account for this Beha-
viour of his; whether there may, or may not be any Reason for treating
an illegitimate Son in some Companies as a legitimate Son, and whether
there may be, at any time, any Reason for treating a legitimate as an
illegitimate one. A Man comes into the Country where he was not
known before, and has a Child that he had not by his Wife; perhaps he
may have Reason for treating him as a legitimate Son. A Man may
carry an illegitimate Child abroad, and visit with him in the Neighbour-
hood, and pass him for his legitimate Child; for perhaps he might be
glad that that Person whom he visited, should not know him to be a
Bastard; but a Man can have no Reason, in my Apprehension, for treat-
ing a lawful Son as an unlawful one. Then you will consider the several
Schools the Child was put to by Lord *Altham*; you will consider whether
these Schools were fit Schools for my Lord, even in indigent Circumstances,
to put his lawful Son to. You will consider, the Consequence of my
Lord's being under the Influence of Miss *Gregory*; the Consequence
was, that this unhappy Child was thrown abandoned to the World at not
ten Years old: here you will consider whether a Treatment of that kind
bespeaks him to be his legitimate or illegitimate Son: Had he been a legi-
timate Son, surely my Lord *Altham* must have had Reflection enough to
have considered what a dishonourable Action he was doing publicly. On
the other hand, you will consider that the Influence of Miss *Gregory*
might well be carried to make him doubt whether this Child was his or
not, if the Child was by an improper Woman. In the next place, you
will consider the Situation and Behaviour of the Mother, that is the
tender Sex, and their Tenderness to their Children is hardly to be got
the better of at any rate. Lady *Altham* was three Years in *Ros*, and
there is but one Testimony of her seeing him then, and that is the
Man that swears he made him Shoes. From this she comes to *Dublin*,
and lives near my Lord at the time this Child is with him; it seems
a little odd that she made no Attempt to have this Child brought to her
but

but by *Catharine O'Neil*; and I submit it to you, how far what she says can have Weight; for she says, that my Lady declared she would be glad to see the Child, but she was afraid the Servant that brought him would lose his Bread. Can such a thing as that be put in competition with the Tenderness of a Mother for a Child? That, Gentlemen, is for your Consideration. Why then, Gentlemen, my Lady comes to the House of Alderman King, and he tells you, that for thirteen or fourteen Months she frequently spoke to him of her Family Affairs, yet never mentions she had a Child. It seems very strange; a Woman, where she fancies herself injured, is mighty apt to tell the Injuries done her to every body, and to aggravate her Distress by saying she was deprived of the Comfort of seeing her Child. This was not to be entrusted to Alderman King, but communicated to Mrs. *Hodgers*, whom she had never seen but once; you will consider this, Gentlemen. In the Year 1727 my Lord died, and there can be no Doubt but my Lady knew it; there is not any Proof of her having made any Enquiry after the Child: It is true; my Lady might have made the Enquiry after the Child, and it might have proved ineffectual, because of his being transported so soon after; but of this there is no Evidence; but how comes it she did not make the Enquiry, especially where her own Interest was to guide her in that Case? And yet here is the Force of the Mother and Interest joined together, and they work nothing on my Lady *Altham*. You will consider that the Estate of this Family, on Failure of Issue, being to go to *Arthur*, late Lord *Anglesea*, it was the Interest of the Mother to have made a strict Enquiry after him; and yet there is a Witness for the Defendant, *William Napper*, who tells you, that he had a Letter of Attorney from Lord *Anglesea*, to take Possession of the *Ross* Estate; and by virtue thereof made Numbers of Minutes to several Tenants, and no Objection he ever heard made, that Lord *Altham* ever had a Son. That, Gentlemen, seems a little extraordinary.

The next Thing that offers, and the Strength of the Case for the Plaintiff

is, the Transportation of him, and the Directions the Defendant gave to Mr. *Gifford* for the Prosecution of him after his return into England. You will consider, as to the Transportation, whether the Defendant was the Occasion of it, or not? If you should be of Opinion he was, you will consider how far that will have an Effect upon you. He claimed to be the lawful Son of Lord *Altham*; you will consider whether that might have been an Inducement. If you should be of opinion that the Story on each hand carries an equal Degree of Probability; this of the Transportation should, in my Apprehension, add great Weight to the Case of the Plaintiff: If, on the other hand, you should not think them equally probable, you will consider how far the Transportation will make you give Credit to a Fact you should otherwise think improbable. The same may be said in respect of the Attempt in England, in relation to the Prosecution of him there. I have mentioned before, that several of the Witnesses on both Sides cannot be very well depended upon; and therefore I think the Probability or Improbability of the Thing may be of great Weight in determining the present Question.

Then the Jury withdrew, and in about Half-an-hour brought in their Verdict for the PLAINTIFF.

This *James Annesley*, Esq. died January 3, 1760. He was twice married; first, to a Daughter of Mr. *Chester*, at *Staines-Bridge* in *Middlesex*; by whom he had one Son and two Daughters. The Son, *James Annesley*, Esq. died November 1763, S. P. and the eldest Daughter is married to *Charles Wheeler*, Esq. Son of the late Captain *Wheeler* in the *Guinea* Trade: Secondly, to a Daughter of Sir *Thomas P. Anson* of *Bourdi* near *Tunbridge* in *Kent*, Gentleman-Porter of the *Tower*, by whom he had a Daughter and a Son, who are both dead; the Son, aged about seven Years, died about the Beginning of 1764; and the Daughter, aged about Twelve, died in May 1765.

XXVII. The Trial of Mrs. MARY HEATH, (a Witness examined on the Trial in *Ejectment* in the Court of Exchequer in *Michaelmas* Term, 1743, in the Cause wherein CAMPBELL CRAIG, Lessee of JAMES ANNESLEY, Esq. was Plaintiff, against the Right Honourable RICHARD EARL of ANGLESEA, Defendant) for Perjury, at the Bar of the Court of King's-Bench in Ireland, on Friday the 8th Day of February, 1744.

Published by Permission of the Right Honourable the Lord Chief-Justice *Marlay*, Mr. Justice *Ward*, and Mr. Justice *Blennerhasset*.

[The several Proceedings had upon the Indictment against *Mary Heath*, for Perjury, previous to her Trial.]

The Bill was found by the Grand-Jury of the County of *Dublin*, at a Session of the Commission of Oyer and Terminer, on the 24th Day of *October* 1744; and there she traversed the Indictment, and removed the Record by *Certiorari* into the Court of King's-Bench, returnable the first Day of last *Michaelmas* Term.

On the sixth Day of *November* 1744, the Traverser appeared in the Court of King's-Bench, and the Court appointed the Trial to be at the Bar of the Court on the Fourteenth Day of *November*, with Liberty for either Party to apply in the mean time to put off the Trial, for reasonable Cause, to be made appear by Affidavit.

The Traverser did apply to put off the Trial on the following Affidavit, sworn the 10th of *November* 1744.

The King against } THE Traverser, *Mary Heath*, came this Day
Mary Heath. } before me and made Oath, That *James Annesley* having, as Deponent heard and believes,

brought an *Ejectment* in the Exchequer for Recovery of the Possession of Part of the Estate whereof *Arthur* late Earl of *Anglesea* died seized in this Kingdom; and the Right Honourable *Richard* Earl of *Anglesea* having taken Defence to said *Ejectment*, the same came to be tried at the Bar of said Court in last *Michaelmas* Term; which Trial continued and was adjourned from Day to Day for upwards of ten Days, on which Trial Deponent was produced and examined as a Witness on Behalf of said Earl. That Deponent is well informed and verily believes, that on said Trial the only Point tried was, whether said *James Annesley* was the Son of *Arthur* late Lord *Altham* by his Wife *Mary* Lady *Altham*; that she is well assured and believes, that Examinations were laid before the Grand-Jury

at last Commission of Oyer and Terminer for the County of *Dublin* for Perjury, alledged to be committed by Deponent on said Trial; and that a Bill of Indictment was found on said Examinations against Deponent the 24th Day of *October* last, and not before, as she is informed and verily believes. Saith, She is informed and believes, the Points in said Indictment, and on which Deponent is indicted, are relative to said Lady *Altham*'s having a Child by said Lord *Altham*, and in some measure the same as that tried in the Exchequer as aforesaid. Saith, she is informed and believes, that a Suit was instituted in the Chancery of England by said *James Annesley* for Recovery of the *English* Estate, whereof said *Arthur* Earl of *Anglesea* died seized, or Part thereof; and has been informed and believes, said *James* has also filed a Bill in the Chancery of Ireland for Recovery of the said *Irish* Estate, whereof the said *Arthur* died seized, or Part thereof; and saith, That a Commission is now speeding at *Wexford* in said *English* Cause, and that the same was opened before said Indictment was found; and Deponent was examined on behalf of the said Earl upon said Commission, and the Examination of said Commission is still going on, as Deponent believes. Saith, she is informed and verily believes, that the Title of the several Estates is the same, and that the Point to be determined as to said Estates between said *James Annesley* and said Earl of *Anglesea*, and the other Parties interested is, whether said *James* is the Son of said late Lord *Altham* by his said Lady. Saith, she is advised and believes, the same Evidence in a great Measure, will be necessary for Deponent's Defence on the Trial of said Indictment, and in the Defence of said Suits, and therefore Deponent believes (being so advised) that preparing for Deponent's Defence on said Indictment, will take a considerable Time, there being many Witnesses necessary for Deponent's Defence, living in different Parts of this Kingdom as well as in England. Saith, there are several Persons, whose Place of Residence is in London and other Places in England, and who are now there, as she verily believes, who are material Witnesses for Deponent's Defence on said Indictment, and without whom

Testimony Deponent cannot with Safety stand her Trial; and whom Deponent could not possibly get from England since said Bill of Indictment was found; and in particular, Mrs. Mary Judd of the County of Essex, and Mrs. Sarah Bonner of London, Mrs. Sarah Heath of London, and Thomas Rolph of Maryland in England, and several other Persons who reside in England, are very material Witnesses for Deponent upon her said Trial, and whom Deponent could not possibly get over to attend this Term, and whom Deponent believes and doubts not but she can get to attend the next Term. That there are several Persons in the Counties of Cork, Wexford, and Galway, who are very material Witnesses for Deponent; several of whom are wrote to, but they cannot, as Deponent is informed and believes, attend this present Term. Saith, that Sarah Weedon, Widow of John Weedon, who was Coachman to Lord Altham (at the Time when the said James Annesley alleges he was born), and lived at that Time near Dunmain-house (where said James Annesley alleges he was born), and was frequently at Dunmain-house, now lives at Colonel John Blakeney's at Abbott in the County of Galway, which, as Deponent is informed and believes, is seventy Miles from Dublin, and is a most material Witness for Deponent; and Deponent having caused Application to be made to the said Sarah, is informed and believes, she is so infirm, that she cannot travel without a Carriage, and therefore is not come up to Dublin; tho' Deponent has good Reason to believe, and doubts not but she will be able to get her to attend the next Term. Saith, she is credibly informed and verily believes, that James Annesley and those concerned for him (who Deponent believes are the Persons that carry on the Prosecution against Deponent), are so sensible that the said Sarah is a material Witness for Deponent, that they, or some of them, have lately, by Bribes and otherwise, attempted to seduce and carry off the said Sarah from said Colonel Blakeney's, and had a Horse and Pillion for that Purpose at Abbott, but were discovered, and prevented by said Colonel Blakeney's Means. That Anthony Dyer, now of Cork, was Gentleman to the said Lord Altham when he dwelt at Dunmaine afore said, and is a very material Witness for Deponent upon said Trial, who Deponent cannot get to attend this Term, but believes he will be able to get him to attend next Term. Saith, that from the Number of Witnesses, material for her to produce on said Trial, and the different Parts of this Kingdom and Great-Britain, where they reside, it will not be possible for Deponent to get them to attend this Term, nor can Deponent be in any sort prepared to defend herself in a proper Manner, unless reasonable Time be given her; and is satisfied in her Conscience, it is not, nor was it in her Power, or in the Power of any other Person, to get the several Witnesses, material for her Defence, to attend this Term; but believes and doubts not but she will be able to get them to attend the next Term.

In order to oppose this Motion, the following Affidavit was sworn the 13th of November, 1744.

The King } DANIEL MAC KERCHER, Esq. came this Day before me and made Oath, that the Traverser, Mary Mary Heath. } Heath, was, as he believes, apprehended in August last upon a Warrant, granted against her for wilful and corrupt Perjury; and saith, That in expectation of said Heath's Trial coming on at the last Sitting of the Court of Oyer and Terminer held for the County of Dublin, on the 24th of October last, Deponent sent to England and to several Counties of this Kingdom for several Witnesses, to be produced and examined against said Heath; and saith, a great many of said Witnesses came to Dublin from England and several remote Counties of Ireland, to be examined on Behalf of his Majesty on said Trial; but the Indictment being removed by Writ of Certiorari to the Court of King's Bench, Deponent sent many of said Witnesses, who live in this Kingdom, out of Town; and such other of said Witnesses as are old and infirm, and live in remote Parts, and also the Witnesses, who came from England, Deponent hath kept in Dublin at considerable Expences. Saith, he was at very considerable Expences in bringing said Witnesses to Dublin, in Expectation that said Heath's Trial would have come on at said Sitting of the said Commission. Saith, that the Trial of said Heath being appointed to come on, on Wednesday the 14th of November Instant, Deponent hath, since the said Day for Trial was appointed, sent to several Counties of this Kingdom for several of said Witnesses that were before in Dublin, to give Evidence on behalf of his Majesty against said Heath upon said Trial; and saith, some of said Witnesses, who are material to be examined on said Trial against her, have a Call to England upon Business of great Importance; and others, who are very material Evidences against her, are very old and infirm; so that Deponent saith, if the Trial of said Heath should be put off from this Term to next, it will put the Prosecutors to very considerable Expences and Hardships; and not only so, but it will be highly inconvenient to, and almost impossible for several other Witnesses (who are obliged as soon as they can to go for England) to attend in this Kingdom next Hillary Term, without neglecting Affairs of the greatest Consequence; and several other very material Witnesses, who are old and infirm, may die, or become so weak and infirm as not to be able to attend next Term. Saith, that the Application on Behalf of said Heath to put off her Trial to next Term is intended, as Deponent verily believes, not only to put the Prosecutors to great Expence, but also for other Ends and Purposes, and to avoid or postpone, as much as she can, her being tried. Says, if said Heath's Trial should be put off to the next Term, she will not, nor can she be so effectually prosecuted as she would now be, in regard that several material Witnesses against her will be under a Necessity of being next Term in England, and said Heath may, for want of the Evidence of such Witnesses, be acquitted. Whereas, if such Witnesses could and did attend to give Evidence against her, she would be found guilty of Perjury, as Deponent verily believes. And believes said Heath had Time sufficient to prepare for and have any Witnesses material for her. Saith, he is credibly informed and believes, said Heath, or any one for her, did not, since she was apprehended for said Perjury, issue any Summons or Subpoenas for any Witnesses to come to attend and give Evidence on her Trial; nor has she, or any other Person on her Behalf, as Deponent believes, since she was taken for said Perjury, used any Means to have any Witnesses ready to appear for her, in expectation and upon an Assurance given her, as Deponent is informed and believes, by some of her Managers, that said Trial would be put off. Doth not know or be-

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lieve, that Mary Judd, Sarah Bonner, and Sarah Heath, mentioned in the Affidavit of said Mary Heath, or any of them, were examined on the Trial in Execution, had in the Exchequer last Michaelmas Term between the Lessee of James Annesley and the Earl of Anglesea. Saith, he doth not know or believe that Sarah Weedon, mentioned in said Heath's Affidavit, is a material Witness for her; but, on the contrary, is informed, said Sarah is a material Witness against her. Saith, Deponent being informed said Sarah Weedon was a material Witness against said Mary; he, for that Reason, and for no other Ends, sent Edward Weedon, Son of said Sarah, to the County of Galway, to Colonel John Blakeney's, where Deponent was informed said Sarah was, in order to bring her to Dublin, to give Evidence against said Mary; and said Edward, on his Return, informed Deponent, she was by Force detained in the House of the said Blakeney, and that (tho' she declared her Willingness to give her Testimony) said Blakeney would not permit her to go, but forcibly kept her in his House, notwithstanding her Endeavours to come away. Whereupon, Deponent caused a Subpoena to issue, requiring said Sarah to attend to give Evidence on the Trial of said Mary, which Deponent sent to be served on said Sarah, to oblige her to attend, pursuant to such Subpoena. Saith, Deponent intended, before he sent said Subpoena to be served on said Sarah, to apply to this Court for a Writ of Habeas Corpus for her, she being confined and detained by Force in the House of said Blakeney, as Deponent was informed; and accordingly, said Edward and John Weedon, another Son of said Sarah's, made severally an Affidavit, as Deponent believes, on the eighth of November Instant, in order to ground a Motion thereon for a Writ of Habeas Corpus for said Sarah; which Motion Deponent would have made, but Deponent afterwards thought it more proper to try whether by Service of a Subpoena, said Sarah would be permitted to come to Dublin, to give Evidence on the Trial, Deponent believing, said Blakeney would not oppose an Obedience to said Subpoena. Saith, the Person sent by Deponent to serve said Subpoena is not yet returned, that Deponent knows or believes. Denies, he, or said James Annesley, or any other concerned for him, or who carry on the Prosecution against said Mary Heath, to Deponent's Knowledge or Belief, have lately, or at any Time, by Bribes, or otherwise, attempted to seduce or carry off said Sarah from said Blakeney's, to prevent her from being examined on the Trial of said Mary, as is untruly insinuated by the Affidavit of said Heath; nor doth Deponent know or believe, nor does said James Annesley, or any other Person concerned for him, as Deponent believes, know or believe, said Sarah is a material Witness for said Heath upon her Trial. Verily believes, said Sarah is detained in the House of said Blakeney, merely because she is a material Witness against said Mary, and to prevent her from being produced as a Witness; and Deponent is convinced, said Mary could, if she pleased, have had said Sarah Weedon to attend on the fourteenth Instant upon her Trial. Saith, Deponent's Intention to send for and bring said Sarah to Dublin, was to give Evidence against said Mary, and not to prevent her giving Evidence, as is falsely insinuated by said Mary's Affidavit; and denies he, by himself, or any other, attempted to bribe said Sarah; nor did Deponent, since he embarked in the Affairs of the said James, attempt to bribe, or by any unfair or unlawful Means, to seduce or prevail upon any Person to give Evidence in Behalf of said James; nor doth Deponent know or believe, that any Attempts of Bribery or other unlawful or unfair Means were made use of (by said James Annesley or any Person concerned for him) to give Evidence for him in the Suit between him and said Earl of Anglesea, or to stifle or prevent the Evidence of any Person who could give Evidence for said Earl or for said Heath; but, on the contrary, Deponent hath all along, since he engaged in the Affairs of said James Annesley, carried on the same with all legal and fair Ways and Methods, and Deponent is determined so to do in the Conduct of said James's Affairs. Believes, and is convinced by very sufficient Proofs, that Deponent has had of the same, that many unfair and illegal Endeavours and Attempts have been made use of by Persons concerned for said Earl and said Mary Heath, not only to bribe and corrupt Witnesses, but also, by very unfair and illegal Means, to intimidate and seduce several Persons from giving Testimony on Behalf of said James, and to have said Mary acquitted of the Perjury of which she is indicted.

On the thirteenth of November the Matter was debated by Counsel, and the Court were of Opinion the Trial ought to be put off. And afterwards, by Consent of all Parties, the Day of Trial was appointed to be Monday the fourth Day of February 1744.

On the twentieth of November 1744, the Counsel for the Prosecutors moved the Court for an Attachment against Colonel John Blakeney, for his Contempt of the Court, in not permitting Sarah Weedon to attend the Court on the fourteenth Day of November, in obedience to a Subpoena, with which she was served; and grounded this Motion on the following Affidavits.

Thomas Carter, Esq. } JAMES MAGRATH, of the City of Dublin, Attorney and Coroner } came this Day before me and made Oath, of the Lord the King } That on the thirteenth Day of this Instant November, this Deponent accompanied Andrew Ross, of Marystown in the County of Roscommon, Gentleman, to Abbott in the County of Galway, where John Blakeney, Esq. lives, the said Andrew Ross being employed to serve Sarah Weedon with a Subpoena, commanding her to attend in his Majesty's Court of King's Bench on the fourteenth Day of this Instant November, to give Evidence in this Cause. And this Deponent saith, That the said Andrew Ross did, as this Deponent believes, on the thirteenth Day of November serve the said Sarah Weedon with the said Subpoena; and this Deponent having stood at a little Distance from the said John Blakeney's House, to wait for the said Andrew Ross, the said Andrew Ross, in some short Time after he went into the said House, returned to Deponent, and desired this Deponent to get off as fast as he could; and that when the said Andrew Ross turned the Corner of the Avenue he would change Horses with Deponent. That Deponent thereupon believing the said John Blakeney intended to have this Deponent very ill treated for coming with the said Andrew Ross to have the said Sarah Weedon served with the said Subpoena, this Deponent therefore rode off, and at some Distance from the said House exchanged Horses with the said Andrew

Andrew Rofs, and, in some time, Deponent looking behind, perceived several Persons on Horseback pursuing, as this Deponent apprehended, the said *Andrew Rofs* and this Deponent; and therefore this Deponent rode forward as fast as his Horse could carry him, and by that means Deponent escaped any Insult or Danger intended him; and this Deponent verily believes the said Persons were sent in Pursuit of this Deponent and the said *Andrew Rofs* by the said *John Blakeney*, with Intent to treat them very ill, and to prevent their carrying the said *Sarah Weedon* to *Dublin*, to give Evidence against the said *Mary Heath*, as this Deponent verily believes.

Thomas Carter, Esq. Attorney and Coroner of the Lord the King, against *Mary Heath*. WHEREAS there issued forth of his Majesty's Court of King's-Bench in *Ireland*, and under the Seal thereof, his Majesty's Writ of *Subpoena* in this Cause, bearing Date the eighth Day of *November* Instant, directed to *Sarah Weedon*, commanding her to be in the said Court of King's-Bench on *Wednesday* the 14th Day of *November* Instant, to testify the Truth concerning a certain Trial between *Thomas Carter*, Esq. Attorney and Coroner of the Lord the King, and *Mary Heath*: Now, *Andrew Rofs*, of *Mary's-Town*, in the County of *Roscommon*, Gentleman, came this Day before me and made Oath, that on the thirteenth Day of this Instant *November*, in the Forenoon of said Day, this Deponent personally served the said *Sarah Weedon* with the said *Subpoena*, by delivering unto her, at the House of *John Blakeney*, Esq. at *Abbott*, in the County of *Galway*, a true Copy of the said *Subpoena*, and at the same Time gave the said *Sarah Weedon* a *British* Shilling in Silver, and shewed her the said original *Subpoena* under Seal as aforesaid; and this Deponent saith, That before this Deponent served the said *Sarah Weedon* as aforesaid, this Deponent, as he was going towards the House of the said *John Blakeney*, met the said *John Blakeney*, with a Gun in his Hand, coming towards Deponent; and Deponent told the said *John Blakeney*, that Deponent had a Message to deliver, which Deponent said he did not think proper to deliver until Deponent had acquainted the said *John Blakeney* therewith; and upon the said *John Blakeney*'s asking what it was, Deponent told him, that Deponent had a *Subpoena* to serve upon *Sarah Weedon*; and Deponent having shewn and produced to the said *John Blakeney* a Copy of the said *Subpoena*, the said *John Blakeney* having taken and read it, said, the said *Sarah Weedon* could not be there (meaning, as Deponent believes, in the said Court of King's-Bench) in that Time; upon which Deponent said, he had so provided for her, that Deponent would engage she should be there the next Day in Time: Whereupon, the said *Blakeney* swearing, said, he would take care the said *Sarah Weedon* should not be there the next Day. That Deponent thereupon begged he might see the said *Sarah Weedon*; to which the said *John Blakeney* in answer, said, with an Oath, that Deponent might see her, but that he, this Deponent, should not take her away; but this Deponent saith, That he, this Deponent, went into the said *John Blakeney*'s House, and there served the said *Sarah Weedon* with the said *Subpoena*, as aforesaid. And upon this Deponent's serving the said *Sarah Weedon*, as aforesaid, she said she thought she was to have been sent for a *Thursday*; upon which, Deponent said, she, the said *Sarah Weedon*, might then come, for it would be Time enough, and that Deponent would take her very safe to *Dublin*. That thereupon, the said *John Blakeney*, who was present at the said Service and Discourse between the said *Sarah Weedon* and Deponent, said, That she the said *Sarah Weedon* should go, and that he would take care to send her in a proper Time. And this Deponent saith, That the said *John Blakeney* having behaved and expressed himself in a very angry Manner, and being greatly displeased, as this Deponent understood by him, and as this Deponent verily believes, that Deponent had come on the aforesaid Errand to serve the said *Subpoena*; and the said *John Blakeney* having declared, with Protestations and Oaths, that he would send *James Magrath* to *Galway* Goal, and that he would let the said *Magrath* know, that there were Courts in the Country as well as in *Dublin*; the said *John Blakeney* having seen the said *James Magrath* with Deponent, when Deponent first met the said *John Blakeney*, as aforesaid; this Deponent was greatly affrighted; and finding it to no Purpose to expect to bring the said *Sarah Weedon* to *Dublin*, to give Evidence in pursuance of the said *Subpoena*, by Means of the Obstruction and Opposition of the said *John Blakeney*, though this Deponent verily believes, were it not for such Opposition of the said *John Blakeney*, that the said *Sarah Weedon* would readily have come with this Deponent in Obedience to the said *Subpoena*; this Deponent therefore went away. And when Deponent came up to the said *James Magrath*, who waited for Deponent at a little Distance from the said *John Blakeney*'s House, this Deponent apprehending from the Declarations and Threats of the said *John Blakeney* towards the said *James Magrath*, that it would be most prudent and safe for the said *James Magrath* to get off as fast as he could, this Deponent therefore desired the said *James Magrath* to make the best of his Way; and that when Deponent turned the Corner of the Avenue, Deponent would change Horses with the said *James Magrath*, Deponent believing the Horse that Deponent rode to be better than that rode by the said *Magrath*; and accordingly the said *John Magrath* and Deponent rode off, and Deponent changed Horses with the said *Magrath* when they got some Distance from the said *John Blakeney*'s House. And Deponent saith, That when the said *Magrath* and Deponent had gone forward for some Time, this Deponent, looking behind him, perceived several Persons on Horseback pursuing, as this Deponent apprehended, the said *James Magrath* and this Deponent, which gave this Deponent the greater Reason to fear some Danger, and thereupon Deponent pushed forward as fast as his Horse could carry him, and by that Means escaped any Danger or Insult that might be intended by the said Persons, who, Deponent verily believes, were sent in Pursuit of this Deponent, or of the said *James Magrath*, by the said *John Blakeney*. And this Deponent saith, That by the aforesaid Means of said *John Blakeney*, this Deponent could not carry the said *Sarah Weedon* to *Dublin*, to give Evidence in pursuance of the said *Subpoena*; and this Deponent verily believes, the aforesaid Opposition and Behaviour of the said *John Blakeney* was merely to prevent the said *Sarah Weedon*'s coming to *Dublin* to give Evidence against the said *Mary Heath*.

But the Court made no Rule.

On the twenty-first Day of *November* 1744, the Counsel for the Prosecutors moved the Court for a Writ of *Habeas Corpus* to be directed to *Colonel John Blakeney*, requiring him to have the Body of *Sarah Weedon* before the Court; and grounded this Motion on the following Affidavits: Sworn the 8th of *November*.

The King against *JOHN WEEDON*, of the City of *Dublin*, came *John Blakeney*, Esq. This Day before me and made Oath, That *Sarah Weedon*, this Deponent's Mother, is now detained against her Will, and without any legal Process at Law or Warrant against her, at the House of *John Blakeney*, Esq. at *Abbott*, in the County of *Galway*. And this Deponent saith, That on *Tuesday* the Thirtieth Day of *October* last, this Deponent was at the said House of the said *John Blakeney*, with Deponent's said Mother, in order to carry her away from the said *John Blakeney*, but this Deponent could not. And this Deponent further deposes, That in the Evening of the said Thirtieth Day of *October*, this Deponent went with his Brother, *Edward Weedon*, to the said House of the said *John Blakeney*, in order, if they possibly could, to carry their said Mother away; but the Gates of the said *John Blakeney*'s Yard, and the Doors of his House having been shut and locked, this Deponent and his said Brother knocked at the Gate, and the said *Sarah Weedon* looking out of a Window up one Pair of Stairs in the said House, desired this Deponent and his said Brother to go off as fast as they could, for that the Doors were locked upon her, and she could not get out; and that if this Deponent and his said Brother did not immediately go away, they would be knocked on the Head. Whereupon this Deponent and his said Brother went away, being afraid of Danger if they staid any longer; and this Deponent verily believes, the said *John Blakeney* will, for some unlawful Ends and Purposes, continue to detain the said *Sarah Weedon* against her Will, and by Force and Durels, and without any Authority for so doing.

The King against *EDWARD WEEDON*, of the *Gravelly-Hill*, in the County of *Carlow*, came this Day before me and made Oath, That *Sarah Weedon*, this Deponent's Mother, is now detained against her Will, and without any legal Process at Law or Warrant against her, at the House of *John Blakeney*, Esq. at *Abbott*, near *Castle-Blakeney*, in the County of *Galway*. And this Deponent further deposes, That in the Evening of the Thirtieth Day of *October* last, this Deponent went with his Brother, *John Weedon*, to the House of the said *John Blakeney*, in order, if they possibly could, to carry their said Mother away; but the Gates of the said *John Blakeney*'s Yard, and the Doors of his House having been shut and locked, this Deponent and his said Brother knocked at the Gate; and the said *Sarah Weedon* looking out of the Window up one Pair of Stairs in the said House, desired this Deponent and his said Brother to go off as fast as they could, for that the Doors were locked upon her, and she could not get out; and that if this Deponent and his said Brother did not immediately go away, they would be knocked on the Head. Whereupon, this Deponent and his said Brother went away, being afraid of Danger if they staid any longer. And this Deponent verily believes, the said *John Blakeney* will, for some unlawful Ends and Purposes, continue to detain the said *Sarah Weedon* against her Will, and by Force and Durels, and without any Authority for so doing.

Mr. Thomas Blakeney, Attorney, informed the Court, That to his Knowledge the material Facts mentioned in the foregoing Affidavits were false; and offered that *Colonel Blakeney* should answer those Affidavits, if those concerned for the Prosecutors would agree he should do so at Peril of Costs, and would undertake to pay the Costs. This Offer *Mr. Mac Kercher*, then present in Court, declined. *Mr. Blakeney* then desired, that *Edward* and *John Weedon*, who made the Affidavits, should be ordered to attend, and undertook to falsify their Affidavits, by Affidavits. And accordingly, the Court put off the Motion till next Day, and ordered the said *Edward* and *John Weedon* to attend then, and *Mr. Blakeney* to make Affidavit in the mean time.

On the twenty-second Day of *November* 1744, the above Affidavits of *John* and *Edward Weedon* were read; and the following Affidavits of *Mr. Thomas Blakeney* and *Edward Kilkelly* were produced and read.

The King against *THOMAS BLAKENEY*, Gent. maketh Oath, *John Blakeney*, Esq. That he very well knows *John Blakeney* of *Abbott*, in the County of *Galway*, Esq. that he is this Deponent's near Relation, and lives within two Miles of this Deponent's Place of Residence in said County, and that he, his Family, and this Deponent's Wife and Family frequently visit each other. Deposeth, That on the Day but one after a Verdict was given in the Court of Exchequer on a Trial, which was had between the Lessee of *James Annesley*, Esq. and the Earl of *Anglesea*, this Deponent received a Letter from this Deponent's Wife, wherein the mentioned that old *Mrs. Weedon*, who then lived at *Abbott*, said, That she lived for many Years with Lord and Lady *Altham*, and that said Lady never had a Child while in *Ireland*; but that one *Juggy Landy* had a Child called *James Annesley*, and that Lord *Altham* was supposed or deemed to be his Father, or to that Purpose; which Letter Deponent shewed to several Gentlemen, and was the first Account Deponent ever had of said *Mrs. Weedon*'s knowing any thing of that Matter, or of her living in said Lord *Altham*'s Family. Deposeth, that some time about last *Christmas* Holidays this Deponent was at *Abbott* aforesaid, and there saw the said *Mrs. Weedon*, and asked her, whether she lived with Lord and Lady *Altham*, and if said Lady ever had a Son? And *Mrs. Weedon* declared that said Lady never had any Child whatsoever since her coming into *Ireland*, to the Time that she and Lord *Altham* had separated. That Deponent asked said *Mrs. Weedon* if she knew *Jemmy Annesley*, or whose Son he was; that said *Mrs. Weedon* said she did know *Jemmy Annesley*, and that he was the Son of *Juggy Landy*, and not of Lady *Altham*; wherefore Deponent always did and does believe, that said *Mrs. Weedon* is a material Evidence for the Earl of *Anglesea*, and not for the said *James Annesley*. Deponent further deposes, That the said *Mrs. Weedon* has been for several Years past Servant to the said *John Blakeney*, and lived with him at *Abbott* aforesaid; and deposes, That on *Saturday* the third Day of *November* Instant, this Deponent called upon the said *John Blakeney* at *Abbott*, in this Deponent's way to *Dublin*, and there saw the said *Mrs.*

Mrs. Weeden, and depose, That she was so far from being confined, or under any Manner of Restraint, that she was at full Liberty; that the Doors of the House were open, and that she might have gone in or out, or to any Place she thought proper. And depose, That Deponent was at the same Time informed by the said John Blakeney and his Lady, which he believes to be true, that at 12 o'Clock at Night the Tuesday before, some People came about his House, and that they had taken or stolen away his Servant John Weeden, and that he also believed, they also intended to take away the said Mrs. Weeden; for that he was informed they had a Horse with a Pillion, and that said John Weeden rode or travelled on the said Pillion. Depose, That this Deponent met said Mrs. Weeden in the common Hall of said House at Abbott on the Saturday aforesaid; and that she begged of this Deponent to enquire for her Son John, as she called him, as soon as Deponent should arrive in Dublin, and to send him Home, for that she was very sure he would return to his Service, if he got but once sober, but that she very much feared they would keep him always drunk; and seemed greatly troubled at his being taken away. That Deponent promised to enquire for him, the said John, and to tell him what she desired. Depose, That on Thursday, the eighth Day of November instant, the said John Weeden, together with Deponent's Servant, called upon this Deponent at a House, where Deponent was at Dinner in Dublin; that Deponent told said John Weeden, he was sorry he had quitted his Service without his Master's Leave, and also told him what his Mother said to this Deponent as aforesaid, and that she expected he would go back. Whereupon the said John said, he never would, for that he was to be much better provided for. And Deponent having asked him by whom? he, the said Weeden, said, it was by the young Earl of Anglesea. Whereupon Deponent smiled and said, he was not Earl as yet. That said John thereupon said, that whether he was to be Earl, or not, he would provide for him, and, at the same Time, wished that his Mother would come up, for that, if she did, she would be much happier, and have much easier Bread than she had where she lived. Depose, That he very well knows that the said John Weeden has been for several Years past Servant to the said John Blakeney, and lived with him in his House at Abbott aforesaid, until he quitted him in the Night of the thirtieth of October last; and Deponent verily believes, the said Mrs. Weeden never was, nor is she now, as this Deponent verily believes, under any Manner of Restraint, or in any Sort confined by the said John Blakeney, or any other Person; but verily believes, she is at full Liberty to go where she thinks proper. And saith, he knows that the said Mrs. Weeden has been applied to, on Behalf of the Earl of Anglesea, to attend at Wexford, there to be examined as a Witness on his Lordship's Behalf, on a Commission, which Deponent believes, is, and has been speeding there for some Time, in a Cause depending in the High Court of Chancery in England, wherein the said James Annesley is Plaintiff, and the said Earl of Anglesea is Defendant.

The King against } EDWARD KILKELLY, of Liff, in the County of Galway, Cooper, came this Day before me and made Oath, That on Friday sevennight this Deponent was at the Defendant's House at Abbott, in the County of Galway. And this Deponent saith, That as he was going to the said House he saw Mrs. Sarah Weeden, who is, and for a considerable Time hath been, Servant to the Defendant, and whom Deponent knows very well, without the Gates of the said Defendant's Yard, as if she was returning from the Place where the Cows were milking, and had, as Deponent apprehended and believed, some Milk in her Hands carrying into the House. And this Deponent saith, she the said Sarah Weeden was alone, and not in any Sort of Restraint or Confinement; and Deponent afterwards, on the same Day, saw the said Sarah Weeden going about her Business in the said House, and in no Restraint or Confinement; and Deponent conversed with the said Sarah at that Time about several Matters, and she did not mention any Sort of Restraint or Confinement, but told Deponent her Son John Weeden was gone away, and seemed much concerned at it. And this Deponent is very sure the said Sarah is not, nor was not at any Time put into any Sort of Restraint or Durels by the Defendant.

Court.] Call John Weeden.

JOHN WEEDON.

Mr. Harward offers to speak.

Court.] We have nothing to do with the Birth of James Annesley; here is Affidavit against Affidavit, we must hear which of these Affidavits is true. We are imposed on by one Affidavit or other; the Honour of the Court is concerned, and therefore, before we do any Thing, we will hear what John Weeden has to say.

Mr. Har.] With humble Submission, I conceive the hearing of us after this Person is examined is not a proper Time; this is now my Time to offer what I have to say; I shall have no Occasion to speak after the Examination is ended, and therefore beg leave to say a few Words now, which are, that if this Person is to be examined, I do apprehend it must be on the Foot of some supposed Transgression that he hath committed.

Court.] No, Sir, it is to discover the Truth. We will have no concealing of the Truth in this Court. Swear him.

Mr. Har.] I do not oppose your Lordship's Right to examine this Witness; but—

Court.] Read the Affidavit to him.

JOHN WEEDON is sworn.

Court.] You are now to declare the Truth, and nothing but the Truth, and you are now likewise to declare the whole Truth. You are not obliged to say any Thing to criminate yourself.

Q. Is your Name John Weeden?—A. John Weeden. Yes, my Lord.
Q. Are you the Son of Sarah Weeden?—A. Yes, I am, my Lord.
Q. Did you live with Colonel John Blakeney?—A. I did live with him.
Q. Is Sarah Weeden your Mother?—A. She is.
Q. When did you see her last?
A. I saw her the 30th of October in the House of my Master.
Q. Have you a Discharge?—A. I have not.
Q. When did you leave your Master?
A. I left him the next Day, the 31st of October.
Q. Why did you leave him?
A. I was afraid to appear to him, because that I was with my Brother.

Q. What Reason had you to fear appearing before him?
A. For Fear he should use me ill.
Q. Did he ever use you ill?—A. He never did.
Q. How came you then to be afraid? Who persuaded you to leave your Master?—A. Nobody at all. I came away on my own Accord.
Q. Did you desire your Mother to leave him before you came away?
A. I did.
Q. And what did she say to you?—A. She said she could not.
Q. For what Reason did she say she could not?
A. I could not find out the Reason.
Q. Did she tell you she durst not?—A. She said, that she could not.
Q. Did she tell you that her Master kept her there against her Will?
A. She did not tell me so.
Q. What Time of the Evening was it that you went to Colonel Blakeney's the first Time?—A. It was between seven and eight o'Clock.
Q. Was your Brother with you?—A. My Brother came along with me.
Q. What Time did your Mother speak to you out of the Window?
A. About half an Hour after Eight.
Q. What Time did you come away?—A. I came away by Day-light.
Q. What! the next Morning?—A. The next Morning.
Q. What Time? Was the Family up?—A. They were up, my Lord.
Q. Did you lye in the House?
A. I did not lye in my Master's House, because I could not get in.
Q. Where did you meet your Brother?
A. I was sent from Home to— for a Hound of my Master's. I went and got the Hound, and came to take a Mug of Ale at Glentane; and there I met my Brother; and my Brother said, I am come for my Mother; and I said, I would get her out of the House; and we went together, and when we came there, we found the Doors and the Gate locked, and she came to the Window, and said, that she could not go out: with that I was afraid of my Master, and a Boy came running out and said, My Master was coming with a Whip, and I made off as fast as I could.
Q. What Time was this?—A. It was about eight o'Clock.
Q. Did you find the Gate fastened?—A. I did, my Lord.
Q. What did your Mother say to you?
A. She said she could not go with us: And, says she, go away about your Business, or you will be knocked on the Head.
Q. Was your Brother there?—A. He was.
Q. Was he a Servant there?
A. No, but came to see whether my Mother was alive or not.
Q. Was your Mother a Servant there?
A. She was Servant two Years last Michaelmas.
Q. Was she a Servant at this Time?—A. She was at that Time.
Q. She said that she could not go?—A. She did, my Lord.
Q. For what Reason?—A. I cannot tell.
Q. Did she say, that she would not go?
A. She did not say that she would not go.
Q. Did you and your Brother desire Mr. Blakeney to let her go?
A. No, I was afraid to go to him.
Q. Did your Brother?—A. My Brother did not.
Q. Where was it that you proposed to carry her?
A. To Ballynasloe, to one Butty's.
Q. Where further?—A. We proposed to bring her to Dublin.
Q. Where?—A. To Mr. Annesley's.
Q. Are you in Mr. Annesley's Service?—A. I am not.
Q. Are you in any body's Service?—A. I am in Nobody's Service.
Court.] Hear your Affidavit read.
Clerk of the Crown reads the Affidavit.
Court.] Does he write his Name?
Clerk.] No.
Court.] Did your Mother ever tell you that she would come away?
A. She did not.
Q. Why did you ask her to come away in the Night?
A. Because my Brother came for her.
Q. Did she ever tell you and your Brother that she was compelled to stay where she was?
A. She did not tell us that she was compelled to stay.
Q. Do you understand your Affidavit? How came you to swear in your Affidavit that she was detained against her Will; and now you say she was not? What Religion are you of?—A. A Protestant.
Q. How came you to swear that positive Affidavit? Did any body read it to you?—A. Yes, an Attorney, Robert Reynell.
Q. Who is Robert Reynell?
Mr. Nelson.] He is my Clerk, my Lord, he read it to him.
Q. Did your Mother tell you she was a Prisoner?
A. No; but she told me, she was afraid of her Life.
Q. Are you sure of that?—A. I am, my Lord.
Q. Of whom was she afraid?
A. She was afraid of my Lord Anglesea, that she would be murdered by him.
Q. Was my Lord Anglesea ever in that Country?—A. He never was.
Q. Why should she run from her Master's House without Wages or Discharge, because she was afraid of Lord Anglesea? Is he a Person of such Authority and Power over Colonel Blakeney's Servants, as to terrify them from their Master's Service?
A. I cannot tell that, my Lord.
Q. Was she discharged at that Time?—A. She was not.
Q. Was she paid her Wages?—A. No.
Q. Did she demand her Wages, to come away?—A. She did.
Q. How do you know that, was you by?
A. I was not, but she told me she could not get her Wages.
Q. Was she afraid of Colonel Blakeney's doing her any Harm?
A. She was not, my Lord.
Q. Why did she apprehend any Harm from my Lord Anglesea, did he send for her?
A. There was last Spring a Man and a Chair came to bring her to Wexford, from my Lord, but she was an old Woman, and would not go.
Q. Was she summoned, or did he send for her of himself?
A. He served her with a Bit of Paper.

Q. Did

Q. Did he offer to force her to go?—A. He did not.
Q. Did you ever hear that Colonel Blakeney, or any Body in the House forced her to stay?—A. I never did.

More of the Affidavit is read.

Q. What Time was Mr. Blakeney's outward Doors usually lock'd in Winter-time?

A. Sometimes at Eight or Nine o'Clock, and sometimes not at all.

Court.] Where is Edward Weedon?—Crier.] Edward Weedon.

Court.] Where does your Brother live?—A. He keeps in Town.

Q. Is he in any Service?—A. He is not.

Q. Does he follow any Trade?—A. He has no Trade at all.

Q. Did he follow nothing?—A. He followed a Spade.

Q. Where did you get that Horse that you went to Mr. Blakeney's on that Night, the thirtieth of October?

A. From my Brother.

Q. Where did your Brother get him?—A. He brought him with him.

Q. From whence?—A. From Dublin.

EDWARD WEEDON.

Court.] Are you the Son of Sarah Weedon, that lives with Mr. Blakeney? Edward Weedon.] Yes.

Q. What time in October last did you go there?—A. The thirtieth.

Q. What time of the Day?—A. In the Evening.

Q. What time?—A. About seven or eight o'Clock.

Q. Were the Gates shut?—A. They were.

Q. Was it dark?—A. It was dark, my Lord.

Q. Did you see or speak to her that Night?—A. I did not.

Q. Did any body else?—A. My Brother did.

Q. What did she say?

A. She desired him to go off about his Business, and bring me with him, or else I'd be knocked on the Head, my Lord.

Q. Did she say she could not go?—A. She did, my Lord.

Q. For what Reason?—A. Because the Doors were locked.

Q. Did she say she had a mind to go with you?

A. No, she said no more.

Q. Did you or your Brother ask her whether she would go, and what did she say?

A. She said no more than desired him to go off, and bring me with him, for if we stayed there, I would be knocked on the Head.

Q. Was she kept as a Prisoner?—A. As far as I understand, she was.

Q. How come you to understand so?—A. Because the Gates were shut.

Q. What Time was this?—A. About seven or eight o'Clock.

Q. Were the Gates open when you came there first?

A. No, they were not. My Brother went up first to bring her out, and he told her that I was there, come from her; and she was coming out, and he came first, and he thought she was following him.

Q. How do you know this?—A. My Brother told me this.

Q. Is it usual for Gentlemen to shut their Gates at Night in the Country?

A. It is in the Country; my Mother said she was shut up.

Q. Did she say that she was shut up, or only that the Gates were shut?

A. She said as this, She should not come out, and desired my Brother to go off and take me along with him, for I'd be knocked on the Head.

Q. Did you hear her speak?—A. I heard her speak.

Q. What did you hear her say?

A. I heard her bid my Brother go off and bring me with him, for I should be knocked on the Head.

Q. Did she say nothing more?

A. She said no more, but shut the Window.

Court.] Read the first Part of his Affidavit.

Clerk of the Crown reads it.

Court.] How did your Mother know you were there?

A. My Brother knocked at the Gate.

Q. Did any Body come to the Gate?

A. Nobody; but my Mother opened the Window.

Q. Was she a Servant at that time?—A. She was.

Q. When did you see her before that time?

A. I went to her before that by myself, about a Month or five Weeks before, and she asked me if I heard anything concerning Mr. Annesley and my Lord Anglesea; I told her I did; and she said, For your Life, do not speak a Word, for you are in the midst of your Enemies here.

Q. Did you carry a Horse with you the 30th of October?

A. I did, my Lord.

Q. Did your Mother say any thing to you more, the time that you was with her before?

A. She said, I would be very desirous of seeing Mr. Annesley, if I was in Dublin.

Q. Whose Horse and Pillion was it that you were furnished with?

A. I hired them by the way.

Q. Who sent you to hire them?

A. I hired them by Mr. Annesley's Orders.

Q. Who gave those Orders to you?—A. Mr. Annesley himself.

Q. Your Mother said no more the time you went by yourself, but that you were among your Enemies there?—A. No more, my Lord.

Q. Was she a Servant in the House?

A. She was a Servant-Maid in the House, and, as far as I understand, she was forced.

Q. Who told you she was forced?—A. The Doors were all locked.

Q. Were they locked when your Brother went there?

A. They were open when my Brother came, my Brother went in.

Q. Where did you meet your Brother that Evening?

A. At a Place called Glentane.

Q. How long did your Brother stay before he came to you again?

A. He came out to me again in about three Quarters of an Hour.

Q. How soon after that did you return?

A. He told me that his Master followed him out with a Whip for to kill him.

Q. Did he tell you so?—A. He told me so.

Q. Did he venture to go back afterwards?

A. When he went back the Gates were shut, and he went round to the Backside of the House, where there was a Door, and knocked at it;

my Mother looked out of the Window, and said she could not go: And says she, go your way and bring your Brother with you, for he will be knocked on the Head.

Q. Did she tell you that she was confined or imprisoned?—A. She did not.

Q. Are you or your Brother in any body's Service?

A. We are in Nobody's Service.

Court.] Read the Affidavit.

Clerk of the Crown reads it.

Court.] How long is it since you lived at Gravelly-Hill?

A. I left it about two Months ago.

Q. Were you a House-keeper there?

A. I lived there with a Friend of mine.

Q. Can you write?—A. No, my Lord.

Q. Nor read?—A. No.

Q. How came you to make this Affidavit?

A. Them that examined me, drew it.

Q. Who were they?—A. Mr. Geoffrey.

Q. Is he here?—A. No.

Q. Did you tell him that your Mother was detained?

A. I told him as thus, that the Doors were locked, and she said she could not come.

Q. Did you tell him these Words that are in your Affidavit?

A. I told him no more or less than what I have given on my Oath here.

TO JOHN WEEDON.

Q. Did your Mother tell you that she was confined?

A. She did not tell me that she was confined.

Q. Nor you do not know it?—A. No, my Lord.

TO EDWARD WEEDON.

Q. Did your Mother tell you she was confined?

A. She did not tell me she was confined.

The Matter was then debated by Counsel, after which the Court delivered their Opinion, as follows.

LORD CHIEF JUSTICE MARLAY.

WE are of Opinion, in the first place, That no Habeas Corpus can be granted in this Case. A Habeas Corpus for the Liberty of the Subject is a Writ of Right, and may be applied for without an Affidavit of the Party, and was done in the Cases of my Lord Leigh, Sir Robert Viner, and Sir Robert Howard. In the Case of Sir Robert Viner, an Habeas Corpus was sued for, to obtain the Liberty of a Woman confined in his House; the Woman said she was not confined by him, but chose to stay with him. But this does not appear to us at all to be the Case here, that there is the least Restraint upon Sarah Weedon; but, on the contrary, that she is at her full Liberty; for notwithstanding these Affidavits of these Men, it does appear so. Edward Weedon of the Gravelly-Hill in the County of Carlow maketh Oath, that Sarah Weedon is now detained (sworn the 8th of November) by Colonel John Blakeney at Abbott, near Castle-Blakeney, in the County of Galway. John Weedon of the City of Dublin maketh Oath, that Sarah Weedon is now detained at the House of John Blakeney, Esq. at Abbott, in the County of Galway; in Terminis terminantibus the same; both illiterate Persons, and yet both make these positive Affidavits of her being under Restraint, when it appears she was at her full Liberty, not only before, but after these Affidavits were made. These Affidavits were made by Marksmen, and therefore the Court sent for the Person that drew the Affidavits, to know why he drew them in the Manner they appear to us; for, upon the Table, these Men have declared that they do not know, nay, they cannot say they believe, that she is restrained of her Liberty. Can we then, when they have declared that their Affidavits are not true, grant the Habeas Corpus? By no means. Consider the Consequence of these things: By taking a Horse in a Replevin, a Man may be guilty of Felony, if a Person has a mind to knock down every body that stands in his way, and procures others to impose upon the Court by Affidavits in order to prevent all Opposition; in that Case the Court will exert their Authority, and punish the Persons that imposed upon them. We are of Opinion, there is not the least Colour of granting the Habeas Corpus; for, to whom must it be directed but to Mr. Blakeney? If Mr. Blakeney does not obey the Habeas Corpus, he must be attached: If he does, he must come to Dublin; and the Prosecutor has declined to pay the Expence of all this.

The next Point to be considered is, whether these Men could be attached for falsifying their Affidavits? I am amazed to hear it said, there are no Precedents of Persons being attached for Prevarication and imposing on the Court: May be not in this Case, but in most great Causes, that have been long depending, such things have happened. Suppose a Man in an Affidavit to put off a Trial, should swear, that such a Bond was perfected, and he explains himself, when he comes to be examined, that he heard such a one say so; is not he guilty in Conscience of Perjury, and ought he not to be punished for Prevarication and for the Imposition? I can give Instances, where Persons have endeavoured by artful Affidavits to extort exorbitant Bail, for which they have been committed by the Court.

Now as to these two Persons, they have sworn in the most express Terms in their Affidavits, every thing which is necessary to induce the Court to grant an Habeas Corpus. I must own, if there was an Inducement to do this from filial Piety, I should be very tender how I committed them; but it is plain they are not induced by that Motive; what they did, they did it, that they might be employed, as well as others, by Mr. Annesley, not out of filial Piety to free their Mother, whom they knew to be at Liberty, nor is there the least Appearance that they had such a Motive. Therefore, as they have endeavoured to impose upon the Court, and injure an innocent Person, Mr. Blakeney, I think they ought to be committed.

Mr. Justice WARD.

THE only thing to excuse them is their Ignorance. But as the Matter now stands, it is plain that the Person who drew the Affidavits, knew they were false, knew that these Men swore to a Fact they did not know to be true. Really, a Man of Business must know the Practice in drawing Affidavits, and what kind of Affidavits will serve the End proposed by them; but these Men swear further, and say, that they told him the same Story they did now: If that be true, he drew these Affidavits

fully, he led them into Perjury, and is as guilty as they are, and should as certainly be punished, if we had him; but I find on Inquiry, he is not here; therefore, as we have Nobody else to punish, we must punish these Men, who have thus perjurated and imposed upon the Court.

LORD CHIEF JUSTICE.

It is a most wicked, profligate Thing in an Agent, to make an illiterate Man swear an Affidavit he knows to be false: Whether that be *Goofrey's* Case or no I will not say, because he is not here to clear himself, but it looks very like it.

Monday, the 4th of February.

Motions in Behalf of the Crown for putting off the Trial till next Term *.

[Mr. Solicitor General, for the Crown.

MY Lord, the High Sheriff has been applied to several Times to give a Copy of the Pannel, according to Custom, to the Agent for the Prosecutors; but he has not hitherto been able to procure one, though the other Party has."

"Lord Chief Justice.] The Sheriff could not give it without Leave of the Court."

"Mr. Solicitor General.] The Court is seldom or never applied to on that Account, the Sheriff usually gives Copies of the Pannel to the Parties, without any Application to the Court, two or three Days before the Trial; but supposing an Application to the Court necessary, why should he give it to one Party, and refuse it to the other?"

"Mr. Spring, for the Traverser.] The Gentlemen concerned for the Prosecution have served us with Notice of a Motion to put off the Trial, and therefore we hope they will make their Motion."

And desired the Notice might be read.

Clerk of the Crown reads the Notice, as follows, viz.

Counsel in Behalf of his Majesty will move the Court on Monday Morning next, to put off the Defendant's Trial till Friday next; which Motion will be grounded upon Affidavits this Day filed in the proper Office, and upon the Affidavits of *Mary Heath* and of *Daniel Mac Kercher*, Esq. made in this Cause in the last Michaelmas Term, and the Nature of the Case and Reasons to be offered.

Dated this second of February, 1744.

"Mr. Solicitor General. We desire first to see if there be a Jury; we have a Right also to know if the Jury have been rightly summoned."

"The Bailiffs being called to prove the summoning the Gentlemen mentioned in the Pannel, they appeared, were sworn, and the Pannel was called over."

"Mr. Solicitor General.] I observe, my Lord, that several of the Gentlemen mentioned in this Pannel are out of the Kingdom, and well known by all of us to be out of the Kingdom; several others live in distant Counties, out of the County of Dublin; some are old and infirm, and incapable of serving on Juries for several Years past; others have been dead several Years; and some are Six-clerks in Chancery, and Officers in the Custom-house, who neither can or are obliged to attend."

"Lord Chief Justice.] All Persons summoned ought to appear, and then shew Cause why they should be exempted from serving."

"The Jury being called over twice, eight of their Number only appeared."

"Mr. Solicitor General.] My Lord, I see only eight Gentlemen of the Jury attend, and if eight more of these in the Pannel had been in the Kingdom they would not have attended. Members of Parliament are exempted, and so are Officers in the Court of Chancery, and Custom-house. Others are disabled from attending by Absence, the Infirmities of old Age, and Death; so that if both Sides were prepared, as there is no Jury, there can be no Trial this Day; for Talesmen are not admitted on Trials of this Kind: Therefore we are under no Necessity of making our Motion for putting it off to Friday next."

"Court.] We had some Thoughts of bringing on the Trial next Wednesday, but there is a Sitting of *Nisi prius* that Day, and other Suitors are not to be injured. Let the Trial therefore be put off till Thursday, if it should be put off longer there would not be Time for Judgment that Term; but the Attornies should consent. Mrs. Heath, do you consent it should be put off?"

"Mary Heath.] Yes, my Lord."

"The Agent for the Prosecutors was asked whether he would consent to bring it on a Thursday; but he said he would not come into any such Consent, nor had he any Authority so to do."

The Counsel for the Traverser informed the Court, that their Witnesses were in Town at great Expence, and hoped the Counsel for the Prosecutor would agree to prosecute at the Day prefixed, and not then move to put it off longer.

"Lord Chief Justice. The Reasons given To-day for putting off the Trial, I can tell you, will not be sufficient next Thursday for putting it off any further; if the great Expences attending the Trial are to be saved, the sooner the Trial comes on the better."

"Mr. Solicitor General.] We intended to have tried this Question To-day; but Mr. Mac Kercher, who conducts this Affair, and is the only Person that thoroughly knows the Evidence proper to be produced to prove the Indictment, is on the other Side of the Water, detained by contrary Winds; and so likewise are some of our most material Witnesses, who are daily expected: There are seven Packets due. If Mr. Mac Kercher and our Witnesses come, we will immediately go to Trial; if not, we cannot."

"Mr. Bradstreet, for the Traverser.] I hope, my Lord, that both Parties shall be confined to particular Hours to examine their Witnesses in; for if the Prosecutors, who examine first, should take up a long Time, the Traverser might be thereby stinted in Time for the Examination of her Witnesses: I humbly conceive both Parties should examine an equal Number of Hours in Turn."

"Mr. Harward.] Such a Rule was never made, my Lord, I am pretty certain, on Trials of this Kind."

"Mr. Justice Ward.] I have had the Honour of being a considerable Time on the Bench; I cannot now pretend to bear Fatigue as well as formerly; but I hope I shall take care that the Jurors, or myself, shall not be in Danger of being destroyed."

* In the Motions for putting off the Trial, what is printed in Crotchets [], and marked with ("), are not in the Trial printed by Permission of the Judges, but taken from two other Copies of the Trial printed at that Time (one in Folio and the other in Octavo), in order to render it more complete.

"Lord Chief Justice.] Examining by Hours is not so unprecedented. It was the old Custom among the Romans, to examine by the Hour-glass. Gentlemen, I think proper to mention to you, That no Witness shall be examined, unless his Evidence be previously opened to the Court, and that one Counsel of a Side only is to examine."

Thursday Morning, February 7th.

[The Court being sat,

"MR. Solicitor General, for the Crown.] My Lord, I mentioned to your Lordship last Monday, that Mr. Mac Kercher and several of our most material Witnesses were on the other Side of the Water waiting for a Passage; if they had arrived, we should willingly have tried this Traverser To-day; but it has so happened contrary to our Expectation that they are not yet arrived, and therefore as we are not yet furnished with our material Evidences, or with any Person acquainted with the Evidence proper to be applied to prove the Facts in the Indictment, we cannot with Safety go to Trial. Colonel Weldon, my Lord, who is known to be a Gentleman of great Worth and Reputation, has been served with a Subpœna, but is extremely ill of the Gout in his Bed, and though a very material Witness and willing to give his Evidence, he is not able to travel to Town without endangering his Life, and the Prosecutors, without the Benefit of his Testimony, cannot properly proceed to Trial. I therefore only move your Lordship that this Trial may be put off till the first Day of next Easter Term."

"Mr. Serjeant Marshall, for the Crown.] The Traverser, my Lord, removed this Indictment in October last by Certiorari from the Commission of Oyer and Terminer into this Court on the very Day it was to have been tried, after she had put the Gentlemen for the Prosecution to all the Expence of a Trial, for Want of giving them previous Notice of her Intentions to put it off. And on the 7th of November when she appeared on her Traverser in this Court, on her bare Allegation that she was not prepared to take her Trial, she was farther indulged, and had till the 14th given her, to prepare herself for it, though the Gentlemen were then also ready for Trial."

"On the 13th, the Day immediately preceding this last Day appointed by the Court for her Trial, the Counsel for the Traverser again moved to put off her Trial on her single Affidavit, that she had some material Witnesses in England, and in remote Places of this Kingdom, and upon that Foundation alone her Trial was put off till this Term. We, my Lord, have given regular and timely Notice to the Agent for the Traverser, that we would apply to your Lordship to put off the Trial: Affidavits we have to shew that we are not prepared to come to Trial, and therefore we hope we shall have the like Indulgence with the Traverser to put it off till next Term, especially as this is the first Application of that Kind we have made, and as we have formerly been put to so great Inconveniences and Charges by the Traverser's affected Delays."

"If your Lordship pleases that Mr. Mac Kercher's Affidavit sworn the 13th of November last, which was read upon the Traverser's Motion to put off her Trial last Term, may be now read."

"Court. Let Mr. Mac Kercher's Affidavit be read."

The King against } Daniel Mac Kercher, Esq. as Page 433.
Mary Heath.

Mr. Marshall.] I pray, my Lord, that Mr. Nelson's Affidavit may be read.

Court.] Read his Affidavit.

The King against } RICHARD NELSON, of the City of Dublin,
Mary Heath. } Gent. maketh Oath, That he, this Deponent, being employed as Agent on Behalf of the Prosecutors, he prepared Briefs for Counsel, and sent several Subpœnas for Witnesses to several Parts of this Kingdom, to give Evidence on Behalf of his Majesty against the Traverser on her Trial, which was, as Deponent believes, appointed to be had on the 4th Day of February Instant. Saith, That by a Letter, which this Deponent lately received by Post from Mr. Mac Kercher, dated London, the 10th of January last, this Deponent verily believes said Mr. Mac Kercher did on or about the 17th Day of January last leave London, in order to come to this Kingdom, to carry on the Prosecution against the Traverser, the said Mac Kercher being one of the principal Persons concerned in carrying on said Prosecution; and verily believes, the said Mac Kercher is, and has been, at Park-gate or Holyhead for some Days past, and would have been here before this Time, if the Wind had served for a Passage; and this Deponent expects him in this Kingdom as soon as the Wind becomes fair for a Passage from Holyhead or Park-gate. Says, He believes that William Goofrey is a material Witness to be produced against Defendant, and believes said Goofrey and others, who are Witnesses, as Deponent believes, to be produced against the Traverser, are waiting with said Mac Kercher at Park-gate or Holyhead for a Passage, and believes, that an effectual Prosecution cannot be carried on against said Heath until said Mac Kercher comes to this Kingdom.

Sworn the 2d of February, 1744.

Mr. Marshall.] I pray, my Lord, that the Affidavit of Robert Kennedy may be likewise read, which will inform your Lordship of Colonel Weldon's State of Health.

Court.] Read his Affidavit.

The King against } ROBERT KENNEDY, of the City of Dublin,
Mary Heath. } maketh Oath, That on the 27th Day of January last he, this Deponent, served Arthur Weldon, Esq. with a Subpœna, issued out of and under the Seal of this Court, dated the 28th Day of November last, by delivering unto the said Arthur Weldon, at his House in Raben, in the Queen's County, a Copy of said Subpœna, and at same Time shewed him the Original, and offered him a British Shilling in Silver, which he refused to take. By which Subpœna, said Weldon, and others therein named, were required to be in this Court on Monday, the 4th Day of February then next, between the Hours of seven and eight of the Clock in the Forenoon, to testify on Behalf of his Majesty concerning a certain Perjury, whereof Mary Heath stands indicted. And saith, That at the Time this

Deponent served said *Weldon*, he told Deponent he would most willingly attend in pursuance of said Subpœna, but that he was so ill of the Gout, that he could not stand, or scarce stir, and that he would not venture his Life; and that the Week before he had the Gout in his Stomach. And saith, said *Weldon* then appeared to this Deponent to be very weak and ill, and was not, as Deponent believes, able to walk one Step, nor was he, as he believes, able to travel in a Coach or Carriage from his House to *Dublin* without great Danger and Hazard of his Life; and verily believes, said *Weldon* is not, nor has since been able, without the greatest Danger to his Life, to travel in a Carriage or otherwise to *Dublin*; and verily believes, said *Weldon* is a material Witness to be produced on behalf of his Majesty against the Traverser, on the Indictment for Perjury against her; and verily believes the said *Mary Heath* cannot be effectually prosecuted upon said Indictment without the Testimony of said *Weldon*; and believes said *Weldon* would readily attend to give Evidence on the Trial of said *Mary Heath*, if he could do it without endangering his Life; and verily believes, and doubts not but said *Weldon* will attend to give Evidence on behalf of his Majesty on the Trial of said *Heath*, in case the Trial be put off to next Term, and that said *Weldon* will be then able to travel with Safety to his Life.

Sworn the 6th of February 1744.

["Mr. Tisdal. My Lord, it is the Interest of Society to bring Offenders to Justice: The Gentlemen who conduct this Prosecution were fully prepared for a Trial before this Affair was removed by *Certiorari*, and since it was removed into this Court there was a Day appointed for Trial last Term; the Witnesses came to Town from several Parts, at great Expences, and in regard the Traverser was not then ready, the Trial was put off, which put the Prosecutors to great Hardships in preparing at different times for the expected Trial. The Affidavits which have been read have mentioned that some of our Witnesses are at the other Side of the Water, and that Col. *Weldon* has been served with a Subpœna, and would attend if possible. And for these Reasons we hope your Lordships will put off the Trial 'till next Term.

"Court.] Was Mr. *Weldon* bound over?

"Mr. Nelson.] No.

"Mr. Daly, for the Traverser.] I would humbly inform your Lordships, that when the Prosecutors applied to push on this Trial last Term, there was no Pretence then offered, that Col. *Weldon* was a material Witness for them. I pray that *Mary Heath's* Affidavit may be read."

Which was accordingly read, as likewise the others to oppose the said Motion.

The Traverser *Mary Heath*, as Page 432.

The King } THE Traverser, *Mary Heath*, maketh Oath, That her
against } Place of Abode is in *London*, in the Kingdom of
Mary Heath. } Great Britain, and Deponent having lived for several
Years with *Mary Lady Altham*, wife of *Arthur* late Lord *Altham*, was prevailed upon to come to this Kingdom in the Month of *October* 1743, in order to be examined as a Witness upon a Trial, that was had at the Bar of the Exchequer in this Kingdom in *Michaelmas* Term 1743, between *Campbell Craig*, Lessee of *James Annesley*, and the Right Honourable *Richard Earl of Anglesea*; and Deponent was examined on said Trial on behalf of said Earl. And saith, That after said Trial was over, Deponent was prevailed upon to continue in this Kingdom, in order to be examined as a Witness on behalf of said Earl in a Cause depending in the Chancery in *England* between said *James Annesley* and said Earl of *Anglesea*; and Deponent was examined as a Witness in said Cause in or about *October* last, by virtue of a Commission from *England*, which was then speeding at *Wexford*; but some time before Deponent was so examined, she was arrested upon a Warrant for Perjury, alledged to be committed by her in her Evidence on said Trial; and the Doors of the House, in which Deponent lodged in *Latten's-Court*, *Dublin*, or Liberties thereof, were broke open when Deponent was so arrested by a Parcel of Bailiffs or Setters, some of whom declared they had waited for an Opportunity to find Deponent alone. And when Deponent was so arrested, she was brought from her said Lodgings to *Henry-Street*, and from thence towards said *James Annesley's* House or Lodgings in *College-Green*; and in the Road, some of the Persons that arrested Deponent, or attended them, directed that Deponent should be brought to *Castle-Street*; and Deponent was accordingly brought to a Tavern in *Castle-Street*, and from thence to a Publick House, as Deponent believes it to be, in *Christ-Church-Yard*; where the Person, before whom Deponent was brought, declared, he believed it was not aailable Offence; and several Persons that appeared as Agents for said *James Annesley*, seemed to doubt whether Bail could be taken for Deponent; but at length said Person bound Deponent in Recognizance of one Thousand Pounds, and each of the Securities in five Hundred Pounds, to the best of Deponent's Remembrance, and bound Deponent to appear at the Sessions of *Kilmainham*, and refused to bind Deponent to appear at any other Place. And Deponent is informed and believes, that there were not any Examinations returned to *Kilmainham* against Deponent, but Deponent was bound over to appear at the Commission of *Oyer and Terminer* held in or about *October* last, and was obliged to give Security for Deponent's Appearance there. And deposeeth, That Deponent's Business and Affairs require her Attendance in *London*, and her being obliged to stay longer in this Kingdom will be very inconvenient and prejudicial to her; and saith, that the Attempt to put off Deponent's Trial is made, as she verily believes, with Intent to harrahs and distress Deponent, and the said Earl of *Anglesea* and *Charles Annesley*. And Deponent is informed, and verily believes, there are at this time in this City at least fourscore Persons that have been Subpœna'd and brought hither from different Parts of this Kingdom at great Costs and Expences to attend and be examined as Witnesses on behalf of Deponent upon her Trial. Saith, That several of said Witnesses are old and infirm, and believes in her Conscience, that if her Trial should be put off to another Term, several of her most material Witnesses may die; and verily believes it will not be possible at a future time to get her said Witnesses together, if they are once dispersed, or go to their respective Places of Abode. And saith, there are two Persons lately dead, that were very material Witnesses for Deponent.

Sworn the 6th of February 1744.

The King } MICHAEL LACY, of *Camolin*, in the County of
against } *Wexford*, Gent. maketh Oath, That he, this Deponent, has been employed by the Right Honourable *Richard Earl of Anglesea* in bringing several Witnesses to this City from several Parts of the Country, to give Evidence on behalf of the Traverser upon her Trial in this Cause; and saith, there are now, and for some Days past have been, in this City upwards of eighty Witnesses, who have been brought from different Parts of this Kingdom, in order to give Testimony on behalf of Defendant on her Trial, many of whom are Persons of Figure and Fortune, and have been brought and kept here at the Expence of said Earl and *Charles Annesley*, Esq. And saith, he hath made the exactest Computation he possibly could of the Expences of bringing said Witnesses and keeping them in this City, and the necessary Expence that must attend their being sent to their respective Places of Abode; and saith, the same, upon the most moderate Computation, will amount at least to seven hundred Pounds.

Sworn the 6th of February 1744.

The King } MARK WHYTE, of the City of *Dublin*, Gent. one of
against } the Attornies of this Honourable Court, maketh Oath, *Mary Heath*. } That he, this Deponent, is employed as Agent on behalf of the Traverser in this Cause, and was so employed by the Right Honourable *Richard Earl of Anglesea* and *Charles Annesley*, Esq; and saith, he hath laid out and expended to Lawyers, and other necessary Preparations for the Trial of the said Defendant, over and above the Expences of Witnesses, Attorney or Agents Fees, or preparing or copying Briefs, the Sum of three hundred Pounds Sterling and upwards, and also paid a Draft of fifty Pounds *English* Money, which was drawn on Deponent, to defray the Expences of some Witnesses that live and reside in *England*.

Sworn the 6th of February 1744.

The King } EDMOND BOURK, of *Collumkill*, in the County of
against } *Kilkenny*, Farmer, maketh Oath, That since the *B-Mary Heath*. } signing of *December* last he, this Deponent, has been employed to serve Subpœnas to testify and give Notices to Witnesses to attend and give Evidence on behalf of the Traverser, on the Trial appointed to be this Day; and that he attended several of said Witnesses to *Dublin* for that Purpose. And Deponent knows there now are in and about the City of *Dublin* upwards of thirty Persons, and believes there are upwards of sixty Persons attending as Witnesses on the Part of the Traverser, several of whom are Persons of Distinction and Fortune, and have brought with them several Servants and other Persons and Horses. And saith, he verily believes, and is satisfied in his Conscience, that Two Hundred Guineas will not defray the Expences of the Witnesses so in Town, their Lodgings, Servants, Horses and other Attendants for the Space of four Days. And saith, he attended the Execution of the Commission for the Examination of Witnesses at *Wexford*, in the Months of *September* and *October* last past, between the Earl of *Anglesea* and *James Annesley*, and was himself examined as a Witness on that Commission, relative to the Parentage and Birth of said *James Annesley*, and the Issue or supposed Issue of *Arthur* late Lord *Altham* by his Lady; and saith, he was credibly informed and believes, that *Dean Hughes*, late of *Eniscorthy*, Gent. and *Henry Giffard*, late of *Ros*, Gent. and the Reverend *William Hervey*, of *Bargybridge*, Clerk, were examined on said Commission, on behalf of said Earl, and believes said *Dean Hughes*, and *Henry Giffard* are since dead, and that the said Mr. *Hervey* was about *Michaelmas* last taken ill and his Life despaired of; and saith, that several of said Witnesses now in *Dublin* attending said Trial, are antient and infirm Persons, and live dispersed in several Parts of this Kingdom.

Sworn the 4th of February 1744.

The King } JOHN CAMPBELL, of maketh Oath, That
against } on the thirtieth Day of *January* last this Deponent *Mary Heath*. } left *Park-gate*, where he had been waiting for a Wind eight Days, and during his stay at *Park-gate* aforesaid, he heard nothing of *Daniel Mac-Kercher* or Mr. *Goostrey's* being there, and believes, if they had been there, he could not but have heard of them. That Deponent went from *Park-gate* aforesaid, across Land to *Holyhead*, where he staid but one Night, and got his Passage in the Packet, and arrived at *Skerries* the fourth Instant in the Evening; and that Deponent heard nothing of them at *Holyhead*; and believes they were neither at *Park-gate* or *Holyhead* at the time aforesaid.

Sworn the 6th of February 1744.

The King } ROBERT KENNEDY, of the City of *Dublin*,
against } maketh Oath, That he, this Deponent, having re-*Mary Heath*. } ceived from Mr. *Richard Nelson* several Subpœnas for Witnesses to appear on the fourth Day of *February* Instant, to give Evidence on behalf of his Majesty against the Defendant upon her Trial, this Deponent accordingly served a great many of said Witnesses with said Subpœnas respectively in the several Counties in this Kingdom, in which they live, and saith, a great many of such Witnesses are come to this City in order to give Evidence against said *Heath* on her Trial.

Sworn the 2d of February 1744.

["Mr. Recorder, for the Traverser.] The Bill was found in *October* by the Commission of *Oyer and Terminer*; and the Reason of moving the Indictment by *Certiorari* was, that it was impossible for the Traverser, in so short a Warning, to prepare for her Trial; and it so happening, that *Michaelmas* Term was so close on the Heels of finding the Indictment, she could not, notwithstanding all her Efforts, collect all her Witnesses from the remote Parts of this Kingdom, and from *England*, to prepare for this Trial. And therefore could it be imagined that it was to delay Justice, when the Traverser was only endeavouring to have an Opportunity of Defence? The Prosecutors then said they were ready; and pray why not the same Reason now of being prepared? they put themselves to unnecessary Expences last Term in preparing for Trial, the Fault of that is to be imputed to themselves; they had notice given them that Application would be made to postpone the Trial."

"Counsel for the Crown.] It clearly appeared to the Court last Term, that the Traverser had not made the least Effort, or taken one Step to prepare for her Trial; and that we had very short Notice of her

"Intentions,

"Intendings; and that only after they knew all our Witnesses were sent for and come to Town."

"*Mr. Recorder, for the Traverser.* The Traverser is at great Expence, her Witnesses being now in Dublin; and the Reason that was offered last Term for putting off the Trial, cannot subsist now, because both Parties have had sufficient Time to make the necessary Preparations for Trial. Pray, my Lord, what Foundation have they now to put off this Trial?"

"*As to Mr. MacKercher's Affidavit, wherein he says, that Mrs. Weldon is a material Witness for the Prosecutor; he never saw her, yet he ventures to say this; she is here to be examined, and will clear up that Matter, and obviate the Objection.*"

"*Counsel for the Crown.* Mr. MacKercher was informed of it by her Sons, and by many others to whom she had declared herself on that head."

"*Mr. Recorder.* The next thing to be considered, my Lord, is the Affidavit of Robert Kennedy, who swears, That Mr. Weldon is a material Witness, without giving any Account that he knows him to be so; this Person, who is only a Server of Subpoenas, ventures, from his own Knowledge, to know what is or what is not material. If the Agent in the Cause would swear it, there might be some Reliance on it. If this Trial is put off, my Lord, another Witness may be found next Term, which might be thought as equally material; so that this Gentlewoman, before she can have an Opportunity of justifying herself, may die in the mean time, under the Imputation of the Indictment."

"If they had produced the Affidavit of any Physician who attended Mr. Weldon, to certify his Illness and his Inability to come to Town, it would be more proper than the Assertion of the Server of Subpoenas: Besides, my Lord, a Man in the Gout, though he cannot walk, might be able to travel. But how a Person who is neither Attorney or Agent in the Cause, and who is not to be presumed to be in the Secrets of the Prosecutor, can swear Mr. Weldon a material Witness, is somewhat very extraordinary; besides, my Lord, since the Time of Service of the Subpoenas, which was the 27th of January, he may have recovered as to be able to come to Town, though indisposed then. But why was not this Gentleman thought of last Term, when the Prosecutors said they were ready? Therefore, considering the Circumstances of this Case, I hope your Lordships will not put off the Trial."

"*Mr. Sol. Gen.* My Lord, it appears that the Bill of Indictment was found against this Woman the 24th of October, yet Application was made on the 13th of November last to put off her Trial; she had that Interval of three Weeks time to prepare; but because she swore she had some material Witnesses who were wanting on her Trial, it was put off. I hope, my Lord, the Reasons which we offer will have the same Weight, till we can be properly prepared. Mr. MacKercher, who is one of the principal Managers of this Prosecution, and without whose Presence it cannot be carried on effectually, is detained on the other Side of the Water by contrary Winds, and if this Cause should be put off till the next Term, he may and probably will be here then; so that I hope we shall have the same Indulgence that the Traverser had, and that this Trial may be put off till the next Term."

"*L. C. J.* In the Affidavit of Robert Kennedy, there is no Addition to his Name, which is not very common in Affidavits."

"*Mr. Sol. Gen.* The identical Person is in Court, to be produced if required."

Robert Kennedy was called and sworn.

Mr. Daly. Do you know Colonel Arthur Weldon?

Robert Kennedy. Yes, I do, Sir.

Q. How do you know that he is a material Witness in this Cause? Who told you so?—*A.* I saw him sworn to what he could say.

Q. Where?—*A.* Before a Master in Chancery.

Q. Have you any other Reason?—*A.* I have not.

Court. Did you read his Affidavit?—*A.* I read his Affidavit, my Lord.

Mr. Daly. What Affidavit did you read?—*A.* An Affidavit sworn before a Master in Chancery at Maryborough Assizes.

Q. Was you present?—*A.* I was.

Court. In what Cause was it?

A. In the Cause of Richard Earl of Anglesea and James Annesley, Esq.

Mr. Daly. Was there any Cause depending at Maryborough?

A. No, I went there, and met him there and the Master in Chancery; Mr. Morton was present, and his Testimony was wrote; he swore to it, and I witnessed it.

Court. In what Cause?

A. They say, it was to be laid before the Attorney General of England.

Q. Are you used to Business?—*A.* I am not bred to the Law Business.

Q. Do you understand what is material in a Prosecution for Perjury, and what not?

A. I think, what appeared in that Testimony was very material.

Q. Did you shew that Affidavit to any of the Agents of Mr. Annesley?

A. Mr. Morton read it.

Q. Did you shew it to any Agent of Mr. Annesley?

A. I brought it to Dublin, and gave it to Mr. MacKercher.

Q. Do you know what is material Evidence in a Trial for Perjury, and what is in another Cause?

A. As far as my Reason directs me, I do.

Q. What Employment do you follow?—*A.* I keep a Beer-house and Shop, my Lord. I do import a great deal of Beer, my Lord.

Mr. Daly. I am sorry for it. Are not you a Peruke-maker by Trade?

A. No, I am not.

Q. Did you ever see Mr. Weldon before that Day you saw him at Maryborough?—*A.* I did.

Q. Where?—*A.* In Dublin, often.

"*Lord Chief Justice.* He is not a proper Person to distinguish material Evidence, and I observe that no Affidavit was made till Yesterday, that Mr. Weldon was a material Witness."

"*Mr. Tisdall.* The Public is concerned in this Prosecution; Trials are put off frequently in behalf of the Crown, on Affidavits of Witnesses not being able to attend: We hope the Crown and the Publick are at least intitled to the same Indulgence as was given last Term to the Traverser on her Application to the Court; why should she, my Lord,

"who by affected Delays put off her Trial so often before, be suffered to take advantage of our Weakness at present?"

"*Mr. Daly.* I would observe to your Lordships, that Mr. Levingstone, on the 11th of November last, swore an Affidavit before a Master in Chancery, in the Suit of Mr. Annesley against Lord Anglesea, that Colonel Weldon was in so bad a State of Health, that it was feared the Plaintiff would lose the Benefit of his Testimony; unless he was examined de bene esse; yet on the 13th, two Days after this Affidavit, Mr. MacKercher pushed to have the Trial brought on; so that it is plain they then thought they might proceed without Mr. Weldon's Evidence. My Lord, we have the Copy of Mr. Levingstone's Affidavit, which we beg leave may be read."

"*Mr. Harward* objects to the reading of Mr. Levingstone's Affidavit, which was made in the Court of Chancery, and says it is not an Affidavit in the Cause of his Majesty against Mary Heath; therefore he hopes it won't be admitted to be read. Besides, this is only a Copy of an Affidavit."

"*Court.* You do not object then to the reading the Affidavit, but a Copy of the Affidavit. Pray is not the Affidavit of Record, and ought not the Copy of a Record to be admitted to be read? Pray in the Exchequer Chamber would not the Copy of a Record be admitted to be read?"

"*Mr. Daly.* Suppose an Affidavit charging Perjury was made in the Court of Chancery, could it not be laid before the Grand-Jury?"

"*Court.* Gentlemen for the Prosecutor, shew us some Precedents why a Copy of Mr. Levingstone's Affidavit should not be read."

"*Mr. Harward* mentioned the Case of Edworth against Edworth against reading the Affidavit: And moreover, my Lord, tho' Col. Weldon was in such a State of Health, as made it prudent to examine him to preserve his Testimony; yet he might have been well enough to attend the Trial last Term."

"*Lord Chief Justice.* Are not Affidavits in the Spiritual Court read here on Prohibitions? There are no Precedents shewn why the Copy of Mr. Levingstone's Affidavit should not be read."

"*Arthur MacGuire* sworn to prove he compared the Copy which he had in his Hand with Mr. Levingstone's Affidavit on Record, and that it was a true Copy thereof, which was read."

The King } **ARTHUR MAGWIRE**, of the City of Dublin,
against } Gent. came this Day before me and made Oath, That
Mary Heath. } he compared the above Copy of an Affidavit with the Original Affidavit in the Usher's Office of his Majesty's High Court of Chancery in Ireland, and saith, the same is a true Copy, and that he saw *Hugh Swiney*, the Clerk in the said Office, sign the Name *St. Sibthorp*, Usher, thereto; and saith, the said *Hugh Swiney* usually attests Copies of Affidavits, and believes he has a Power so to do.

Sworn this 7th of February 1744.

James Annesley, Esq. } **WILLIAM LEVINGSTONE**, Esq. came
Plaintiff, } this Day before me and made Oath, That on
Richard Annesley, } Sunday the eleventh Day of this Instant November,
called Earl of Anglesea, and others } this Deponent saw *Arthur Weldon*, Esq. at his House
Defendants. } in the Queen's County, and that the said *Arthur Weldon* was then in a weak State of Body, inasmuch that he then seemed to Deponent to be in danger of dying; and this Deponent saith, the said *Arthur Weldon* is a very material Witness on behalf of the Plaintiff *James Annesley* in this Cause; and Deponent saith, if the said *Arthur Weldon* be not shortly examined in this Cause, the Plaintiff will in all Probability lose the Benefit of his Testimony.

Sworn before me this 21st Day of November, 1744.

William Levingstone. } **THOMAS STOPFORD.**
True Copy,
Ex. by *Bowden.*
STE. SIBTHORP, Usher.

"*Mr. Walsh, for the Crown.* My Lord, if there was no other Foundation to put off this Trial but the Affidavit that has been made of Mr. Weldon's being a material Witness, I humbly apprehend, it would be a sufficient Reason. The Person who made the Affidavit was examined before your Lordships. He has mentioned why he was a material Witness; and though he is not a Person of great Distinction, as *Mr. Recorder* would have him, he is a very creditable, honest Man, and has a Right to be believed on his Oath, as well as any other Man."

"My Lord, there are several other Witnesses who are very material to attend on this Trial, who cannot possibly attend if it comes on now, and not proper to disclose who they are, or whether they are or are not material, it is sufficient that they are sworn to be material. We were ready to come to Trial last Term, and tho' we should not then have had the Attendance of Mr. Weldon there, we might have had other Witnesses to prove the Point for which we now want his Evidence. Those Witnesses we have not at present, therefore considering the Disabilities we are under at this Time, we hope we shall be indulged for once, as well as the Traverser has been before."

"*Lord Chief Justice.* Gentlemen, did you ever know of a Trial under these Circumstances to be put off without paying Cost?"

"*Counsel for the Prosecutors.* There was the same and stronger Reason last Term for the Traverser's paying Cost, and yet it was denied us."

"*Mr. Harward.* My Lord, this Bill of Indictment comes here as well supported as any Indictment that was ever brought into this Court. I say it is supported by a Verdict found by twelve Gentlemen of as great Repute and Character as ever were upon any Jury, who had it for fifteen Days under their Consideration. There is no Imputation, my Lord, of its being an idle or wanton Prosecution. This Indictment was removed by *Certiorari*. It is no Writ of Right that the Subject has, but in reality it is an Indulgence to the Subject. The repeated

"Indulgence

"Indulgence given to the Traverser in not bringing on her Trial last Term, has been mentioned already, and as this Prosecution is in behalf of the Crown, we hope an equal Hand will be carried between his Majesty and the Subject. Mr. Mac Kercher has sworn in his Affidavit, that some material Witnesses to be examined in this Cause had necessary Calls to England; and that if the Traverser's Trial should be put off to this Term, that it would be almost impossible for them to attend, nay it was plainly told the Court they could not attend: We find he is not here, and other material Witnesses are at the other Side of the Water waiting for Wind; which I say adds more Credit to Mr. Mac Kercher's former Affidavit, for it is fallen out as he said, that if the Trial was postponed, it was next to an Impossibility that they could attend.

"Mr. Nelson has mentioned a Letter he received from Mr. Mac Kercher, that he expected him with the first fair Wind. Kennedy has mentioned in his Affidavit the ill State of Health of Colonel Weldon, and that he was a material Witness.

"As to the Objections that Kennedy was not Agent, and therefore cannot know whether he was a material Evidence, I humbly rely on it, my Lord, that it can have no manner of Weight; for Kennedy has told your Lordships, that he was present when Mr. Weldon swore his Affidavit, and had the Custody of it, and therefore must know the Purport thereof, and how far his Testimony might be relative to this Trial. I beg leave to say, that the single Testimony of Mr. Weldon, as he is a Gentleman of an unexceptionable Character, might be put in the Scale against many Witnesses, not so well established in point of Reputation; and the Want of his Evidence is a sufficient Motive to postpone the Trial.

"I must further observe to your Lordships, that last Monday there appeared in the Box only eight of the Jury mentioned in the Pannel; so that if both Parties were prepared, the Trial could not have come on that Day; and as this Day's Application is the first and only one on our Part for putting off the Trial till next Term, I hope your Lordships will indulge us in it."

"Mr. Robbins mentioned, that the same Cause of putting off the Trial last Monday still subsists, and urged very strongly some of the Reasons offered by the other Counsel for putting off the Trial."

"Mr. Mac Manus.] My Lord, it fully appears from the several Proceedings, the affected Delays given by the Traverser to postpone her Trial to this Term.

"The Bill of Indictment (as has been already observed) was found in October last; and the Traverser, to postpone her being tried at the then Commission of Oyer and Terminer, brought a *Certiorari*; so that I beseech your Lordships to consider, that the Indictment comes into this Court at the Prayer of the Traverser. The Court were bound of right to avoid it at the Instance of the King; because every Indictment being at the Suit of the Crown, he has a Prerogative of suing in what Court he pleases; but at the Request of the Defendant a *Certiorari* is seldom grantable for the Removal of an Indictment before the Justices of Goal Delivery, and very rarely if ever for removing an Indictment for Perjury, Forgery, and other heinous Misdemeanours, where the Publick is so nearly interested, in regard such Crimes deserve all possible Discountenance; and the *Certiorari* might delay, if not wholly discountenance the Prosecution, and so delivered in 1st Syder. 54.

"It is likewise delivered there as Law, if a Cause be moved out of an inferior Court, it ought to be tried the same Term that it is removed, that the Party may not be delay'd by *Certiorari*. My Lord, after it was removed, and the Traverser appeared on her Traverse in this Honourable Court, the 7th of November, she had Time given her 'till the 14th; when the 14th came, she again moved to put it further off 'till this Term.

"The Prosecutors very justly opposed the Motion last Term, of delaying this Trial any further, 'till this Term, in regard they were at great Expences, and had several times prepared for it; yet on the Affidavit of Mrs. Heath, that she had not some of her material Witnesses ready, it was postponed: so that I say, my Lord, this Trial was put off, at her Instance, at a Time when by Law she should and ought to have been tried, and those Gentlemen had a Right to demand a Trial.

"There have been Affidavits read to your Lordships how material Mr. Weldon's Evidence is, and that he cannot now attend, but that the next Term it is hoped he will be able to give his Attendance, which is a strong Motive to put off this Trial in behalf of the Crown. I beg leave, my Lord, to say, that the Case of an Indictment is not like that of an Information. The Promoters of an Information may be guilty of a Default, but no Laches or Default can be imputed to the Crown, at whose Instance all Indictments are supposed to be.

"My Lord, it is equally odious to punish the Innocent as to let the Guilty go free: your Lordship put off the Trial last Term, lest the Innocent should be punished, upon a Presumption of Innocence till the contrary appeared; and I am sure, my Lord, you will be equally careful this Day not to let the Guilty go free, which may be the Case if the Prosecution be now hurry'd on, in the Absence of several material Witnesses, who by Sickness and other Accidents are now prevented attending at this Trial, and in the Absence of the Person who conducts it. From these Circumstances I hope your Lordship will put this Trial off 'till next Term."

"Mr. Callaghan.] In all Cases, my Lord, where any Indulgence is to be shewn, it is granted to the Crown; yet I do not say but publick Justice should be properly and equally administered: The Accusation founded on this Indictment carries a great Degree of Presumption, tho' not Conviction; the Objection of Kennedy's not knowing whether Mr. Weldon is a material Witness or not, with great Submission, can have no Force; other Persons may sometimes know who are material Witnesses as well as Men of Business. If a Person stands unimpeached in his Character, there can be no Objection to his Testimony. It is every Day's Experience to put off Trials, if it appears that a material Witness is visited with a Disorder, and can't attend; in the present Case it appears several are absent.

"As to what is offered on the other Side, that this may be a Foundation for finding out other material Witnesses that cannot be present next Term; That, my Lord, will have no great Weight, for by the same Reason no Trial could ever be put off for want of material Evidence.

"Moreover, my Lord, if the Trial be put off 'till next Term, and the Traverser should then happen to be acquitted, it will be so much the more to her Honour; but if she escapes for want of due, proper, or effectual Prosecution, she will not stand as unimpeached from publick Censure as otherwise she would.

"It has been already mentioned what Expences we have been put to last Term, which might have been saved if we had known in time that her Trial was to be delayed; but Care was taken that it should not be known, 'till the Prosecutors had been put to as great Charges as if the Trial had come on: And as great Mischiefs must arise if this Trial should not be postponed, I hope, my Lord, it will not be brought on 'till next Term."

"Mr. Harding.] All Questions are to be determined by the Importance of Evidence: I say, my Lord, in a Case of this kind, that on the Weight of material Evidence all Questions must ultimately depend. If it appears that we have material Witnesses, who cannot attend at present, and if it so happen that we must lose the Benefit of their Testimony if this Trial comes on, this Matter must still remain in the dark; and if the Traverser should be acquitted for want of such important Evidence, she will in that respect stand under an Imputation. And I must beg leave to say, that I admire why Gentlemen from such Circumstances should be fond of trying this Traverse now, since the Prosecutors are not prepared; and that Mrs. Heath's pressing on the Trial this Day, when she knows the Prosecutor is not ready, is an Argument that she knows herself guilty. My Lord, the Gentlemen of the other Side have laid great Strefs upon the Objection that Robert Kennedy could not know that Colonel Weldon was a material Witness. The Charge in the Indictment is, that Lady Albam was not with Child, nor never had a Child at Dunmain. Surely, my Lord, he may know how far this Charge may be collected from the Affidavit of Mr. Weldon, which he had seen, and had in his Custody, and which must be relative to this Matter. Besides, my Lord, from the Conversation that Kennedy had with Mr. Weldon, that he would willingly attend, but that he was so ill that he could not then venture his Life to travel; I say, with humble Submission, from this very Declaration he might know he was a material Witness. Pray, my Lord, if Mr. Weldon was not a material Evidence, would not he have told Kennedy at that time that there was no occasion for his Testimony?

"This is a Matter of very great Consequence; and if the Prosecution cannot be effectually carried on, the Traverser must be acquitted. The Publick have a Right to a fair, impartial Enquiry into this Affair; and as it can be of no Inconvenience to Mrs. Heath that this Trial should be postponed, but will be of the greatest Service to her if she be acquitted with Honour on an effectual Enquiry, but not so much to her Honour if she be now acquitted; therefore we hope her Trial will be postponed 'till next Term."

"It was further observed by the Counsel for the Prosecution, that the Traverser had put her Trial off three several Times; that these affected Delays on her Part, were by so much the greater Hardship on the Gentlemen who carry on the Prosecution in behalf of the Crown, as they had not only postponed Business of the highest Consequence to them in England, in order to attend it; but as the Traverser's Intention of moving for Delay has always been industriously concealed from them until the very Day that her Trial should have taken place, or the Day immediately preceding it; by which means they were each of these three Times put to the same Trouble and Expence as if they had actually tried her with Effect. This Proceeding, my Lord, to all disinterested Persons, must appear not only vexatious, but calculated to promote the oppressive System of this unfortunate Gentleman Mr. Annesly's too powerful Enemies, of worrying him and his Friends out by unnecessary Expence and Delay. This Woman must have known her own Intention of putting off her Trial to this Term, early enough to have given Notice of it to those Gentlemen, so as to have prevented the great Expence of Money and Time, and the great Trouble that they and their Witnesses have been at in preparing so often for her Trial; while she remained in a supine Security of having her Trial delayed, and relied on the Indulgence of this Court, without taking one Step to prepare for it. We therefore hope, my Lord, that for these and many other Reasons already mentioned, we shall this Day, for once, meet with the same Indulgence of putting off this Trial till next Term, especially as this is the first Application of that kind we have made, and as we have so good a Right to expect it."

After which the Court delivered their Opinion as follows.

Mr. Justice BLENNERHASSET.

The Prosecutor has moved on two Affidavits to put off this Trial till next Term.

On Monday last he moved to postpone the Trial till Friday, which Motion was granted.

The Affidavits now moved on are, one of Kennedy, an Ale-seller and a Server of Procces.

And the Affidavit of Mr. Nelson, who is the Agent and Attorney for the Prosecutor.

The Strength of Kennedy's Affidavit consists in this, that one Mr. Weldon is a material Evidence.

I must observe, that upon the Motion to postpone the Trial 'till Friday only, there was no Affidavit made concerning Mr. Weldon; for Kennedy's Affidavit, in which only Mr. Weldon's Name is mentioned, appears to have been sworn Yesterday.

There was an Affidavit of Mr. Mac Kercher's, which he made the last Term, in opposition to the Motion to put off the Trial then made by the Traverser.

This Affidavit has been this Day read.

There Mr. Mac Kercher swears, that he had a great number of Witnesses attending, and that he was ready to prosecute.

At this time Mr. Weldon was not thought of; he has been summoned since, but to this Hour he is not bound over to prosecute.

Nor was he examined on the Trial in the Court of Exchequer.

Now, as to the Affidavit of Kennedy, though it has all the Parts which generally make up Affidavits to put off Trials; for he swears to the same

motion

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of Mr. Weldon, and to his being a material Witness, and that he was not well when he was summoned; yet he goes, in my Opinion, so far, that he cannot well receive Credit.

For he takes upon him to swear also, that the Traverser cannot be convicted without his Testimony.

So that Mr. Weldon is the only Person who can give Evidence to convict this Woman, if we believe Kennedy.

But if we believe Mr. MacKercher, he swears he had a Number of Witnesses ready to prosecute the Traverser to Conviction, the Term before Mr. Weldon was thought of.

As to Mr. Nelson's Affidavit, it relates to Mr. Gosfrey only, that he has given Examinations in this Cause, and that he is in England; and to Mr. MacKercher.

I need not remark on this Affidavit, it is made by a Man of Credit in his Profession, and I believe it to be true.

But the Force of this Affidavit is taken away by an Offer made by the Traverser, who says, she will consent to have Gosfrey's Examinations read in Evidence against her upon the Trial, and that she will waive any Benefit which she might have by a Cross-Examination.

As to that Part of Mr. Nelson's Affidavit which is relative to Mr. MacKercher, it has no Weight with me; he says Mr. MacKercher is absent, and is a Manager in this Cause; he does not say he is a Witness, so that there is no Pretence to put off the Trial on that Account.

But the Counsel for the Prosecutor object that there is no Equality kept, if this Trial be not put off; say they,

The Traverser put it off last Term, and we should have the same Indulgence now.

The Case on the Traverser's Motion widely differs from the Case made by the Prosecutor on this Motion.

The Bill of Indictment was not found 'till the twenty-fourth Day of October, at the Commission of Oyer and Terminer.

The Traverser afterwards obtained a *Certiorari* to remove it to the King's Bench, which was not returnable 'till the first Day of Term. She then appeared, and immediately informed the Prosecutor, that she could not be ready for her Trial; she afterwards moved on Affidavits to put it off, and suggested that a Number of Witnesses were in England, and many dispersed in remote Parts of this Kingdom; she named many of them by Name; she swore they were material, and that it was not possible to have them that Term, but that she hoped to have them by this.

Upon these Affidavits the Trial was put off, and a Day of Trial appointed for this Term.

The Prosecutors opposed this warmly, made Affidavits that they were ready to prosecute, that their Witnesses were all in Town at great Expence to them, and they do not say now, by any thing they have sworn, but that they have every Witness now which they then had, except Gosfrey.

This was sufficient Notice to them to be prepared; they were not hurried as the Traverser must have been, if her Trial had been brought on before she could, from the Circumstances of her Case, have been prepared.

The Court, in my Opinion, should consider the prodigious Expence the Party is put to; I think it is sworn, that no less than fourscore Witnesses are now attending to give their Evidence in behalf of the Traverser, and that the preparing for this Trial has cost her already above seven hundred Pounds.

I consider also the heavy Imputation which lies on her Character, which she ought to have an Opportunity of clearing up, if she can.

And for these Reasons think she ought to have her Trial; but I submit to the Opinion of the Lord Chief Justice and Mr. Justice Ward.

Mr. Justice WARD.

The Progress of this Cause is easily recollected. The Bill of Indictment was found the twenty-fourth of October, at the Commission of Oyer and Terminer for the County of Dublin, against the Traverser for wilful and corrupt Perjury; notwithstanding which, and although the Verdict in the Exchequer was contrary to her Evidence, I shall suspend my Opinion until the present Jury have found her guilty, or acquitted her. Justice and the publick Good require, that Witnesses upon their Oaths should always speak Truth; yet I am apt to believe, were not private Persons affected in the Event of this Prosecution, every Circumstance, whether material or not, would not be so strenuously contended for.

Many Reasons made it improper to try this Indictment at the Commission; therefore my Lord Chief Justice granted a *Certiorari* to remove it into this Court; it is owing to that I see many Gentlemen upon this Jury, who could not have been so there, being Judges; it was fit the best Gentlemen for Fortune and Character in the County should be had to try a Cause of this Consequence; it was incumbent on the Sheriff to return such, and I believe he hath done his Duty.

The seventh of November the Traverser, called upon her Recognisance, appeared, and the Court appointed the fourteenth for her Trial; but on the tenth she moved the Court to put it off to this Term, on her Affidavit of several material Witnesses, naming them, being in several Parts of England; and remote Parts in Ireland, whom she could not possibly have in Time to make her Defence. This Motion was strongly opposed; but her Affidavit was so full, that it could not be refused her; and I must say, that in a common Case it would have required no longer Time than to read the Affidavit; and the Court appointed the fourth of February for the Trial. On this Motion Mr. MacKercher made an Affidavit, which now is become necessary to be considered; he swears that he is embarked in this Cause, and, as I understand him, an Agent; that he was then ready to prosecute and go on with the Trial of the Traverser. As it was obvious to object, if he was then ready, why should he not be so this Term? to answer which he goes on and swears, that several Persons interested, and Witnesses, were going to England, whom he apprehended he could not have next Term, and could not bring on the Trial without them. This looks like giving Notice he could not be ready this Term, and I confess if he, or the visible Agent on this Side the Water, had applied the Beginning of Term, and made the Necessity of their Witnesses going to England appear, and that they were not returned, and if the Traverser had been at no Expence, I should have gone as far as the Practice of the Court would allow to delay the Trial. But instead of this, Mr. MacKercher, in his Affidavit, did not mention the Name of any one of his

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Witnesses that were going to England, which renders it impossible to examine whether they did or did not go there, or were since returned, or ever would; besides, they seemed to acquiesce, and continued silent until the second of February, when Notice was given, the Prosecutors would move on the fourth to put off the Trial to Friday following. No other Notice hath been since given; nor did the Prosecutors move to put off the Trial on Monday, until the Jury was called; and only eight appearing, it must go off on Course to the next Day, on which they only pressed that it should be put off to Friday, without assigning any Reason from Mr. Weldon's Disability to attend, or indeed any Reason at all that I know of. However, through much Importunity, the Counsel on both Sides agreed to put it off to this Day, when a full Jury appearing, they now move on new Affidavits to put it off to next Term, and assign for Reasons the Absence of Mr. MacKercher the Agent, and also of Mr. Gosfrey and Colonel Weldon, two Witnesses. As to Mr. MacKercher, he was here last Term, and might have been here now; for though Mr. Nelson swears he acquainted him by Letter that he would be here, yet Campbell swears he came last Week from Parkgate and Holyhead, and heard nothing of Mr. MacKercher at those Places; besides, Mr. Nelson has always appeared to us as the known Agent, and is of known Abilities and Sufficiency to conduct any Cause. As to Mr. Gosfrey, the Counsel for the Prosecutors say he was here last Term about the End of it, when Edward Weedon and his Brother, being examined in Court, charged him on Oath with drawing Affidavits for them, being illiterate, to swear to their Mother Sarah Weedon's Imprisonment by Colonel Blakeney, when they only told him, as they, with great Simplicity, swore in Court, that Mr. Blakeney's Gates were locked at the usual Hour of the Night, and they never looked on their Mother as a Prisoner there; and when the Court required Mr. Gosfrey's Attendance, they were told he was then in England; he is bound over to prosecute, and ought to have attended; However, the Traverser hath absolutely removed this Objection, by consenting his Examinations should be read against her. But the main Objection rests upon Colonel Weldon's Absence, who, as Kennedy swears, was served with a Subpoena the twenty-seventh of January, and was then so ill of the Gout, that he could not attend, and that the Traverser cannot be convicted without him. Kennedy appearing in Court, acknowledged himself to be a Beer-Seller, and, by his Appearance, he is a Man of low Station and little Knowledge. I think him very sufficient to swear to what he sees and hears; but I must say I do not think his Judgment or Belief any way sufficient to ground mine on. An Attorney or Agent is the proper Person to swear a Witness to be a material one to convict the Traverser, but the Agent and Attorney, who certainly must be informed of the Witnesses for their Clients, have declined this. Kennedy, indeed, told us on the Table, he read an Affidavit of Colonel Weldon's at Maryborough, and thought it material; but to obviate this, the Traverser's Counsel have consented this Affidavit be read in Evidence against her, so that if it be material, it will have its Weight. In the next Place, how comes Colonel Weldon to be now so material a Witness, when last Term Mr. MacKercher pressed to go on to Trial without him? and I presume he knew what he could say, the Affidavit he made being, I think, at the Summer Assizes preceding.

Besides, though Colonel Weldon was subpoena'd the twenty-seventh of January, and Kennedy made an Affidavit the second of February, in that he is silent as to Mr. Weldon's Illness, nor was it mentioned by the Counsel on Monday; but when nothing else would do, on the sixth of February he swears to his Illness, and something like his being a material Witness; this I have considered already: But I must observe, what has misled the Counsel, that though Colonel Weldon should be ill of the Gout on the twenty-seventh of January, it no ways appears but he may be now on the seventh of February well recovered, or at least able to travel; 'tis admitted he lives but one Day's Journey from Dublin, why then was not a Messenger sent down to bring us an Account in what State of Health he was a Day or two past? Since they have neglected this, I shall not look upon him as a necessary Witness. The Counsel for the Prosecutors alledge they have above sixty Witnesses, and the Traverser's eighty in Town; I think it is full Time to go on with the Trial, and I see no Reason for putting it off. I should not have been so tedious, but for the great Earnestness with which the Counsel have pressed this Motion.

LORD CHIEF JUSTICE MARLAY.

I am of their Opinion, that we must not put off this Trial. I will mention the several Steps taken in this Proceeding. It appears here by Affidavit, That on the tenth of August Mrs. Heath was arrested on a Warrant, grounded upon Examinations of Perjury committed by her in her Evidence on the Trial in the Court of Exchequer; fifteen Witnesses are first bound over to prosecute at the Sessions of Kilmainham, and afterwards at the Commission of Oyer and Terminer. The Commission sat on the 23d of October, and a Bill of Indictment was found against her the next Day, which she traversed, and the Traverser moved for a *Certiorari* to take her Trial in the King's Bench, upon Affidavits so full, that it was not to be refused without the greatest Injustice; there being an Estate depending of six thousand Pounds a Year, and that there were Examinations carrying on in the Chancery here, and in England. I do believe that neither Side can shew, where the Testimony of Witnesses has been anticipated by an Indictment of Perjury, but something like that Step was taken in this Cause. The *Certiorari* was granted by the Court upon an Affidavit of the Traverser, and the Trial put off upon her Affidavit of the tenth of November. The Affidavit of Mr. MacKercher is sworn afterwards on the 13th of November, shewing Cause for bringing on the Trial the next Day, but no Court could possibly bring on the Trial when that Affidavit was offered. The Traverser swore that several Witnesses, whom she named, were in England; and that Mrs. Weedon in particular, was a material Witness, and lived in a remote Part of this Kingdom. Mr. MacKercher swears, that Mrs. Weedon was a material Evidence for the Prosecutor, that she was detained by Force, and moved for an *Habeas Corpus* to bring her hither. That Motion was brought on, and Examinations were taken after the Day appointed for the Trial, and a Motion made to attach Mr. Blakeney for detaining this Mrs. Weedon. It appears, that she was summoned to attend here on Behalf of the Prosecutor on the 14th of November, just the Day before; and that the Place she then lived at is above 70 Miles from Dublin. There came two Witnesses upon the Table, who had sworn Affidavits,

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in order to found an *Habeas Corpus* and an Attachment against Mr. *Blake*, and they having sworn false, they were both committed. Both those illiterate Witnesses swore her, in their Affidavits, to be under a Restraint, when it appeared she was at Liberty. This they confessed, and also, that those Affidavits were prepared by *Goofrey*, the Person now said to be in England. This is a very extraordinary Proceeding, and a Sort of Indictment not usually brought into this Court. The first Trial was put off, on the Affidavit of the Traverser, that she was not prepared for her Defence: The Question now is, whether the Reasons offered for putting off this Trial to *Easter Term* be of equal Force. It appeared then by the Affidavit of Mrs. *Heath*, that several Witnesses, necessary for her Defence, could not possibly attend at the Day prefixed for Trial; the Bill of Indictment was found the twenty-fourth of *October*; the Trial was to be on the fourteenth of *November*; how could Witnesses in England be brought by that Time to appear here? But Mr. *Mac Kercher* swears that Mrs. *Weldon* was a material Evidence for the Prosecutor, and not for the Traverser, as she insinuated. She is now here, you have no want of her, if she be that material Witness; and then the Question is, whether the Affidavits made now can put off this Trial. The Affidavit of Mr. *Nelson* is general, and only says, that he had a Letter from Mr. *Mac Kercher*, dated the tenth of *January*, acquainting him that he would leave *London* on the seventeenth of that Month. There are several Affidavits made on the Side of the Traverser, and one in particular, that there was no such Person upon the Road from *London* to this Place; but however, as he is no Evidence in the Cause, there can be no Colour for his Absence to put off the Trial. Then the whole Matter is reduced to the Affidavit of *Kennedy*. He swears those three Things that are material to put off a Trial; but I must observe that this Affidavit is in fact contradicted by the Affidavit of Mr. *Mac Kercher*, who swears on the thirteenth of *November*, he was ready to bring on the Trial the next Day, and yet Mr. *Weldon* is not one of the Witnesses for that Trial, and he is not bound over to prosecute; Mr. *Mac Kercher* knew his Evidence, for he had then his Affidavit in Chancery; therefore that Part which is necessary to put off the Trial, that a material Witness to be produced cannot attend, is wanting in *Kennedy's* Affidavit, for it appears that it is not well grounded by *Mac Kercher's* Affidavit. There's another Objection against *Kennedy's* Affidavit: He swears, he does believe Mr. *Weldon* is to be had the next Term, and that he believes he is a material Witness. Consider, that though this be proper if it comes from the Agent, yet it is not proper, when an Ale-seller makes this Affidavit, and a Man that confesses he was never bred to Business. You know, that if a Person be accused for a

violent Assault, in case there be no Danger of Death, there is Bail taken; but if instead of sending for a Surgeon, the Person who applies for Bail sends for a Cobler, and the Cobler swears he had searched the Wound and found it not dangerous, Nobody can say, but the Court would refuse Bail upon the Affidavit of this Cobler. Therefore *Kennedy's* Affidavit is of no Consequence. As to *Goofrey*, his Examinations are here, the Counsel for the Traverser desire they may be read against her. But I must tell you, that his Examinations are no more, than that Mrs. *Heath* did say such and such Words on the Trial in the Exchequer. I have the Trial here, and Mr. *Goofrey* can prove no more than what all present at that Trial can prove; and therefore, Gentlemen, upon account of Mr. *Goofrey*, I think not proper to put off the Trial. But what makes me think it improper to put it off is, the great Expence on the Side of the Traverser: It appears by the Affidavits on account of the Traverser, that they have been at a vast Expence; one Person swears to 700*l.* another swears to 300*l.* besides a 50*l.* Bill. Now, if you can delay Trials, and put Traversers to this Expence, you will soon have what you desire in carrying on this Cause, for Nobody will dare to appear as a Witness, when they know it is so dangerous and expensive. But it has been urged by Mr. *Harward*, that she should have a full and fair Trial; and let me tell you, it is as much for the Credit of the Prosecutors that there should be a full and fair Prosecution, and that where Witnesses bound over may be had to appear, and do not, it creates a Suspicion of the Justice of the Prosecution; People will be apt to say, that Jugglers cannot play so well the same Trick twice. There is no doubt but a Verdict was found for the Prosecutor by a Jury of undoubted Credit; but it does not follow that the Traverser is guilty, and the best and the wisest Jury may be deceived. This Matter can be delayed no longer, because by this Delay there can never be any Time fixed for a Trial; but as this Motion has taken up a great deal of Time, so it would be impossible to go through it this Day, therefore we will defer it till To-morrow Morning.

The Jury prefixed over to Friday the eighth of February at eight o'Clock.

Mr. Serjeant *Marshall*.] I beg leave to observe, that the Examination of Mr. *Goofrey* does not go to all Parts of this Indictment.

Court.] To every one of them.—You do in effect confess her innocent, if you do not prosecute her.

Counsel for the Traverser.] We consent Mr. *Goofrey's* Examination may be read in Evidence, and waive our Right of cross-examining.

T H E

T R I A L of Mrs. M A R Y H E A T H, for Perjury.

Counsel for the Prosecutor.

Warden Flood, Esq. his Majesty's Solicitor-General.
Robert Marshall, Esq. second Serjeant at Law.
Philip Tisdall, Esq. third Serjeant at Law.
Philip Walsh, Esq. one of his Majesty's Counsel at Law.
William Harward, Esq.
Joseph Robbins, Esq.
James Mac Manus, Esq.
Cornelius O Callaghan, Esq.
Ambrose Harding, Esq.
John Morton, Esq.
Thomas Fitz-Gerald, Esq.

Counsel for the Traverser.

Eaton Stannard, Esq. one of his Majesty's Counsel at Law, and Recorder of the City of Dublin.

Friday, February the 8th 1744.

THE Court being sat before nine o'Clock, the Jury were called over, when Fourteen appearing, and no Challenges being made, the following Twelve were sworn to try the Issue of Traverser.

Sir Samuel Cooke, of St. Catherine's, Bart.	Edward Ford, of Davidstown, Esq.
John Rochfort, of Newpark, Esq.	Mark Synnot, of Drunconder, Esq.
Eyre Evans, of Portrane, Esq.	Thomas Baker, of Newtown, Esq.
Nicholas Archdale, of Mount Eccles, Esq.	George Evans, of Newport, Esq.
David Chaigneau, of Corka, Esq.	Narcissus Charles Proby, of Damestown, Esq.
Quaile Somerville, of Cookstown, Esq.	Charles Burton, of Dubber, Esq.

The Indictment on which this Trial was had is as follows, viz.

The King against Mary Heath, } THE Jurors for our Lord the King upon their Oaths say and present, That in a certain Bill of County of Dublin, a Plea of Trespas and Ejectment of a Farm depending as of the Term of the Holy Trinity, in the Sixteenth and Seventeenth Years of the Reign of our said Lord, the now King George the Second, of Great-Britain, and so forth, and in the Year of our Lord, one thousand seven hundred and forty-three, in our said Lord the King's Court of Exchequer in Ireland, then being at the King's Courts in the said County of Dublin, before the Barons of our said Lord the King, of the said Court, and brought into the said Court, and prosecuted by Campbell Craig, Gent. Debtor of the said Lord the King, Plaintiff, against the Right Honourable Richard Earl of Anglesea, Defendant; who was present then in the said Court, by his Attorney, Thomas Burroughs, for thirty Messuages, thirty Tofts, fifty Cottages,

two Mills, fifty Gardens, eight hundred Acres of Arable Land, three hundred Acres of Meadow, six hundred Acres of Pasture, fifty Acres of Furze and heathy Ground, fifty Acres of moory Ground, with the Appurtenances, in Great Stramine, otherwise Stameen, Little Stramine, otherwise Stameen, Little Donacarne, Shallon, Killcarvan, otherwise Killbarrow, Cruffey, Annagor, otherwise Annager, and Little Gaffney, situate, lying and being in the County of Meath; all which said Premises were formerly the Estate of the Right Honourable James Earl of Anglesea, deceased; and lately the Estate of the Right Honourable Arthur Earl of Anglesea, also deceased; and which had been demised to him, the said Campbell Craig, by James Annesley, Esq. and had been also demised to him the said Campbell Craig, by the Right Honourable James Earl of Anglesea, and had been also demised to him, the said Campbell Craig, by the Honourable James Annesley, only Son and Heir of Arthur late Baron Altham of Altham, deceased, otherwise the Right Honourable James Baron Altham of Altham, on the first Day of May, one thousand seven hundred and forty-two, at Trim in the County of Meath aforesaid, for the several Terms of twenty-one Years, to commence from thence in Manner and Form as in and by the Declaration of the said Campbell Craig, in the said Bill of the said Plea of Trespas and Ejectment of a Farm, is mentioned and set forth; in and to which said Bill of a Plea of Trespas and Ejectment of a Farm, he the said Richard Earl of Anglesea, by his said Attorney, took Defence in due Form of Law, and for Plea thereto, said that he was not guilty of the Trespas and Ejectment aforesaid, in Manner and Form as the said Campbell Craig complained; and of that he put himself on the Country, and the said Campbell Craig likewise; and Issue being so joined in said Plea of Trespas and Ejectment, in due Form of Law, by and between the said Parties, it was afterwards so proceeded upon thereon that the said Issue afterwards,

to-wit, on the Second Friday after the Morrow of All Souls, in the Term of St. Michael the Arch-angel then next, that is to say, on the 11th Day of November, in the seventeenth Year of the Reign of our said Lord, the now King, in the Court of Exchequer aforesaid, before the said Barons of the said Court, at the King's Court aforesaid, in the County of Dublin aforesaid, was tried by a certain Jury of the Country, for that Purpose, in due Form of Law, then and there elected, tried and sworn in said Court, to try the said Issue; and on the said Trial, it was then and there admitted, as well by, for and on behalf of the said Campbell Craig, as by, for and on behalf of the said Richard Earl of Anglesea, that the said Lands and Premises, mentioned in the said Plea of Trespass and Ejectment and Declaration of the said Campbell Craig, were the Estate of Inheritance of Arthur Lord Baron Altham of Altham, late deceased, and that he died seized of the said Lands and Premises; and the said Campbell Craig, then and there, upon said Trial, produced Witnesses on his Part, who being then and there duly sworn on God's Holy Evangelists, by the said Barons of the said Court of Exchequer, to testify the Truth, the whole Truth, and nothing but the Truth, in the said Plea of Trespass and Ejectment so depending, the said Barons having sufficient Power and Authority to administer the said Oath to them on that behalf, gave in Evidence, and then and there swore, and deposed upon their Oaths aforesaid, to the Jurors of the Jury aforesaid, before the Barons aforesaid, that James Annesley aforesaid, the Lessor of the said Plaintiff, Campbell Craig, was the only Son and Heir of the said Arthur late Lord Baron Altham of Altham, by his Wife, Mary the late Lady Altham; and that the said James Annesley was born and christened at Dunmaine, in the County of Wexford, in the Kingdom of Ireland. And the said now Jurors so sworn for our said Lord the King, upon their Oaths, further say and present, that Mary Heath, of the City of Dublin, in the County of the said City, Widow, upon the Trial aforesaid, in the Court of Exchequer aforesaid, before the Barons aforesaid, at the King's Court aforesaid, in the County of Dublin aforesaid, being then and there produced as a Witness, by and on behalf of the said Richard Earl of Anglesea, on the said Trial of the said Issue, she the said Mary Heath was then and there sworn, upon God's Holy Evangelists, in due Form of Law, by the said Barons of the said Court of Exchequer, to testify the Truth, the whole Truth, and nothing but the Truth, in the said Plea of Trespass and Ejectment, the said Barons of the said Court of Exchequer having sufficient Power and Authority to administer the said Oath to the said Mary Heath in that behalf; and the said Mary Heath being then and there so sworn, then and there falsely, voluntarily, knowingly, wilfully, maliciously, corruptly and illicitly swore and deposed upon her Oath aforesaid, to the said Barons and to the Jurors of the said Jury, who then and there were in due Form of Law elected, tried, and sworn as aforesaid, to try the said Issue as aforesaid, that Lady Altham, that is to say, the aforesaid Mary Lady Altham, who was Wife of the said Arthur late Lord Baron Altham of Altham, never was with Child, while she the said Mary Heath lived with the said Mary Lady Altham. And,

Further, the said Mary Heath then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the Jurors of the said Jury, that the said Mary Lady Altham never had a Child at Dunmaine, that is to say, Dunmaine aforesaid, in the said County of Wexford, in the Kingdom of Ireland. And,

Further, the said Mary Heath then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the Jurors of the said Jury, that there never was a Child, as the Child of that Family, that is to say, of the said Arthur late Lord Baron Altham of Altham, and the said Mary Lady Altham his Wife, either christened or living at Dunmaine House, that is to say, the aforesaid Dunmaine House, in the said County of Wexford, while she, that is to say, the said Mary Heath, was at Dunmaine aforesaid. And,

Further, the said Mary Heath then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the said Jurors of the said Jury, that she, that is to say, the said Mary Heath, never saw a Child in the Hands or Care of Joan Laffan, while she, that is to say, the said Joan Laffan, was at Dunmaine House aforesaid. And,

Further, the said Mary Heath then and there, before the said Barons of the said Court, gave in Evidence and swore upon her Oath aforesaid, to the said Barons and to the Jurors of said Jury, that the said Mary Lady Altham did not miscarry of a Child at Dunmaine aforesaid. Whereas really and in fact, the said Mary late Lady Altham, who was Wife of the said Arthur late Lord Baron Altham of Altham, was with Child while she the said Mary Heath lived with the said Mary Lady Altham. And whereas also really and in fact, the said Mary Lady Altham had a Child at Dunmaine, that is to say, Dunmaine aforesaid, in the said County of Wexford in the Kingdom of Ireland. And whereas really and in fact, there was a Child, as the Child of that Family, that is to say, of the said Arthur late Lord Baron Altham of Altham, and the said Mary Lady Altham his Wife, christened and living at Dunmaine House aforesaid, in the said County of Wexford, while she the said Mary Heath was at Dunmaine House aforesaid. And whereas also really and in fact, the said Mary Heath did see a Child in the Hands and Care of Joan Laffan, while she, that is to say, the said Joan Laffan, was at Dunmaine House aforesaid. And whereas also really and in fact, the said Mary Lady Altham miscarried of a Child at Dunmaine aforesaid. And so the now Jurors sworn for our Lord the King as aforesaid, upon their said Oaths say and present, that the said Mary Heath on the said Trial of the Issue aforesaid, upon her Oath aforesaid, before the Barons aforesaid and Jurors of the said Jury, elected, tried and sworn to try the said Issue between the Parties aforesaid, in the said Court of Exchequer at the King's Courts aforesaid, in the County of Dublin aforesaid, in Manner and Form aforesaid, did falsely, voluntarily, knowingly, wilfully, maliciously, corruptly and illicitly, commit wilful, voluntary, malicious and corrupt Perjury, in great Contempt of the said now King and of his Laws, and contrary to his Majesty's Crown and Dignity.

Court.] You, Gentlemen of Counsel for the Traverser, offered Yesterday that Mr. Geoffrey's Examination should be read in Evidence against the Traverser, and that you would waive her Right to cross-examine him; you must admit it now.

Mr. Daly.] Admitted.

Court.] (On Motion for separating the Witnesses.) The Witnesses were ordered to be separated, and not to come into Court till they are sent for; Nobody is to be admitted to them, but each to have a Guard on the other's Witnesses.

Court.] Gentlemen, for the Ease of the Jury, and Necessity of finishing the Trial, I must tell you, that we will not, on either Side, have a Multiplicity of Witnesses; the Meaning of the Law is, that the Trial should be had in one Day, and we won't sit here to hear any Evidence that is immaterial. Whoever protracts a Trial, is by the Law supposed to dare not to stand it.

Mr. Recorder.] My Lord, we shall endeavour to make the Trial as short as we can, but there are many Cases that depend upon Circumstances, which must be made appear, and wherever your Lordships find that it is a necessary Defence, you cannot think it is too long.

Mr. Justice Ward.] It is in the Power of the Gentlemen of the Bar to shorten this Trial, and I hope you will observe the Rule laid down Yesterday, for one Gentleman to confine himself to each Witness.

L. C. J.] I make no doubt of laying that down as a Rule.

Mr. Sol. Gen.] Our Resolution is to observe it; and we will shorten the Trial, in all respects, as much as we can.

The Lists of the Witnesses are given in to the Court, that they may be separated, and the Clerk of the Crown numbering them, there were 80 on the Side of the Traverser, and 86 on the Side of the Prosecutor.

Court.] Do you imagine, that the Law supposed that any body should produce fourscore Witnesses? Two Witnesses are enough to prove any Fact, if it be a good one, for by the Mouth of two Witnesses shall a thing be established; and 200 will not prove any Fact, if it be a bad one.

The Officer of the Court charged the Jury with the Indictment in the usual Form, and was directed by the Court to take out the five Points or Assignments of Perjury, and give them to the Jury; which was done.

1. That Mary, Wife of the late Lord Altham, never had a Child, while the Traverser lived with the Lady Altham.
2. That Lady Altham never had a Child at Dunmaine.
3. That there never was a Child christened, or living at Dunmaine, as the Child of Lord and Lady Altham, while the Traverser was at Dunmaine.
4. That the Traverser never saw a Child in the Hands or Care of Joan Laffan, while the said Laffan was at Dunmaine.
5. That Lady Altham did not miscarry of a Child at Dunmaine.

[" Mr. Sol. Gen. (Counsel for the Crown.) May it please your Lordships, and you Gentlemen of the Jury, I am of Counsel in this Case for the Crown, against the Traverser Mary Heath, who stands indicted for wilful and corrupt Perjury, a Crime of the deepest Dye, on the Discountenance and due Punishment whereof the Lives, Liberties and Properties of all Men, nay the very Being of Society depend; for no Man's Life, Liberty, or Property can ever be safe, if such are either countenanced, or escape for want of due Prosecution. And before I proceed to state the Case, I must beg leave, my Lord, first to mention, that by hurrying on this Trial so prematurely, in the Absence of our principal Witnesses, in the Absence of the Gentlemen who carry on the Prosecution, particularly of Mr. Mac Kercher, who has the conducting of it, who alone is acquainted with the Nature and Strength of the Evidence, and the due Application thereof, and is now detained on the other Side of the Water by contrary Winds, we proceed to it under manifold and great Disadvantages: Yet under these Circumstances, I make little doubt but we shall be able to convict the Traverser, to the Satisfaction of all unprejudiced Persons, if the Witnesses to be produced are able to prove the Matters contained in my Instructions. I shall therefore proceed to state the Case as briefly as I can.

" Arthur Annesley, first Earl of Anglesea, (so created by King Charles the Second, with a Limitation to the Heirs Male of his Body) had Issue five Sons, James his eldest, Altham his second, Richard his third, Arthur his fourth, and Charles his fifth Son.

" The first Earl having made very large Acquisitions, sufficient to support two distinct Families, procured the Baronage of Altham for his second Son Altham, and his Issue Male, with a Remainder over to his third Son Richard.

" As to the Altham Title, Altham, the first Lord Altham, died without Issue Male, whereupon that Dignity became vested in his Brother Richard, who had Issue Arthur, afterwards Lord Altham, and Richard now in Possession of the Anglesea Titles and Estates.

" With regard to the eldest Branch, James, eldest Son of the first Earl, was, in his Father's Lifetime, married to a Daughter of the Earl of Rutland, on which Marriage, a Settlement was made in common Form, and the Estates limited to Lord James for Life, Remainder to his first and other Sons in Tail Male, Remainder to the other Sons of the said first Earl in Tail Male, Remainder to his right Heirs.

" The said first Earl was accordingly succeeded, both in the Title and Estate, by his said eldest Son James, who afterwards also died, and left Issue three Sons, James, John and Arthur.

" James, the eldest of these, and third Earl of Anglesea, levied Fines and suffered common Recoveries of his Estates, and thereby docked the Entail created by his Father's Marriage-settlement, and made himself absolute Tenant in Fee-simple; afterwards he made several Wills and Codicils, and having no Issue Male of his own, he thereby limited his Estates, upon the Failure of Issue Male of his Brother Arthur, to go to the Altham Branch.

" Accordingly it happened that the said Arthur, who was afterwards Earl of Anglesea, died in 1737, without Issue; so that if Arthur Lord Altham had been then living, he would undoubtedly have succeeded to the Anglesea Honours and Estates: But as he happened to die in November 1727, it is indisputable, that if he had left a Son, such Son would have been entitled to those Honours and Estates.

" The principal Question therefore at the late Trial at Bar, and the single Question now is, Whether the said Lord Altham left a Son or not?

"not? We that are concerned for the Crown, did then maintain the Affirmative, and this we shall now endeavour to prove, though a Fact already established by the solemn Verdict given at that Trial, by twelve Gentlemen of the greatest Characters for Integrity, Capacity and Fortunes in this Kingdom. A Verdict not precipitately given, but after fourteen Days Attention and Deliberation, and which therefore ought to carry the greatest Weight.

"Had the Person, who claims to be the Son of *Arthur Lord Altham*, been in the Kingdom, when *Arthur Earl of Anglesea* died, he might have asserted his Right, while many of his Witnesses were living, and the Facts recent. But he had the Misfortune, Gentlemen, not only to be out of the Kingdom, but out of Europe.

"But as we are not at Liberty to lay that Fact before you, I shall not presume to observe upon it any further."

"*Lord Chief-Justice*.] No such Evidence ought to be opened here.— Prove that the *Lord Altham* had a Son."

"*Mr. Daly*.] The Evidence offered by *Mr. Solicitor* is quite illegal, and I will shew it to be so."

"*Mr. Recorder*.] I have a great Regard for whatever *Mr. Solicitor General* says, but no Fact should be opened to the Jury, but what properly relates to the Matter of the Indictment."

"*Court*.] The Matter of Perjury contained in the Indictment, is the single Question before us; what *Mr. Solicitor* mentions might be proper to be shewn in the Court of Exchequer, in an Action for the Recovery of the Estate. But we are not now to try the Right to an Estate, but a single Fact: If *Lady Altham* had a Child, *Mary Heath* is perjured, and this the Jury are to try."

"*Mr. Archdale*.] (one of the Jury) I apprehend the Question before us is, whether *Mary Heath* is perjured or not?"

"*Court*.] Yes, that is the Point, Gentlemen."

"*Mr. Solicitor General*.] *Mr. Annesley* brought an Ejectment in the Court of Exchequer, in order to try his Title to an Estate in the County of *Midd*, which Action was accordingly tried in *Michaelmas Term*, 1742. The sole Question on that Trial was, by the Admission of all Parties, Whether *Mr. James Annesley* was the lawful Son of *Arthur Lord Altham*? and the Jury, who were Gentlemen of undoubted Credit and Fortune, after fifteen Days Trial and Deliberation, found upon their Oaths, that *Mr. Annesley* was the legitimate Son of *Arthur Lord Altham*. Upon this Trial, Gentlemen, *Mrs. Heath*, the Traverser, was examined, as a principal Witness, on the Part of the Defendant the *Earl of Anglesea*, and it is for the Evidence she then gave, that she now stands indicted for Perjury, in the five following Particulars:

"First, That she swore, that *Mary Lady Altham*, who was Wife of *Arthur late Lord Altham*, never was with Child, while she *Mary Heath* lived with the said *Mary Lady Altham*.

"Secondly, That she swore, that the said *Lady Altham* never had a Child at *Dunmaine* in the County of *Wexford*.

"Thirdly, That she swore, that there never was a Child, as the Child of the Family of *Lord and Lady Altham*, either christened or living at *Dunmaine House* in the said County of *Wexford*, while she *Heath* was at *Dunmaine*.

"Fourthly, That she swore, she never saw a Child in the Hands or Care of *Joan Laffan*, while the said *Joan Laffan* was at *Dunmaine House*.

"Fifthly, That she swore, that the said *Lady Altham* never miscarried of a Child at *Dunmaine* aforesaid.

"And although it will be enough for us to prove *Mrs. Heath* guilty of Perjury, in any one of the said Points, yet notwithstanding the great and many Advantages gained against us by our being surprised, and hurried on to Trial at this Juncture, I doubt not of our being able to convict her of the whole. We shall begin, by proving, that *Mrs. Heath*, at the Trial at Bar, swore the several Particulars mentioned in the Indictment, and then shall proceed to shew, that those Particulars are false."

"*Court*.] The first Assignment of Perjury is, that *Lady Altham* never was with Child while the Traverser lived with her.

"*Mr. Serjeant Marshall*.] My Lord, we shall first produce the Record. Upon the Trial in the Court of Exchequer the single Point was, Whether the Lessor of the Plaintiff was the Son of *Lady Altham*, Wife of *Arthur late Lord Altham*? and there was a Verdict found for him.

"*Mr. Daly*.] We admit the Record, and we admit *Mary Heath* was produced as a Witness upon that Trial, and that she swore that *Lady Altham* had not a Child, whilst she the Traverser lived with her.

"*Mr. Serj. Marshall*.] Do you admit the several Assignments of Perjury?"

"*Mr. Daly*.] We do.

"*Mr. Serj. Marshall*.] My Lord, the next Thing that we shall lay before your Lordship is a Person [*Mrs. Cole*] to prove, that after *Lady Altham's* Arrival in this Kingdom, in the Year 1713, she came to the House of *Mr. Briscoe*, in *Bride-street*, in this City; that after staying there some short Time, she removed to the House of one *Mrs. Vice*, in *Essex-street*; that from thence she went to the late *Lord Altham's* House at *Dunmaine*, in the County of *Wexford*; and it will appear to your Lordship and to the Gentlemen of the Jury, that at the late *Lord Altham's* House at *Dunmaine* she was with Child, and did miscarry of a Child.

"*Mr. Daly*.] We admit, if you please, that *Mrs. Heath* came over with my *Lady Altham* in *October* 1713, and lived with her to her Death in the Year 1729.

"*Court*.] Gentlemen, call your Witnesses.

I. *Mrs. HENRIETTA COLE.*

"*Mr. Serj. Marshall*.] *Mrs. Cole*, did you know *Arthur late Lord Altham*?"

"*Mrs. Cole*.] Yes, Sir.

"Q. Did you know *Mary Lady Altham*, his Lady.---A. Yes.

"Q. At what Time did you first become acquainted with her?"

"A. In the Year 1713.

"Q. Do you know any Place in the County of *Wexford*, where they lived?---A. Yes, at *Dunmaine*.

"Q. Were you at any Time at that House, and when?---A. I was, Sir.

"Q. Can you recollect about what Time, Madam?"

"A. I believe it might be about *February* that my Mother and I went there.

"Q. In what Year?---A. In the Year 1713.

"Q. Do you know of any remarkable Accident that happened while your Mother and you were there?---A. Yes, I do.

"Q. Give an Account to the Court and the Jury, what that Accident was.

"A. My Lord was in a very great Passion one Day, at some Sawcers being brought to the Table; his Passion was very great, and he had ordered them never to come upon the Table on any Score, for they were not fit for modest People to see; and all on a sudden he threw them between my Lady and me, and put my Lady into a violent Fright."

"*Court*.] What were they?---A. China Sawcers, my Lord.

"*Mr. Serj. Marshall*.] Pray, Madam, what happened upon that Occasion?"

"A. My Lady fell a-trembling; into a violent Fit of Trembling and Tears."

"Q. Was there any, and what Consequence from this Accident?"

"A. My Lady was exceedingly ill in the Night."

"*Mr. Edm. Malone*.] My Lord, before she goes on any further, I hope she will say what she knows of her own Knowledge, and nothing more."

"*Mr. Serj. Marshall*.] Whatever may be an Inducement to the material Point is necessary for her to say."

"*Court*.] Go on.

"*Mrs. Cole*.] I say it from *Mrs. Heath* the Person coming to my Mother, and I in Bed with my Mother."

"*Court*.] Then you heard *Mrs. Heath* tell your Mother my Lady was very ill?---A. I heard her, my Lord."

"*Mr. Serj. Marshall*.] Did any and what Consequence happen from that Illness?---A. My Mother told me in the Morning—

"*Court*.] Stop you there: You must only tell what you know yourself did happen."

"*Mr. Serj. Marshall*.] Well, tell what did happen of your own Knowledge."

"A. My Lady miscarried, as I understand."

"Q. From whom were you informed that my Lady was so sick?"

"A. From *Mrs. Heath*.

"Q. Where was you at that Time that you was informed of it?"

"A. In Bed with my Mother."

"Q. What did she say to your Mother then?"

"A. She came to the Door, and said, *For God's Sake, Madam, get up, my Lady is exceedingly ill, make haste and get up.*

"Q. Pray, Madam, do you know what was the Consequence of that Illness?---A. My Lady miscarried, as I take it."

"Q. Why do you apprehend that she miscarried?"

"A. I saw an Abortion in the Basin the next Day."

"Q. Where did you see it, Madam?---A. In my Lady's Closet."

"Q. Who shewed it to you?"

"A. I believe, my Mother; as to that Particular I cannot be positive."

"Q. Where was *Mrs. Heath* at that Time?"

"A. Indeed, I cannot be positive as to that; but she was ever at my Lady's Elbow whenever she was ill."

"Q. How was she in that Family, a Servant or Relation?"

"A. She was a Servant, I think; I cannot tell whether she was a Relation or not."

"Q. Was she my Lady's Woman?---A. She was deemed as such."

"Q. Had you any and what Discourse with the Traverser concerning my Lady's Sickness at that Time?"

"A. Indeed, I cannot charge my Memory with having any; we might have had Discourse about it, but I cannot charge my Memory."

"Q. How long was *Lady Altham* confined afterwards to her Chamber?"

"A. That is a Question I cannot exactly tell you."

"Q. Was she confined to her Chamber after that Accident of the Sawcers?"

"A. She was confined to her Chamber; my Lord wanted her down to Supper that Night, and sent for her several Times; and my Mother went up for her, and she was too ill to come down."

"*Mr. Recorder*.] What Night?"

"A. The Night of the Day that the Sawcers were thrown."

"*Mr. Serj. Marshall*.] You say, Madam, that my Lady was confined, pray how long was she confined?"

"A. Whether it might be a Fortnight or Three Weeks, I cannot positively say, but she was confined to her Chamber."

"Q. In what Manner was she confined, in Bed, or up, or how?"

"A. She kept her Bed for some Time, and sat up in her Chamber at other Times."

"Q. Did you give an Account of this Affair to any Body whatsoever since the Time this Accident happened?"

"A. I have spoke of it frequently, and my Mother has spoke of it."

"Q. To whom, Madam, can you recollect?"

"A. Indeed, I believe there is *Mr. Monk's* Family, that I believe may remember it perfectly well; there is in *Gorey* several that may remember it from my speaking of it before ever this Affair happened."

"Q. Where was *Mrs. Heath* during the Time that *Lady Altham* was confined in her Chamber?"

"*Mr. Recorder*.] Oh! she said already, that she was about her."

"Q. Pray, Madam, did *Mrs. Heath* know any Thing of that Matter, or not?"

"A. She was in the House, she was immediately at her Elbow, she was the Person that came to my Mother."

"*Court*.] Did you go into my Lady's Room when she called your Mother?"

"A. I did not, my Lord, I lay in my Bed."

"*Mr. Serj. Marshall*.] But she desired your Mother to make haste, for that my Lady was exceedingly ill?---A. She did, Sir."

"*Jury*.] What Time of the Night was it that *Mary Heath* came to your Apartment?---A. I really cannot recollect."

"Q. When was it that you went into the Closet, and saw this Abortion you mention?"

"A. The next Morning about 9 or 10 o'Clock, I believe; to be certain I cannot."

"Q. Do you take upon you to say, that at the Time when your Mother shewed you the Abortion, that the Traverser was in the Closet?"

"A. I cannot say, she might or might not."

"Q. Did *Mrs. Heath* constantly attend *Lady Altham*?"

"A. She did constantly."

"Q. Did you ever see her attend her?"

"A. I have seen her, and was often sent to call her."

"*Mr. Serj. Marshall*.] When she called your Mother up, did she express any and what Apprehension concerning my Lady's Illness?"

"A. I cannot say that she expressed any at all, only that she said, *For God's Sake, Madam, get up, my Lady is exceedingly ill.*

Q. D

Q. Do you know how it was understood in that Family, what the Occasion of that Sickness was?—*Court.* Supposition or Hearsay is nothing.

Cross-Examination.

Mr. Recorder. Pray, Madam, do you remember the Time that my Lady Altham came to Ireland, the Month I mean?—*Mrs. Cole.* About October.

Q. Where did she lodge when she came to Dublin? Did not she come to your Father's House?—*A.* She came to my Father's House.

Q. How long did she continue in your Father's House before Lord Altham came?—*A.* Whether a Month or six Weeks in Town, before he came to Town, I cannot tell.

Q. Pray, Madam, where was it that my Lord and she first met?

A. At my Father's House.

Q. Can you recollect the Month that was in?

A. I cannot be very certain; but I think that it must have been in November, the latter-end of November, or in the Beginning of December, which I cannot tell.

Q. Do you fix it in November?

A. I cannot fix it more than what I say.

Q. I ask you now, Madam, did my Lord and Lady Altham lodge at your House till they went to Dunmaine?—*A.* I do not believe they did.

Q. I ask you, upon your Oath, did they lodge in your Father's House till they left Town?—*A.* I think they did not.

Q. It is a material Question, and you must answer it; I ask you, did they or did they not? for you that remember things so well, must know whether they did or no. Did not they lie there the Night they were reconciled?—*A.* They did, and some Nights after.

Q. Did not they till they left Town?

A. No, Sir, I do not believe they did.

Q. Cannot you say whether they did or not?—*A.* I cannot say positively.

Q. Can you say they did not lodge there while they staid in Town? You that know they were reconciled by your Father's Means, cannot you recollect whether they left your Father's House before they left Town?

A. I do not think that they staid there while they lived in Town.

Q. You do not think; but can you say whether they did or not?

A. I tell you, Sir, my Father was uneasy at their being in his House; my Lord was a Man that had a great many Freaks, and my Father prevailed on him to take Lodgings.

Q. And did he take Lodgings?

A. I think I may say it, I am not certain; but I think I may be positive that they did not lodge at my Father's House till they went to the Country.

Q. Well, then, Madam, do you recollect their going away from Town? Did the Coach come to your Father's House to carry them away?

A. I do not remember.

Q. Were they at your Father's House when they went away?

A. I do not believe they were.

Q. Did the Coach come for them?—*A.* I remember no Coach coming for them. Indeed I do not remember any Equipage.

Q. Now, Madam, you say that your Mother and you went to Dunmaine; what Time was it that Lord and Lady Altham left this City?

A. I cannot ascertain the Time of their going.

Q. You did not go with them?—*A.* I did not.

Q. I think you said your Mother and you went to Dunmaine in February?—*A.* I believe it was.

Q. Pray, Madam, when my Lady was at your House, did she hire any Servants to go down with her?—*A.* I do not remember one.

Q. Do not you remember that she hired one Mrs. Setwright?

A. I remember Mrs. Setwright at Dunmaine, but do not remember my Lady's hiring a Servant in the House.

Q. Were you a Gossip to Mrs. Setwright at Dunmaine?

A. I know she was brought to Bed.

Q. Did you stand to the Child?—*A.* Indeed I do not remember I did; if I did, it is more than I know, or can remember.

Q. Was your Mother sick while you were at Dunmaine?

A. Not to my Knowledge.

Q. You do not remember that neither?—*A.* Indeed I do not.

Q. Was she so ill as to take Vomits there?

A. I do not remember any Vomit she took, nor do I remember her to have taken two Vomits in all her Life.

Q. Did not you lie with your Mother at Dunmaine?

A. Part of the Time I was Bed-fellow to Mrs. Heath, and part to my Mother; for my Father was there for a while, and as soon as he went, I lay with my Mother.

Q. Pray, Madam, did your Father go with you there?

A. No, he did not.

Q. Was your Father in the House when these Sawcers were thrown down?

A. He was not.

Q. Did that happen before or after he was there?

A. It was after he was there.

Q. How long was you there before your Father came?—*A.* I cannot tell.

Q. How long, a Fortnight?

A. I believe we might; more or less I cannot tell.

Q. Was it the Beginning of February, or the latter-end, that you went down?—*A.* I believe towards the Beginning; I cannot tell.

Q. I see you can tell nothing but one Point. Was it the Beginning, the Middle, or the latter-end of February that you went there?

A. I cannot say; but I believe it was in February.

Q. Well, but I ask you now, what Time was it that this Accident of the Sawcers happened?—*A.* I cannot tell whether in March or April.

Q. Which Month was it?—*A.* If I could remember the Day, the Hour, or the Minute, I would tell you.

Q. How long was it before your Father came?—*A.* I think it was after.

Q. How long did he stay there?—*A.* He stayed but a very short Time.

Q. Can you say how long he stayed?

A. Whether a Week or ten Days I cannot say.

Q. How long after he went away did it happen?

A. I cannot tell how long.

Q. Were not you examined in this Cause once before; can you recollect what Time you fixed then for your going to Dunmaine?—*A.* I cannot tell.

Q. Did not you say it was in March or April?

A. I do not know whether I did or not.

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Court. Did you say in February or March then, or when?

A. I cannot tell, my Lord, whether I did or not.

Mr. Recorder. When you were examined on the Trial in the Exchequer, did you say, you went in February, March or April?

A. I said that my Lady miscarried in March or April.

Q. Did not you swear that it was in March or April that you went down?

A. Not to my Knowledge.

Q. Why, had not you as good a Knowledge then as now?

A. I might; if I said it I mistook.

Q. Pray, Madam, I'd ask you another Question; you say, you mistook if you said so; upon your Oath, how long after you went down was it that this Accident happened?

A. It was some Time after; it either was in March or April, but I believe rather it was in April.

Court. You do remember you were examined in the Court of Exchequer; by Virtue of your Oath, did you swear then, it was in the Beginning of Spring that you went to Dunmaine?

A. I do say, that I believe I said that it was the Spring.

Q. Do you call the Month of February Spring?

A. I might mistake in that.

Mr. Mac Manus. My Lord, I apprehend it is an improper Question to ask a Woman now, what she said another Day; to examine her at this Time to what she swore then.

Court. I ask your Pardon, Mr. Mac Manus, it is very proper.

Mr. Recorder. Recollect the Time; how soon after you got down did this Accident happen, for it is a most remarkable one, in a Fortnight, or three Weeks, or a Month, or how long?

A. It was more than a Fortnight, three Weeks, or a Month; as I take it, it was about two Months after we got down.

Q. Can you recollect the Month?

A. It might be something more than two Months, I cannot be positive.

Q. And might not it be something less?

A. No, I do not think it was.

Q. Can you recollect the Company there at the Time of this Accident?

A. I have endeavoured my Recollection as much as I could. There were four Gentlemen at the Table besides my Lord, my Lady, my Mother and I; but to tell one of their Names I cannot, and whether dead or alive, I do not know.

Court. Was your Father there?—*A.* No, he was not at the Table.

Mr. Recorder. Was there any Quarrel between my Lord and my Lady at this Time?—*A.* There was none that I know of, for it was the Sawcers that occasioned the Quarrel.

Q. How were the Company placed at the Table; I suppose my Lord sat at the lower End of the Table?

A. My Lady sat at the upper End, my Mother sat by her, and I on the other Side, and I do believe, as well as my Recollection can serve, I believe my Lord sat the very next Person to me; I am not positive, but I think he did.

Q. Were these four Gentlemen that were at Dinner, People of any Fashion?—*A.* I suppose some were, and some were not.

Q. Can you be positive whether my Lord sat next you?

A. Upon Recollection, I think he did sit next me.

Court. Where did my Lady sit?

A. At the upper End of the Table, and the Chimney was behind me.

Mr. Recorder. Did you sit the next to her?

A. I sat the very next to her.

Q. On which Hand?—*A.* The Right Hand.

Q. Was your Mother there?—*A.* My Mother was there.

Q. And did you sit on the Right Hand of my Lady?

A. I can give you a very good Reason for it.

Q. Tell it.—*A.* It is, that my Mother had got some Cold, and her Eyes were weak, and she did not care to face the Light.

Q. What Room was it you dined in? Describe Dunmaine.

A. I have not been at Dunmaine lately; but however, the Room, as you come in at the Street-door, was on the Right Hand; there was a Bed in the other Room opposite to it.

Q. What was the Use of those Sawcers?

A. There was something upon every one of them.

Q. How were they brought to the Table?—*A.* They were brought in on a Dish, a Desert, and those Sawcers were intermixed with other Things.

Q. What had they upon them?

A. I believe there were Sweet-meats upon them.

Q. Were you daubed with them when my Lord threw them by you?

A. He took them in this Manner, and emptied them all; and as he emptied them he threw them between my Lady and me, he would empty a Sawcer and throw it, and so one after another till he had thrown them all.

Q. Where did he empty them into?

A. In the Dish that they were standing on.

Q. Did he know that my Lady was with Child?

A. I believe he did; and I am pretty sure he did.

Q. And yet he threw those Sawcers directly between you?

A. Sir, my Lord was unaccountable in his Temper.

Court. Do you say that my Lord knew my Lady was with Child?

A. I do believe he did know it.

Q. What is your Reason for that Belief?

A. I have no Reason, only because of the Abortion.

Q. But had you any Reason to believe he knew it before that Time?

A. I do say thus far, that the very first Words that Mrs. Heath said to my Mother—

Court. You are only to say what you know yourself.

Mrs. Cole. I heard my Lord say that my Lady was with Child before the Accident.

Mr. Recorder. Did you hear him say so?—*A.* I did hear him say so.

Q. And yet he threw the Sawcers in this Manner; how did he throw them?—*A.* My Lady put her Head one Way, and I put my Head the other, as they were throwing.

Q. Now, Madam, you say you went into the Closet the next Morning, your Mother carried you there?—*A.* No, she did not.

Q. Who carried you there?—*A.* I went of myself.

Q. Was your Mother there?—*A.* She was in the Closet.

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Q. And

Q. And your Mother shewed you this Abortion?—A. She did.
 Q. Now, how old were you at that Time?
 A. I believe this will shew (holding a Bit of Paper in her Hand); when I was here before I was quite uncertain as to my Age.
 Q. You then said you were twelve or thirteen?
 A. There is a Fault in that Trial, for I was ask'd my Age, and I could not be certain; I was asked why I could not, and I said I could not, because there was always—
 Q. What did you say your Age was then? Did you say how old you was?
 A. Forty-five or thereabouts.
 Q. Did not you say you were then twelve years old?
 A. I was led into it; I said I was, and could not tell how much more; I was asked how old then was I, ten, twelve, fourteen, or sixteen; and said I might be ten, twelve, fourteen, or sixteen, which I cannot determine.
 Q. How old was you at the Time of the Trial; did you not say forty-five or thereabouts?
 A. Here is my Age (shewing the Paper); I have now got it, and it is vastly more.
 Q. When was you born?
 A. I was born in the year 1691, but then I did not know.
 Court.] What is your Reason for saying you were born in the year 1691?
 A. I got my Age out of the Registry.
 Q. What Registry?
 A. Of St. Nicholas.
 Q. What Parish of St. Nicholas?
 A. St. Nicholas, Dublin.
 Q. Which, there are two Parishes called St. Nicholas?
 A. This St. Nicholas next us here.
 Q. Whereabouts is the Church, in what Street?
 A. St. Nicholas hereabouts, I do not remember the Street.
 Court.] That is St. Nicholas Within.
 Mr. Recorder.] Why then you were twenty-two at that Time?
 Court.] There is ten Years difference, and that is a great while to be mistaken in.
 Mrs. Cole.] I tell you, that here was the Thing just as I was asked; when they asked me my Age, I said I cannot tell, take so many out of so many, and then you will know; there was some of the Lawyers immediately talking, she's perjured, and that struck me to the Heart, that I did not know what I said.
 Court.] Were you asked that Question but once on the Trial, or twice, or thrice?
 A. I know I was asked it once, and when I was on the Table the last Time, that was the second Time, I had then recollected myself.
 Mr. Recorder.] Was not you asked how it came that your Mother shewed you the Abortion when so very young?
 A. I do not know indeed.
 Q. Do you remember when you came to the Age of one-and-twenty? Did you never reckon your Years?
 A. I did not, and there was a constant Dispute and Debate what Year I was born.
 Q. Were you of Age when you went to Dunmaine?
 A. To be sure I find by this Registry I was.
 Q. That is no Evidence; were you one-and-twenty when you went to Dunmaine?
 A. I was to be sure.
 Q. You say it positive?
 A. I do say it positive.
 Q. How came you to mistake so prodigiously?
 A. I do believe every one of you may remember that I said, take so many out of so many, and then you may know.
 Q. Well, Madam, when your Mother shewed you this in the Bafon, had it any Figure or Shape?
 A. It seemed to me to have it.
 Q. What Figure had it?
 A. It had Head and Limbs, Sir.
 Q. Could you distinguish them plainly?
 A. It was but very little.
 Q. Did you take and examine it?
 A. I do believe my Mother shewed me the Limbs, I did not take it to examine it; I looked at it as it lay there.
 Q. Did your Mother do any more than shew it to you as it lay?
 A. I do not know but she might, to shew the Limbs.
 Q. Did she take it in her Hand?
 A. I do not remember that she did.
 Q. Did she stir it in the Bafon?
 A. She might stir it with a Feather.
 Q. Did she, or did she not?
 A. I cannot say.
 Q. Had she a Feather in her Hand?
 A. I cannot say that she had.
 Q. Had it all its Limbs?
 A. I might see the Limbs and the large Eyes.
 Q. What did you take it to be when you saw it first?
 A. My Mother told me it was an Abortion.
 Q. That was in the Clofet?
 A. In the Clofet.
 Q. Is there a Window in the Clofet?
 A. There are three Windows.
 Q. Did your Mother speak to you about it before you went into the Clofet?
 A. Before I went into my Lady's Room my Mother told me she had miscarried.
 Q. Was that all she told you?
 A. That is all, Sir.
 Q. Did your Mother or you go into the Clofet first?
 A. When I went into the Clofet my Mother was there; we went into the Room together, and I believe my Mother went into the Clofet before I did.
 Q. Did your Mother speak before she went into the Clofet about the Abortion?
 A. I don't recollect; my Mother told me my Lady had miscarried.
 Q. But did she tell you of the Abortion before she went in; did she say that there was one in the Clofet?
 A. No, she did not.
 Q. You are sure it was not before she went in?
 A. Indeed I really do not know, Sir, she told me there was one, but whether before or after I cannot be positive.
 Q. Did you, when you were formerly examined, say it was before or after, or that you could not tell?
 A. My Confusion was so great, I did not know what I said.
 Q. Did she, or did she not tell you before she went into the Clofet?
 A. She told me my Lady had miscarried before I went in, and when I went in I saw the Abortion.
 Q. What carried you into the Clofet if you did not know it was there?
 A. My Mother and I went in; my Mother was there, and I might go

to her; when she had made her Compliments to my Lady, she went in, and I followed her.
 Q. When you were asked before how you came to go into the Clofet, did you not answer this, That your Mother told you the Abortion was there, before you went in?
 A. I believe I did say it, I might mistake in the Term.
 Q. Did you, or did you not say so?
 A. I believe I did say it. I know my Mother told me my Lady had miscarried.
 Q. Pray, Madam, when did you leave Dunmaine?
 A. We left it, I believe, the latter-end of May, or Beginning of June, which I cannot tell, and went to Burton-Hall.
 Q. Did not you swear upon the former Trial, that my Lord sat at the lower End of the Table, opposite to my Lady, for now you place him next yourself?
 A. I believe I did say it. But I say that I was in that Confusion when I was here before, that I might; I might mistake in that, for not a Mortal had spokato me what I was to be examined about; but when I came on the Table, I was in the greatest Confusion that any body could possibly be. If I did say it, it was owing to downright Confusion.
 Court.] What time did you leave Dunmaine?
 A. We left it the latter-end of May, or Beginning of June, I cannot be positive which.
 Q. That was in the Year 1714?
 A. In 1714, my Lord.
 Mr. Recorder.] When did you come to Town?
 A. We did not come till the latter-end of July, for we stayed at Burton-Hall.
 Q. How long did you stay there?
 A. I cannot tell whether Six Weeks, or how long.
 Q. Recollect as near as you can.
 A. I believe till quite the latter-end of July.
 Q. And you came to Town when?
 A. The latter-end of July, as near as I can recollect it.
 Q. When did my Lady come to Town? Was she in Town when you came?
 A. I do not know whether she was or not.
 Q. Did not my Lady and you visit after?
 A. When I came to Town a Sister of mine was in the Small-pox, I never had it, and my Mother sent me out of the House directly, which makes me as to any thing after that quite uncertain; and I was not at home after in my Father's House till the Year 1718, but with one Relation or other.
 Q. Pray, Madam, when you came to Town, was not the first News you had of the Death of the Queen?
 A. I know I was not at my Father's House at the Death of the Queen.
 Q. Where was you then?
 A. At Mr. Monck's in Dawson-Street.
 Q. Was not it soon after you came to Town that you heard of the Queen's Death?
 A. It was soon after; I believe it was.
 Q. How soon after was it that you heard that News?
 A. Indeed I will not be certain, nor cannot.
 Q. Was not it the first Publick News you heard?
 A. It might.
 Q. Do you believe it was?
 A. I do believe it was.
 Q. Did not you ascertain your time of coming to Town by that?
 A. I believe I did; I do not know whether I did or not, but I know by my Sister's being in the Small-pox.
 Q. Was Lady Altham in Town then?
 A. Indeed I cannot say whether she was or no, for I tell you I left the House; my Lady might be in Town and I not know it, for I left the House on my Sister's being ill.
 Q. Can you say whether she was in Town when you heard of the Queen's Death?
 A. I cannot tell; but I believe she was not in Town.
 Q. Pray, Madam, when my Lady came to Town, where did she lodge the second time? Did she come soon after you?
 A. I saw her in Town to be sure, but what time of the Year I cannot be certain; but I think it was at Mrs. Vice's.
 Q. Did not you swear upon the last Trial that you were positive that my Lady went to Vice's after the Reconciliation?
 A. I do not know whether it is positive or not, or whether I swore it positive or not.
 Q. Did not you swear it, that they went to Vice's before they went to Dunmaine?
 A. I believe I did.
 Q. Can you now be positive?
 A. I can so far, that they stayed but a few Days at our House, and did not go from our House to Dunmaine.
 Q. How many Days did they stay in your House; was it three, or ten, or how many?
 A. I believe about four or five Days after the Reconciliation, indeed I cannot tell.
 Q. But you are sure my Lady went to Mrs. Vice's?
 A. She went to my Lord's Lodgings, wherever that was.
 Q. Did you visit there before she went out of Town?
 A. I did see my Lady once.
 Q. Was it before or after Christmas that they went to the Country?
 A. I believe it was before; I cannot tell.
 Court.] Did you ever see my Lord and Lady at my Lord's Lodgings?
 A. I did, my Lord.
 Q. Did you go there?
 A. I went.
 Q. Where was it they lodged?
 A. It was a House, as near as I can remember, next to the Slip, at Temple-Bar.
 Q. When was it that you saw them there?
 A. It was after the Reconciliation, before they went to the Country.
 Q. Did you visit them a second time?
 A. I did.
 Q. Was it at the same House?
 A. To the best of my Knowledge it was.
 Q. Whole House was that?
 A. They call it Vice's House, to the best of my Knowledge.
 Mr. Recorder.] Now, Madam, what time of the Year was it you saw them the second time at Vice's, in what Month? Pray recollect, for it is very material.
 A. Indeed I cannot tell.
 Q. You came to Town you say in July, and the first News you heard was the Death of the Queen; was it before or after that you saw her there?
 A. It was after that I saw her.

Q. How long after?—A. I cannot say.
 Q. Was it that Year?
 A. I believe it was that Year, but I cannot ascertain the Month.
 Q. Are you sure it was that Year? See and recollect the Month; if you can.—A. It was that Year, but I cannot ascertain what Month.
 Q. Was Mrs. Sitwright at Dunmaine when you were there?
 A. She was.
 Q. What was she there?—A. She was House-keeper.
 Q. Did you know Sarah Weedon there?
 A. I knew nothing of Sarah Weedon at all.
 Q. Did not you know John Weedon the Coachman's Wife?—A. I never knew that John Weedon the Coachman was married till of late.
 Q. Was John Weedon the Coachman there at that time?
 A. He was there.
 Q. Who was House-maid there then?—A. I do not know.
 Q. Do not you remember Nelly Thomas?—A. No, I do not.
 Q. Do you know Bourk the Postillion?—A. I do not know him.
 Q. Did not you go abroad and stay a Fortnight at Mr. Boyde's House, and Bourk carry you?
 A. I went abroad, but how long I stayed I cannot tell.
 Q. Where did you go?—A. To Mr. Boyde's.
 Q. And did not Bourk carry you there?
 A. I do not know who carried me there.
 Q. Was not it one of my Lord's Servants?
 A. It was, but which I cannot tell.
 Q. How soon after your being at Dunmaine was it, that you went to Mr. Boyde's House?
 A. I cannot tell; but it was while I was at Dunmaine.
 Q. How long did you stay at Mr. Boyde's?
 A. I cannot tell that neither; but I believe a very short Time.
 Q. What Boyde was it?—A. Boyde of Roslar.
 Q. Pray, Madam, who was Butler at Dunmaine when you were there?
 A. Ralph.
 Q. Did you know Anthony Dyer?—A. No, I did not.
 Q. Who was my Lord's Gentleman?—A. Indeed I cannot tell.
 Q. Had my Lady a Page?—A. Indeed I do not know that I ever saw any thing in the Equipage that was a Page.
 Q. Had my Lady a Page or not?
 A. She might have a Page for aught I know, but I do not remember.
 Q. Was this Visit to Boyde's before or after you saw the Abortion?
 A. Indeed, I cannot tell.
 Q. Were you at Dunmaine in the Month of April?—A. I was there.
 Q. On St. George's Day?—A. I cannot tell.
 Q. Were there any Races while you were there?
 A. There might be, but I cannot tell.
 Q. Was you at any Races with Lady Altham?
 A. Indeed I do not remember.
 Q. Did any Girls run for a Smock there? Was there a Smock-Race?
 A. To my Knowledge, I never saw any such thing in the Country.
 Q. Do you know Mr. Mark Whyte?—A. Yes, I have seen him.
 Q. Had you any Discourse with him at any time?—A. Yes, he was at Gorey, and we had some Discourse, I cannot particularly tell what.
 Q. Cannot you remember what you said to him?
 A. I told him some Servants Names that were at Dunmaine; and he asked me if I remembered my Lady to be ever with Child; I told him I did, and that she miscarried; and his Answer was, as to her Miscarriage we do not go upon that, for we do not suppose my Lady a barren Woman.
 Q. Was that all that passed between you?
 A. Mr. Mark Whyte asked me, if I remembered any of the Servants of the Family; I told him I did, and named all I knew.
 Q. Did not you tell him that you'd swear for my Lord Anglesea if he would renew your Husband's Lease?—A. Indeed I deny it absolutely.
 Q. Did you ask the Renewal of the Lease?
 A. Yes; I'll tell you how it was asked. Mr. Cole had been employed for Captain Annesley for a long time, and had a Promise for a Lease from him long before that; and when Mr. Whyte was spoke to upon this former Promise of this Lease, I desired the Captain would make good his Promise.
 Q. Do you know Mr. Frank Annesley of Ballyfax?
 A. I have very little Acquaintance with him.
 Q. Did not you tell Mr. Whyte that you could be a very material Witness for my Lord, but that you would not tell him what you could say till your Lease was renewed?
 A. I did not, unless in this Manner; if the proving a Miscarriage can prove of any Service to my Lord, I can prove the Miscarriage.
 Q. And did you say no more?
 A. No indeed, I cannot say that I did.
 Q. Mr. Recorder.] Had you any Discourse with Mr. Frank Annesley?
 A. He came one Day to Sister Briscoe's House, and wanted to speak to her, and she was not ready for going down, and desired that I would; and I went down Stairs to him, and a little while after she came down, and I shewed him the Subpœna that I was served with.
 Q. Madam, do you recollect the Night that Mrs. Heath awakened your Mother in order to see my Lady?—A. I do not, Sir.
 Q. Do you remember that she came to awaken her?
 A. I do remember that she came.
 Q. Was there a Light in the Room?—A. There was not.
 Q. Had Mrs. Heath a Light with her?
 A. She might have a Candle in her Hand.
 Q. Was there Light or not?
 A. There was not, I believe there might be a Fire.
 Q. Had she a Candle in her Hand?
 A. Indeed I cannot tell, I had been asleep and she awakened me, and I cannot tell.

Q. Was there Light of any Kind in the Room?

A. There might be a Candle, and there might not.

The Reason of the Question is this; look at that Woman.

The Witness looks at Mrs. Heath.

Q. Will you swear positively, that that is the Woman that came in to the Room to call your Mother?

A. Mrs. Heath was the Person, and I believe that is the same.

Q. How can you tell it was her, when there was no Light?

A. I knew her Voice.

Mr. Recorder.] Did you see Lady Altham in Dublin in the Year 1715?

A. I don't think I did; I do not know that I did at all; if she was in Town I saw her; but I cannot tell whether she was or not.

Court.] Did your Mother shew you the Abortion?

A. I went into the Closet and saw it.

Q. Did your Mother call you to see it?

A. I do not know that she did.

Q. Did she desire you to look at the Abortion?

A. I do not know that she did.

Q. When was you married?—A. I was married in the Year ——— I shall be next March 14 Years married.

Q. Can you recollect your Age when you were married?

A. Indeed I cannot, except I count.

Court.] I only ask, because young Women generally keep Account of their Age.

Mrs. Cole. Well, I never did, and I tell you the Reason, there was a constant Debate about my Age, the Leaf was torn out of the Bible.

Q. Did you ever see an Abortion before that time?

A. No, nor for some time after.

Mr. Recorder.] Did any body attend my Lady on this Miscarriage?

A. I cannot remember one.

Mr. Solicitor.] My Lord, I only beg Leave to make one Observation on the Examination of this Witness; it seemed to be apprehended by the Court, that we concerned for the Crown had a mind to lengthen out this Trial unnecessarily; you will please to recollect what little time we took in the original Examination, and how much the Recorder has spent in cross-examining her, and I beg leave to say, that he did not ask one improper Question.

Court.] Since you acknowledge he did not ask one improper Question, you cannot think the time has been taken up unnecessarily.

Mr. Solicitor.] I only mention this, to shew how necessary it is for us to take up as much time in our Examinations, if we find it material.

Court.] You shall have all the time you can desire, to examine any Witnesses that are material.

N. B. The Examination of Mrs. Cole held from 6 Minutes before Nine, to 20 Minutes after Eleven.

Court.] Call your next Witness.

Crier.] Doctor Jemmat.

Mr. Spring. My Lord, I desire, before Doctor Jemmat comes upon the Table, what he is to be examined to may be opened.

Mr. Serj. Tisdal.] My Lord, the next Witness we shall produce is Doctor Jemmat, a Doctor of Physic, who attended Lady Altham in the Year 1714, at Mrs. Vice's, at the time she was with Child.

Doctor SAMUEL JEMMAT.*

Mr. Daly.] I desire to ask a previous Question, which is this; Did not you make an Affidavit of the Testimony you could give in this Cause?

Dr. Samuel Jemmat.] Do you mean in this Court, or any other?

Court.] Before any Person?

A. Before a Master in Chancery I gave in an Examination.

Mr. Daly.] Upon what Occasion, Doctor?

A. They asked me what I had to say in this Affair, and I told them.

Q. Who asked you?—A. One Mr. Cooper, a Master in Chancery.

Court.] What Cooper do you mean, Doctor Cooper?

A. He was a Stranger to me.

Q. Where was it that you were examined?

A. It was in the Queen's County, my Lord.

Q. What time was this?

A. I cannot tell whether in August, or September, or July the last Year.

Mr. Serj. Tisdal.] Did you know the late Lord and Lady Altham?

A. I did.

Q. Was you employed in that Family in any Capacity, and what?

A. I was employed by Arthur Lord Altham, as his Physician for some Years.

Q. Pray, Sir, did you ever attend Lady Altham as a Physician?

A. I did attend her Ladyship.

Court.] Do you remember when she came from England into this Kingdom?

A. I did not know when she came first, but I think about the latter End of November 1714, Lord Altham came to my House in Anglesea Street in a Chariot, and desired I would go with him to see my Lady, for he was afraid she had a Fever.

Q. And did you go?

A. I went in the Chariot with Arthur Lord Altham, to one Mrs. Vice's in Essex Street, where they then lodged.

Mr. Serj. Tisdal.] And did you visit my Lady then?

A. I did, and found her very hot and feverish, and I asked how long she had been so; and my Lord told me, (for only he, and she and I were in the Room) he told me that they had been out late at Night, whether at a Ball, or Play, or Music-meeting I do not remember, and he was apprehensive my Lady had got cold that way; but I forget whether he said it was at a Play, or Concert of Music, or any other Diversion.

Q. Pray, Sir, did you prescribe for her?

A. I did; I told her, I thought a little Blood taken away would be proper, and a gentle Puke necessary; but her Ladyship calling for a Basin,

* This Doctor Jemmat was a Gentleman of a Suffex Family, and in his younger Years, practised as a Physician in England; but some private Affairs calling him over to Ireland, he met with such Encouragement, as induced him to continue there, and was long settled at Dublin, where he was chosen an Honorary Fellow and President of the College of Physicians, and attended Lady Altham in the Winter 1714, when her Ladyship was supposed to be with Child, and prescribed for her; and would have been a material Witness for Mr. Annesley, in the remarkable Trial 1743, had he been known to him, or Mr. MacKercher, who, in some measure, conducted the Cause; but they not knowing of him at that time, were deprived of his Testimony; but the Doctor being afterwards found out, came over in 1752, with several others to England, to be examined in relation to the Anglesea Title and Estate. He for many years had a Complication of Diseases, and was troubled so violently with the Gravel, that he rarely quitted his Bed, or could be moved without exquisite Torture; nevertheless, when he was acquainted with the Consequence his Testimony would be of, he determined, though at that Season of the Year, and so late in Life, to undertake the Journey. But he died at Bristol the second Night after his Landing, in the 78th year of his Age, November 1752, and retained his Senses to the last. [In a Letter from Bristol, dated 21 November 1752, printed in the public Papers at that time.]

I thought she had an Inclination to vomit; but instead of that, she made what the understanding Women call, *Long Spits*, as if she was with Child. I asked her Ladyship then if she was with Child; she told me she had all the Reason in the World to believe that she was so: I then asked how long, and she said three Months. I asked her Ladyship upon that, if she had been regular; she told me that she had as any Woman living, till about three Months before that Time my Lord came for me. Upon which, I altered the Prescription I had before given; and ordered such mild Medicines, to mitigate the Fever, as might not endanger her Ladyship, or the Infant within her.

Q. Do you remember whether Mrs. Heath lived there with my Lady?

A. My Lords and Gentlemen, whenever I was sent for to any Noble Family, or Gentleman's House, my Business was to attend what I was sent for about, and I never took Notice of any Servant.

Q. Do you know whether Lady Altham was with Child then; or not; have you any other Reasons?

A. Upon her telling me this and examining of her, I had Reason to believe she was; I had breakfasted with them before, but I found her Countenance change, and she had yellow Spots and livid Spots came out upon her; and I felt her Breasts, and found they began to grow turgid; upon which, I found that she was with Child, and that made me alter the Prescriptions, that they might not hurt the one or the other.

Q. Do you know whether she went on in her Pregnancy?

A. I gave her Directions how to manage herself; but her Disorder being what we call a *Febris Ephemera*, which lasted but three Days, my Wife and I dined with them at a third Place, and after Dinner, my Wife, who saw her Condition, went out with her, and returned again in a few Minutes; and my Lady told my Wife—

Court.] You are not to say what my Lady told your Wife, but only what you know yourself of her being with Child.

Doctor Femmat.] But I say, I gave her Directions how to manage herself, and my Lord told me—

Court.] You are not to say what Lord or Lady or any Body told you. Do you believe her to have been then with Child?—A. I do.

Mr. Serj. Marshall.] My Lord, I must insist that we have by Law a Right to ask that Question; in the very Chapter of Perjury in *Hawkins* you will see it laid down as a Rule, that Hearsay-evidence, that serves to illustrate what is the proper Evidence to be given before the Court, shall be admitted.

Court.] Hearsay-evidence may be made use of to introduce material Evidence, but when a Witness has said all that is material, we shall not admit that.

Cross-Examination.

Mr. Spring.] As well as I recollect, you said, Sir, that Lord Altham carried you to see his Lady?

A. He called upon me, and I went into the Chariot with him; he did not carry me in, I assure you.

Q. Well, Sir, if he did not carry you, you went with him?—A. I did.

Q. You said, I think, that you made an Affidavit before Mr. Cooper, to what Purpose did you make that Affidavit?

A. I had given in an Examination; I do not know to what Purpose.

Q. Do you recollect what you have said there with respect to the Manner and Time of attending my Lady Altham?—A. I believe I might.

Q. Did not you say there that it was in November?—A. I say so now.

Q. Did not you say that the Chariot was sent for you?

A. I believe not; if the Master in Chancery put it down that I was sent for he mistook me, for I remember that my Lord came for me himself; and I will tell you why I remember it. I was then in Mourning for Queen Anne, and I had only one Weeper on when he came; and he came into the Parlour and sat by the Fire till the other was put on.

Q. Would you have this understood, that if it was mentioned in the Affidavit that the Chariot was sent for you, it was a Mistake?

Court.] He says the Master was mistaken.

Mr. Spring.] Did not you read it before you swore it?

A. I believe I might.

Mr. Walsh.] Pray, Sir, how long have you been a Physician?

A. I took my Degree of Doctor of Physic in the Year 1711, and I think that is about 33 Years; I have been 27 Years a Fellow of the College of Physicians, and an Honorary Fellow above four Years.

Mr. Spring.] Upon your Oath, Sir, are there any Rules in your Profession, by which a Pregnancy can be discerned from a Tympany, or any the like Disorder?

A. By Virtue of my Oath, that Question would puzzle not only the Colleges of Physicians of England and Ireland, but the Royal Society too.

Jury.] Is there such a Thing as a false Conception?

A. Very often, a *Mola* there is.

Q. There is such a Thing?—A. No Doubt of it.

Q. Are the Symptoms the same? Have Women grown big with a false Conception?—A. They have done it.

Mr. Walsh.] The next Witness that we shall produce to your Lordship is one *Hellena Moncrieffe*. We produce this Witness, to shew that in the Year 1714, she was recommended by Sir Chamberlaine Walker, a famous Man-Midwife of this City, to my Lady Altham, whilst she lodged at Mrs. Vice's, for a Nurse; that she was hired and agreed with her Ladyship; had been several Times with her on that Occasion; and will give your Lordship an Account that my Lady was then with Child, and the Reasons of her Knowledge.

3. HELLENA MONCRIEFFE.

Mr. Walsh.] Pray, what Business do you follow?

Hel. Moncrieffe.] My Business is to attend Ladies that lye-in.

Q. How long have you followed that Business?

A. Twenty-seven Years next March.

Q. Tell what Ladies you have attended that Way.

A. The Honourable Mrs. Mary Moore; Mrs. Ludlow, Counsellor Ludlow's Lady, of eight Children; Lady Mountjoy; Lady Antrim; Lord Bessborough's Family entirely.

Q. Well, did you know Sir Chamberlaine Walker?—A. Very well.

Q. What Profession did he follow?—A. Midwifery.

Q. Do you remember to have met him in the Year 1714 any where?

A. I did, Sir.

Q. Where?—A. In *Stafford-street*.

Q. When did you meet him there?

Q. To the best of my Knowledge, in and about November, or Beginning of December, 1714.

Q. Where did you meet him?

A. In *Stafford-street*, at a Jew's House, one *Solomon*.

Q. Had you any Discourse with him there?

Mr. Malone.] My Lord, I object to that as an illegal Question. Mr. Walsh.] I insist upon it to be a legal Question according to the Evidence opened, that she was recommended to my Lady by him; is not it proper to ask what Discourse he had with her on that Occasion?

Mr. Malone.] It is proper to examine her to that Fact, but they have opened it a great deal further.

Mr. Walsh.] Did you see Lady Altham?

A. I had the Honour of seeing Lady Altham.

Q. Where did you see her?

A. I saw her first at Doctor Walker's at that Time, he was Doctor Walker then, and was after knighted in the Duke of Grafton's Time, and he spoke to me, and recommended me to her Ladyship; and said if I had a Mind to nurse, he would recommend me to a very good one. I made very little of it then; I was giving Suck in January to a Child of six Months old.

Q. Did you go to my Lady Altham?

A. I was three different Times with her; the last Time she talked to me a good deal about her being with Child; and what Time she reckoned. Says she, I am at a Loss, as I have had some Illness, how to reckon; and then she lifted up her Night-gown, it was of Sattin, with Green Flowers in it, and shewed me her Belly: Your Ladyship, says I, seems to be as big as any Woman gone seven Months.

Q. And did she say she was?—A. She said, she believed not.

Jury.] What Time was this?—A. In January 1714-15.

Court.] How many Times were you with my Lady?

A. Three different Times I was with her.

Q. Did she lift up only her Night-gown, or all her Cloaths?

A. Only her Night-gown.

Q. What was it you said to her then?

A. I told her that I thought she was as big with Child as any Lady that was six or seven Months gone; and she said herself that she was not so long with Child as seven Months.

Q. What were you recommended for to her?—A. A Nurse.

Q. By whom?—A. By Doctor Walker.

Q. A wet Nurse or dry Nurse?—A. A wet Nurse, Sir.

Q. How came you not to accept of that Nursing?

A. As I went there the last Time I met two or three Friends, and they asked me where I was going; I told them where; says one, *Moncrieffe*, take my Advice, Lord Altham is a bad Man, you have no Necessity, and do not engage; and for that Reason I went unto her no more, but heard she went out of Town.

Q. What Reason had you to believe she was with Child?

A. By her Appearance and Conversation, and the laying my Hand upon her Belly, I had Reason to believe she was with Child.

Q. From these Circumstances, as you are now a Woman of Skill, can you positively say she was with Child?

A. Upon my Word, I do not know either of the Gentlemen, it was Mr. Arthur Hill brought me into this by telling it by Accident above two Years ago; but upon the Word of a Christian, both by the Judgment that I have had since and before, my Lady Altham was as much with Child as ever I was, and I have had one-and-twenty Children.

Mr. Walsh.] Do you know Mrs. Heath?

A. So far I have recollected, that the last Time I breakfasted with my Lady, there came in a Gentlewoman they called my Lady's Woman, she looked opposite to me, and she was a thin-faced black Woman at that Time; and there came Mrs. Tilby, a Mantua-maker, an eminent Mantua-maker at that Time, and brought a Gown with her, but whether my Lady's or no I cannot tell; but she staid at the Dining-room Door, and asked me what I was doing there.

Q. Tell the Discourse you had with Mrs. Heath.—A. I had none at all.

Q. Did you see her there?

A. I saw her come to tell the Mantua-maker was come to her Ladyship.

Q. Do you remember what Lady Altham called her?

A. I do not remember upon my Word, I know she was a thin black Woman, very swarthy, and had black Hair.

Mr. Daly.] We admit that Mrs. Heath was my Lady's Woman.

Mr. Walsh.] Do you remember on what Occasion Mrs. Tilby came?

A. To alter a Suit of black Silk.

Q. To let them out, or take them in?

A. I cannot tell that; it was the Queen's Mourning.

Q. How do you know it was Mourning for the Queen?

A. The Child I was giving suck to was born the 20th of July, I have it in my Bible, and the Queen died in August following.

Q. How many Times did you go to visit my Lady?

A. Three different Times in *Essex-street*; the first Time she was indisposed.

Q. Every Time that you came there did you see this Lady?

A. Never to my Knowledge but once; I had no Reason to retain it.

Cross-Examination.

Mr. Daly.] You waited of Lady Altham, had you ever seen her before that Time?

A. I had, as I had been Woman to Lady Louth, they were intimate, and I had seen her.

Q. Where did you wait on her first?

A. First I waited on her in Dr. Walker's House, in *Capel-street*.

Q. Where did you wait on her at the Time you conversed with her and handled her Belly?

A. At Mrs. Vice's, in *Essex-street*.

Q. What Year was that in?

A. In the Year 1714.

Q. What Time?

A. Between

A. Between the Beginning and 23d of *January*, because I put out my own Child to Nurse the 22d, and it was my second Child.

Q. Who shewed you into my Lady's Room the first Time?

A. To the best of my Knowledge a Man Servant.

Q. Name him.

A. Indeed I cannot. I go very often to Ladies now, and do not know their Servants.

Q. What Sort of Man was he?

A. He was an elderly Man, I have seen him afterwards.

Q. What Time was it that Lady *Altham* and Lady *Louth* were intimate, and you saw her there?

A. It was when they were in *Dublin*.

Q. Where did Lady *Louth* lodge?

A. She lodged at one *Farrel's* upon the Quay.

Q. Did you see Lady *Altham* there?—A. I did.

Q. At what Time?—A. I cannot recollect my Lady's Visitors.

Q. What Year was it?—A. To the best of my Knowledge, it was 1713.

Q. Pray, how often did you see her there?

A. I believe three or four or five Times, I know they were very intimate.

Q. Was there any Servant of my Lady's present, when you were in the Room and handled her Belly?

A. I cannot tell; there was no Servant, it is not common now, and let alone at that Time: Yes, there was a Woman that went with me, and she was by.

Q. Was she present?—A. She was.

Q. Had she any Trade or Calling?

A. She was a creditable Man's Wife.

Q. Did she understand Midwifery?—A. She did not.

Q. And though it is not common for a Servant to see her Lady's Belly handled, yet a Lady that went with you was present, you say?

A. Yes, she was.

Q. Can you recollect what Time of the Year 1713 it was you saw my Lady *Altham* at Lady *Louth's*?—A. I cannot indeed.

Q. Was it in Summer?

A. I believe it might be in Summer; I am not positive as to that.

Q. What was the Woman's Name that was present with you when you handled my Lady's Belly?—A. Her Name was *Claffon*.

Q. But you do not know the Servant that shewed you up Stairs?

A. Indeed I do not.

Q. And none were present?—A. None that I saw.

Q. Do you know any Person in the House that has seen you there?

A. Mrs. *Vice's* Servant saw me there.

Q. What was her Name?—A. Her Name was *Peggy*.

Q. Did Mrs. *Vice* see you there?

A. She did; I sat half an Hour in her Room.

Q. Had she any Children?—A. I think a Girl or two.

Q. You saw her Daughter?

A. I believe so; they were little, and her Children.

Q. Upon your Oath, did you see Lady *Altham* before *Michaelmas* 1713?

A. I cannot tell, because it was no way material to me to recollect that.

Q. When did you leave Lady *Louth*?—A. In the Year 1713.

Q. About what Time?

A. I believe it might be *February*, for I lay-in of my first Child in *February*.

Q. Did you make any Affidavit concerning this Affair?—A. Yes, Sir.

Q. Before whom?

A. I was brought by a Gentleman to *Essex-Street* to a Commission, I think it was, for I know nothing about it: I think about two Years last Summer Mr. *Arthur Hill* began a Discourse about this Mr. *Annesley*. He asked me if ever I saw my Lady *Altham*; I told him I did, and saw her with Child, and he told it to somebody that sent for me.

Q. What Age were you in 1713?

A. I was born the 12th of *March* 1688.

Q. Was not it in Summer before that that you left my Lady *Louth*?

A. No, Sir, it was in *February*.

Q. Did not you say it was in Summer?

A. I say, that it was in Summer that my Lady *Altham* visited Lady *Louth*.

Court.] You have attended a great many Women, pray, can you tell the Difference between a false Conception and a real one?

A. Yes, Sir, by the Conversation of the Woman.

Q. But can you any otherwise?

A. No, really, but by Discourse.

Q. Did you feel the Child stir?

A. No, really, my Lord, I did not; but I remember my Lady, when I said, she seemed to be seven Months with Child, said, No, she was not.

Q. What Child was you nursing at that Time?

A. My second Child I nursed then.

Jury.] You say, Madam, that when you waited upon Lady *Altham*, she told you she was gone about seven Months?—A. I told her so.

Q. How came you to tell her so?

A. Because she asked me the Question; she told me she had some Illness, and could not tell how to reckon, but said she found herself very big and uneasy; I said she seemed about six or seven Months gone with Child.

Q. But why should she ask you, if she could not tell herself?

A. There are a great many Questions asked by Ladies, when they are with Child.

Q. You were unexperienced then. Was your Hand upon her naked Belly?—A. No, above her under-Petticoat.

Q. I think you said you felt nothing stir?—A. I never said I did.

Q. What was the Occasion of putting your Hand upon her Cloaths?

A. To judge by her Bulk; it is a mighty common Thing.

Q. You were at Mrs. *Vice's*?—A. I was.

Q. You say you sat there above an Hour?—A. I said half an Hour.

Q. Did you see any of her Children?—A. I think I saw Children.

Q. What were they?—A. It was a Girl.

Q. How old might it be?

A. Why indeed very little, about five or six Years old; I do not know whether they were hers or the Neighbours Children, but they came into her Room.

Mr. *Daly*.] How long have you been a Nurse?

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A. Seven-and-twenty Years very near, not all out till *March* next.

Court.] Do you know whether you would know my Lady's Woman now? Witness looks at Mrs. *Heath*, and says, I cannot say that I have any Knowledge of the Gentlewoman's Face at all; the Woman then was a thin, swarthy Woman with black Hair.

4. Mrs. MARGARET BUSHE.

Mr. *Harward*.] We call this Witness, my Lord, to the same Purpose; she was an intimate Acquaintance of my Lady *Altham*, and will prove that she was with Child, and afterwards was delivered of a Child.

Q. Pray, Madam, did you know my Lady *Altham*?

Mrs. *Margaret Bushe*.] I did; I was acquainted with her.

Q. Pray, Madam, did you ever see her at *New-Ross*?—A. I did.

Q. When you saw her at *New-Ross*, in what Condition was she?

A. She seemed to be with Child, pretty big.

Q. Was this, Madam, at *New-Ross*?—A. At *New-Ross*.

Q. Pray, Madam, did you see her but once there, or more frequently?

A. I saw Lady *Altham* three Times at *New-Ross*, to the best of my Memory.

Q. Pray, Madam, in what Year, or about what Time was it that you saw her there?

A. To the best of my Recollection and Memory, it was *February*, in the Year 1714-15.

Q. Have you any particular Reasons that induce you to recollect that it was about that Time?

A. Yes; I was at that Side of the Country 'till a little before *Christmas* that Year. It was about half a Year after the Death of Queen *Anne*, they were all in Mourning when I visited her, except one or two that went out, and I do not know whether they were in Mourning or no; and I do believe it was for Queen *Anne*.

Q. Pray, Madam, did this Lady stay for any Time at *Ross*, or go any where else?

A. The Day I visited her I saw her twice then, first at Captain *Butler's*; there Mrs. *Butler* introduced me to Lady *Altham*.

Q. Where did Captain *Butler* live?—A. He lived in *Ross*.

Q. Where did you see my Lady next?

A. A Day or two after I visited my Lady at her own Lodgings in *Ross*.

Q. Pray, Madam, did she continue for any Time there, or did she leave it soon after?

A. The Day I visited her, she talked of going out of Town next Morning.

Court.] Did she go?

A. I do not know, I left the Town in a few Days myself, and did not see her in *Ross* after.

Mr. *Harward*.] How soon did you return to *New-Ross*?

A. I was frequently there to and fro, for I lived at my Father's within three Miles of it, and I cannot tell how soon; but I am sure towards the latter end of the Month of *April*, and to the best of my Memory, either the *Saturday* in *Easter* Week, or early the next Week it was, that I went there.

Q. Pray, Madam, recollect whether this Lady was a Lady far gone with Child, or was early in her Pregnancy.

A. She looked big, and that is all the Memory I know of it, and I asked her no Questions.

Q. Did not you inquire about her being with Child?

A. Several Gentlemen were by, and I did not think it proper.

Q. Do you know of her being delivered of that big Belly?

A. I was at my Father's, and some of his Servants went to Town—

Court.] You must only speak from your own Knowledge, Madam, not what you heard from any body.

Mrs. *Bushe*.] I wished my Lord Joy of that Child on the Quay of *Ross*.

Mr. *Recorder*.] That is nothing.

Mrs. *Bushe*.] I know nothing more of myself, but they both told me so.

Court.] Madam, you come here to declare the Truth, the whole Truth, and nothing but the Truth; and if you swear to what you heard from other People, you may swear false, for they might deceive you.

Mrs. *Bushe*.] I may be deceived, but I will swear the Truth, and nothing but what I know.

Mr. *Harward*.] I shall put to her a legal Question. Pray, Madam, you say you saw her big-bellied, did you ever see her afterwards when she wanted that big Belly?—A. I did.

Court.] How soon after?

A. To the best of my Recollection, I will not be positive, I saw her here in *Dublin* towards the latter end of the Month of *June* that Year.

Q. What Year?—A. In *June* 1715.

Q. In *June* 1715?

A. To the best of my Recollection, about the latter end of *June*, in the Year 1715.

Mr. *Harward*.] How did she appear then, was she with Child or not?

A. She was very slender, and looked pale when I saw her.

Q. Give an Account of what happened when you saw her in *Dublin*?

A. I went to visit her; I was just upon leaving Town, and thought proper to visit her before I went; I found her undressed, and she told me she had been busy packing up into the Country, and was going to *Dunmaine*. It is to no Purpose, I find, to tell you what she told me.

Mr. *Harward*.] The Nature of all Evidence must be to discover the Truth, and there is no Way of coming at the Truth but by the essential and circumstantial Parts of every Fact; she now says she visited my Lady *Altham* in *Dublin*.

Court.] That is material.

Mr. *Harward*.] I ask her then, my Lord, whether Lady *Altham* gave any Account of what became of that big Belly of her's? I have a Right, I think, to know that; or otherwise our Ears are to be shut against the Truth.

Court.] If you were upon a Trial of who was Heir to the Estate, your Question would be proper; but in a Case of Perjury, your Question is not proper, for what Lady *Altham* says is no Evidence for or against the Traverser.

Mr. *Harward*.] I would always be in your Lordship's Judgment about the Legality of any Question, but I beg Leave to mention what I understand I have a Right to insist on; I humbly apprehend I have a Right to introduce the material Part of Evidence by every Thing that precedes it and is relative to it.

Court.] You have the material Part of your Evidence already; the Witness says she saw Lady Altham big-bellied at *Ros*, and soon after in *Dublin* without a big Belly; that is all she knows, or has to say that is material; if Lady Altham told a thousand People she had a Child, that's no Evidence against Mrs. Heath.

Mr. Harward.] What do you apprehend became of that big Belly?

Mr. Daly.] My Lord, I must insist upon it, that the Witness's Apprehensions are no Evidence.

Mr. Howard.] I am pretty confident I cannot be mistaken in this Point, I have a Right to have the Apprehensions of every body, on Oath.

Court.] I beg your Pardon, *Mr. Harward*, shew your Authority.

Mr. Harward.] I will, my Lord: I beg leave to lay it down as an established Rule, since I am called upon, and I hope they will indulge me to give Account of myself. My Lord, I lay down this as a Rule of Evidence, that in all Crimes whatever, the Apprehensions of a Witness are admitted as Evidence; suppose if a Man was indicted for Murder, and a Witness against him gave account of Facts that he had seen concerning that Murder, it is every Day's Experience to ask that Witness what he apprehended upon those Facts. This is the Law, and I must humbly submit it to be so, that when a Witness gives account of particular Facts, he is asked what he apprehended upon those Facts; but he cannot tell what he apprehended, unless he lays Facts before you, which are the Ground of that Apprehension.

Mr. Recorder.] It is the first time that ever I heard that a Man is said in a Court of Law to be examined to his Apprehension of Facts by the Prosecutors of a criminal Cause; the Plaintiff can never ask Belief or Apprehension; I may, but you cannot.

Court.] I see the Doctrine, and whither it tends; I tell you how I apprehend the Law to be, and to be very clear in the Point. The Apprehension of a Witness is asked, where no other Evidence can be had in capital Cases; as where a Witness is produced to prove a Wound given, he is asked whether he apprehends that Wound was the Cause of Death. That must be asked, for he cannot tell otherwise. It is the best Evidence that can be had in that Case. But as to a Fact, if you make the Apprehension of a Witness necessary, it takes away all Proof of Fact.

Mr. Harward.] Then I understand I am not to ask her any thing concerning this big Belly.

Court.] Yes, if she knows any thing of it, you may ask her.

Mr. Harward.] Aye, but not from Lady Altham.

Court.] No, not as to that.

Mr. Harward.] Since I am debarred of asking that Question, I hope I shall have better Luck in the next.

Q. Pray, Madam, what was the common Reputation of the Country concerning Lady Altham's being brought-to-bed?

Mr. Smith.] I object to that Question, my Lord.

Court.] You have much more Reason to object to that, after what I have just now said.

Mr. Harward.] I acquiesce also in that, because that will settle what hereafter will be a very great Debate, when these Gentlemen come to produce their Witnesses.

Court.] The Reputation of the Country is not Evidence here. You lay down your Rules too large, *Mr. Harward*.

Court.] Pray, Madam, where in *Dublin* did you visit Lady Altham?

A. At whose House I do not know, for I never was there but once; the Chairmen knew where she lodged, and carried me there; and I did not know the Name of the People where they lodged; it was in *Essex-Street* I know, a little beyond the Post-Office; between that and *Fleet-Street*, to the best of my Knowledge.

Mr. Harward.] Do you know, Madam, whether there were any Preparations made for her Lying-in?

A. I know, when I was in *Ros*, the Midwife that was said to lay Lady Altham, came to the House where she lodged, and sent out some Wines to my Lady.

Court.] Do you know that these Wines went out to Lady Altham?

A. Indeed I did not send out the Wines myself.

Cross-Examination.

Mr. Spring.] Pray, Madam, you said you saw my Lady Altham at *Ros*?

A. I did, Sir.

Q. I think you say it was in the Year 1714 or 1715?

A. In 1714-15, in *February* I first saw her.

Q. Where did she lodge then?—At *Mr. Samuel Stephens's*.

Q. How long did she remain in that Town during that Time?

A. I cannot tell, for I do not know whether she or I went away first.

Q. Do you know one *Mrs. Butler*, that lives on the *Quay* in this Town?

A. I do.

Q. Had you any Conversation with her?

Mr. Serjeant Marshall.] My Lord, I must object to that Question.

Court.] What the Witness has said to any body is Evidence against her on *Cross-examination*; but not what others have told her.

Mrs. Bushe.] There was some Conversation.

Q. What did you tell this *Mrs. Butler* in relation to Lady Altham's having or not having a Child?

A. I tell you what I said on that Head. I told her that upon Inquiry after this Child, some Years after my Lord and Lady parted. I was told it was dead, and never hearing any thing to the contrary that could convince me, I always thought he was dead.

Q. Did you never tell her, upon your Oath, that Lady Altham had had no Child?

A. I never did; but I told her that I was a good while before I could think, after *Mr. Annesley's* coming over, that he was my Lady Altham's Child.

Court.] Gentlemen, call your next Witness.

Mr. Robins.] My Lord, the next Witness we produce is *Alice Betts*, to prove Lady Altham was with Child, and the Traverser's whole Account to her of her being with Child.

5. ALICE BETTS.

Court.] Was you examined on the former Trial?

Alice Betts.] Yes, I was.

Mr. Robins.] Did you know *Arthur Lord Altham*?—A. Yes, I did.

Q. And Lady Altham his Wife?—A. Yes, Sir.

Q. Do you know any thing of my Lady's being with Child?

A. Yes, Sir, I did.

Q. Tell what you know of your own Knowledge.

A. Why, I went to see my Lady at *Mrs. Vice's* in *Essex-Street*, and my Lord met me and clapp'd me on my Back, and said, *By G—d*, Alley, Mail is with Child.

Q. What do you know of your own Knowledge concerning her being with Child?

A. I know, by seeing of her with Child, and that is all I can tell, by seeing of her big, and joked with her, and wished her much Joy, and she did not deny it.

Q. Do you know *Mrs. Heath*?

A. I knew *Mrs. Heath* that waited on my Lady, but I cannot tell at this Distance whether it be her; I am near-sighted. [The Witness goes nearer to her, and says] I think it is her, to the best of my Knowledge.

Q. Had you any Discourse with her about my Lady? Tell when and where.

A. I used to joke with her about my Lady's being with Child at *Mrs. Vice's*.

Q. When?—A. In *November*, and after.

Q. In what Year?—A. In the Year 1714.

Q. Was it before or after *Queen Anne* died?—A. After the *Queen* died.

Q. What did she say?

A. We used to be talking and joking that Way, we were glad my Lady was with Child; but I never used to ask *Mrs. Heath* seriously about it. It is no more than Jest.

Q. Do you know any thing more of this Matter?

A. My Lady came one Day to our House.

Q. Whose House was that?—A. Captain *Briscoe's*.

Q. Was you Servant there?

A. I waited on *Mrs. Briscoe*. And my Lord and Lady had a little Falling-out, and she came in a little Pet to our House, and went into *Mrs. Briscoe's* Room and cried; she cried most terribly; and a little after *Mrs. Heath* came in with a blue Box in her Hand with my Lady's Head-cloaths, for my Lady came undressed in a long scarlet Cloak; and I helped *Mrs. Heath* to dress and undress her, and she had a long Silk Coat upon her.

Q. What were the Words *Mrs. Heath* said about my Lady's being with Child?

A. I cannot remember the particular Words, any more than that we were jesting in a little way.

Q. How?

A. Why, we were pleased to see that my Lady was with Child; *Mrs. Heath* knows it herself; *Mrs. Heath* knew me mighty well, we were intimately acquainted, and always in my Lady's Room together, dressing and undressing her together, and I attended my Lady with her very often.

Q. Did *Mrs. Heath* ever tell you that my Lady was not with Child?

A. No, she did not, for I never asked her such a Question.

Q. What did she, from her Discourse to you, appear to think of my Lady?

The Question objected to.

Court.] Had you any other Discourse with her, about my Lady's being with Child?

A. No, indeed.

Mr. Robins.] Can you remember the Words *Mrs. Heath* spoke to you?

A. I cannot remember the Words; but we used to joke with my Lady; little common way of talking that way with my Lady; and *Mrs. Heath* and I went once to the Change to buy Muslin together, and there we were talking of my Lady; and *Mrs. Heath* knows very well of an Affair that happened to her and me there.

Q. What do you know of *Mrs. Heath's* Knowledge about my Lady's being with Child?

A. I have no more to say than that.

Q. What is that?

A. That she did know that my Lady was with Child.

Q. How do you know she knew it?

A. Because we joked about it, and we were praising my Lady, as it is the way of Waiting-maids to please their Ladies oftentimes: indeed it is.

Court.] My Lady, you say, was in *Bride-street*, at *Mr. Briscoe's*, when you dressed her?

A. It was there my Lady was dressed.

Q. You say that she was dressed there; did she lodge there then?

A. No, at *Mrs. Vice's*, she came there in a Pet, because she had a Falling-out with my Lord; she called *Mr. Briscoe* Father, and came to him with all her Grievances.

Q. How did she come there?

A. In a long Velvet Hood and scarlet Cloak, *Mrs. Heath* came with the Box, a little blue Band-box.

Q. And was it there that this Jestling with her was?

A. There and at *Mrs. Vice's* too.

Mr. Robins.] Did you make any Observations about my Lady's Size?

A. She was a middling Woman, full-breasted here, and swarthy.

Q. How did her Belly appear?

A. As a Woman with Child, and it was very easily seen.

Q. That was in *November* you saw her?

A. It was, when my Lord told me she was with Child; I saw it then, and I saw her all the time she was in *Dublin*.

Court.] Was she a broad Woman?

A. She was a full-made Woman, very full-breasted and high-hipp'd.

Mr. Robins.] Did her Belly alter?

A. I never observed any way, but that she was growing big.

Court.] How soon did you see her again after she went from *Dublin*?

A. Never again.

Q. How long did she stay in Town from the first time you saw her?

A. I believe just before *Christmas*, or after, she went out of Town.

Q. Can you tell how long after you first saw her, it was that she staid in Town?—A. I cannot indeed.

Q. Can you name the particular Times you saw her?—A. I cannot.

Mr. Robins.] Did you ever see my Lady undress'd?

A. Twenty times, dressed and undressed.

Q. Who used to dress and undress her?

A. *Mrs. Heath*, and I with her, when she lodged at Captain *Briscoe's* first.

Q. How did my Lady's Belly increase?

A. That is a thing impossible for me to tell.

Q. Did

Q. Did you observe a Difference?

A. Yes, I did, that she rather grew bigger than otherwise.

Cross-Examination.

Mr. Recorder.] When did my Lady come to Captain Briscoe's first?

A. In the Year 1713, I believe in October.

Q. When did she go away from Briscoe's?

A. I think she went to the Country with my Lord just before or just after Christmas, I cannot tell exactly, in the Year 1713.

Q. Now I ask you, did she go from Briscoe's to the Country?

A. No, she did not; they went from Captain Briscoe's to Mrs. Vice's, for our House was too little, and my Lord had a vast Number of People after him.

Q. How long did they stay at Captain Briscoe's after their Reconciliation?

A. I do not know whether they staid four or five Days, I cannot tell that itself.

Q. Did they stay two or three Days?—A. Two or three to be sure they did.

Q. And they went from your House to Vice's?

A. They went to Mrs. Vice's.

Q. When did my Lady return again to Dublin?

A. She came up the latter end of the Summer.

Q. What do you call the latter end of the Summer?

A. My Lady was in Dublin at August 1714, when the Queen died.

Q. Did you ever dress my Lady but at Captain Briscoe's?

A. I never did at Mrs. Vice's.

Q. But at Briscoe's you did?

A. I dressed her after she left Captain Briscoe's.

Q. When?—A. That Day that she came to our House that my Lord and she had a Pique.

Q. Never but that time?—A. That was the time.

Q. And you did not undress her at Vice's?

A. I was then but a Stranger; when I went to Mrs. Vice's it was only to visit her.

Q. Did you ever dress or undress her at Mrs. Vice's?—A. I never did.

Court.] I thought you said you dressed her twenty times at Captain Briscoe's?—A. Yes, and so I did.

Q. When was that?—A. That was some time before Christmas, in short dirty Days; for before we had done Dinner it would be Night.

Mr. Recorder.] So that the time you dressed and undressed her was about Christmas?—A. I cannot justly tell the Month; it was in the short dirty Days.

Q. But was it in December?

A. I cannot tell the Month. Is not it a long time to remember 30 Years?

Q. Was it after the Quarrel that my Lady came to Mr. Briscoe's House?

A. It was.

Q. When did that happen?

A. Before or after Christmas, I cannot tell the time.

Q. Do you know the Reason of that Quarrel?

A. My Lord gave her a Slap on the Face; Mrs. Heath knows.

Q. Was you by?—A. No; but my Lady said so.

Q. How long then did my Lady stay in Town?

A. She went out of Town in the Year 1713, before Christmas.

Q. When did she leave Town the second time?

A. Either just before or after Christmas she went from Mrs. Vice's to Dunmaine, and I never heard of her since till now lately.

Q. Did you ever speak to Mrs. Heath about this big Belly?

A. Nothing but what I told you, I never asked her seriously.

Q. Did you ever put the Question to her, whether my Lady was with Child or not?—A. No, I did not ask her seriously about it.

Q. Had you no other Discourse about it?

A. We had none but what I told you, and that was joking; telling and pleasing my Lady that she was with Child; and Mrs. Heath and I laughing, and pleased it was so.

Court.] Did you ever see my Lady after she went into the Country the second time?—A. Never after; and that was the Year 1714.

Mr. Recorder.] You say my Lady came to Town in August?

A. She was in Town in August.

Q. Did you see her in August?—A. I cannot be positive to the Month.

Q. When you saw her in November was her Belly big?—A. Not very big.

Court.] Had you had a Child at that time?

A. No, but I was with Child, for I was married the 24th of August, and quicken'd at that very time, and that makes me remember November.

Mr. Recorder.] Was my Lady's being with Child so visible in November, that any body might know she was with Child?

A. Indeed I believe so; I saw it, I know.

Q. Did Miss Henrietta Briscoe visit my Lady at this time, in November?

A. I believe so, I know she came home before then, and the Small-pox was at our House, and she left the House.

Q. What sort of Girl was Mrs. Cole then?

A. A pretty young Lady of a good Size.

Q. What Size?—A. Not so big or tall as she is now.

Q. Did she grow much afterwards?—A. To be sure she did.

Q. I ask you again, did not she grow much after?—A. She did.

Court.] Was you a Servant in the same House with her?—A. I was.

Mr. Recorder.] What Age might she be then?

A. I cannot justly tell you, she was not at her full Growth.

Q. About what Age do you think she was?

A. I cannot tell. How can I tell?

Q. Was she thirteen, or fourteen, or twenty?

A. Twenty! no, she was not twenty.

Q. Was she fourteen?—A. Yes, to be sure she was.

Q. Did Mrs. Cole visit my Lady at that time?

A. They all visited her, and my Lady came constantly to our House; but she was at her Aunt Monck's at the Green, because of the Small-pox.

Q. Did she stay there all the time my Lady was in Town?

A. She used to come now and then.

Q. Was my Lord Altham in Town in August 1714?

A. Yes, he was along with my Lady.

Q. And was he here in November?

A. Yes, he was in November; it was in November I saw him.

Q. Was it in November he told you that my Lady was with Child?

A. It was in November, after the Queen's Death, that he told me my Lady was with Child.

Q. I ask you, upon your Oath again, was my Lord in Town in August?

A. Yes, he was. He was in Town all the while that my Lady was in Town.

Court.] They came to Town together?

A. Yes, they did, as well as I can remember.

Q. Now, you say my Lord came to Town in August; did not you swear upon the former Trial, that my Lord never was in Town from the time he went into the Country after the Reconciliation, 'till November 1714?

A. I assure you the Trial is not right, it is wrongly, falsely printed.

Jury.] Did you ever find the Lady out of Order, as Women commonly are, when they are with Child, when you were dressing and undressing her at Captain Briscoe's?—A. I never did.

Q. You say you thought she was with Child?—A. I did.

Q. Did you see her out of Order?—A. Yes, Sir, I saw her big Belly.

Q. Did you put on her Shift?

A. I helped to put it on, and her Stays too.

Court.] Call your next Witness.

6. MARY SUTTON.

Mr. Mac Manus.] The next Witness produced to your Lordship, is to the same Point, to prove my Lady Altham's being with Child.

Mr. Mac Manus.] Did you know the late Lord Altham?

Mary Sutton.] I did indeed.

Q. And the Lady Altham?—A. I did, upon my Word.

Q. Where do you live now?—A. In the County of Kilkenny.

Q. Where there?—A. In a Place called the R. wree.

Q. Pray, Madam, were you ever at Dunmaine?—A. I was indeed once.

Q. Where did you live then?—A. In a Place called ———

Q. When did you first know Lady Altham?

A. I knew her when first she came to Dunmaine.

Q. What Year was that in?—A. I cannot exactly tell the Year, but I knew her with Child, and saw her with Child.

Q. What were you at that time?

A. I was a Farmer's Wife, living in the Neighbourhood.

Q. How came you to go to Dunmaine?

A. My Lord frequented my House, and often invited me there.

Q. How far distant was your House from Dunmaine?

A. About two Miles.

Q. Did you ever dine there?—A. I dined there that Day.

Q. What Day?—A. That one Day that I visited my Lady.

Q. Did any thing particular happen that Day?

A. When I went in first, there was none but my Lord and Lady in the Room; I was glad of it, as I was but a Farmer's Wife, that there was no more Company; and after Dinner the Glasses were laid round, and a Bottle of Wine brought upon the Table. They called for my Lady's Toast first; and she toasted Church and King. They then called for mine, and I toasted the Boy in the Basket, meaning my Lady Altham's being with Child.

Q. Pray, can you recollect what Year this was in?

A. I cannot well tell, but as well as I can remember, it was after the Queen died, for I was in Mourning for the Queen.

Q. Do you know of any Inquiry made by my Lady about hiring a Nurse?

A. After Dinner, as we were drinking the Wine, I sat by my Lady; and she said, Mrs. Sutton, as you are acquainted with the Country, can you recommend me to a good Nurse. I told her——

Mr. Daly.] What she told my Lady Altham is no Evidence.

Mr. Mac Manus.] My Lord, this is very full Evidence; she is telling of a Conversation that passed between my Lady and herself concerning my Lady's being with Child, and her Inquiry after a Nurse.

Court.] Did you see Lady Altham at that time?—A. I did.

Q. What did you observe about her?

A. I observed her to be big with Child.

Q. When was this?—A. It was the Monday or Tuesday before Shrovetide.

Q. In what Year?—A. I cannot exactly tell the Year, but it was one of them two Days.

Mr. Mac Manus.] My Lord, I apprehend this Question to be a proper and material one.

Court.] The Question is, whether I will examine the Witness to what my Lady said, whether she was with Child or not?

Mr. Serjeant Tisdall.] My Lord, any Circumstance of my Lady's making Baby-cloaths, or Inquiry about a Nurse, is Evidence to prove that she was with Child.

Court.] Not at all, in this Case.

Mr. Mac Manus.] I apprehend that presumptive and circumstantial Evidence is the strongest Evidence that can be given in this Case.

Court.] You say that you have positive Witnesses to this Point; if you have, we shall readily hear them. Have you any other that are positive Testimony to Lady Altham's having a Child, or that she miscarried? The first Assignment of Perjury is, whether Lady Altham ever was with Child while the Traverser lived with her? The Question then is, whether my Lady's saying she was with Child is Evidence upon that Point? If you will argue the Question, I will hear you.

Court.] Might not the Woman appear to you to be with Child, and might not be so?—A. To all Appearance she appeared to me to be so.

Q. And might not she be not with Child?

A. I cannot tell, Sir, she appeared to me to be big with Child.

Q. Was it certain that she was?

A. There was so much Certainty of it, if one can believe their Eyes.

Q. Do you know that she hired a Nurse?

A. Indeed I do not know it; I cannot say that.

Mr. Serjeant Tisdall.] My Lord, we apprehend we have a Right to have this Question answered. The Question proposed is, Whether she knows any Inquiry to be made by Lady Altham to hire a Nurse?

Mr. Daly.] Indeed if you had asked whether Mrs. Heath made such an Inquiry, there would be something legal in it, but Inquiries of a third Person are most illegal Evidence.

Court.]

Court.] We are not trying the Filiation of this Family, who is Heir to the Estate of it, but whether Mrs. Heath is guilty of Perjury. There is much more Reason to keep to the strict Rules of Evidence in this Court than ever was; the Time of Trial is short, and we cannot adjourn. Have you any real, positive Evidence?

Mr. MacManus.] We have produced positive Evidence that my Lady appeared to be with Child.

Q. Pray, Madam, in what Degree did she appear to be with Child?

A. Very big with Child.

Mr. MacManus.] Why then the next natural Question is, whether there was an Inquiry about a Nurse?

Mr. Daly.] My Lord, is this a legal Question in this Case? I have not an Opportunity to cross-examine what a third Person says, and shall that be Evidence to deprive me of my Estate? Ask if Mrs. Heath made any Inquiry about a Nurse.

Mr. Serj. Tisdall.] The Question proposed is, whether she knows of any Inquiry made by Lady Altham for hiring of a Nurse, of her own Knowledge?

Jury.] Do you, of your own Knowledge, know any thing of the hiring a Nurse?

A. No, Gentlemen, I do not.

Mr. MacManus.] Did my Lord and Lady ever visit you?

A. They did, upon my Word, and had the Child with them.

Q. What Child?—*A.* A Boy, Master James we called him.

Q. Pray, whose Child was it?

A. It was their Child in all Appearance, for my Lady was very fond of the Child as any Mother could be.

Q. Give an Account of what passed about that Child, as to any particular Instances of Fondness.

Mr. Daly.] You cannot ask that Question; it is *Res inter alios acta*, and foreign to this Woman's Prosecution.

Mr. MacManus.] Pray, how old was he?

A. I believe a Year and half, and if a Month more I cannot exactly tell.

Q. When was this Visit made you?

A. I cannot exactly tell, it was a very fine Day.

Q. What Time of the Year was it?

A. In Harvest, the latter-end of Harvest.

Q. How long was it between the Time you saw my Lady with Child, and the Time you saw him at your House?—*A.* It was more than a Year.

Q. How old was the Child when you saw it?

A. It was a Year and half old when I saw it.

Court.] How did my Lord and Lady treat that Child?

A. As a Father and Mother would treat their Child; and my Lady was as fond of him as a Mother could be of a Child, kissing and embracing him, and calling him Dear.

Q. In what Year was that?—*A.* Nay, faith, it is hard to tell.

Q. You must tell.---*A.* I believe the Child was born in the Year 1715, I think he was, as well as I can remember.

Q. What Reason have you for thinking so?

A. By the latter end of April after I was to visit her, I heard next Day that she was brought-to-bed of a Son.

Q. Was you by at his Birth?

A. I was not. I heard there was great Joy and Bonfires.

Q. Did you see the Bonfires?—*A.* No, I was not there.

Mr. MacManus.] How came they to bring so young a Child to your House?

A. When my Lady came, she said, Mrs. Sutton, since you would not bring your Daughter to see my Son, I brought my Son to see your Daughter.

Mr. Recorder.] I insist that the Declaration of my Lady is no Evidence at all.

Court.] Gentlemen, we are of Opinion that the Declaration of Lady Altham is not Evidence against Mrs. Heath, and therefore do not let us waste our Time so to no Purpose.

Mr. Solicitor.] We are mistaken if we would put the Declaration of Lady Altham as Evidence, but we have a Right to know the Witness's Apprehension of her Declaration.

Mr. MacManus.] This Witness has spoke very materially, that my Lady had a big Belly, and was with Child; I hope the Jury will take notice of it, that being one of the Assignments of the Perjury.

Cross-Examination.

Mr. R. Malone.] I think you have said that Lord Altham frequently invited you to Dunmaine?—*A.* He did.

Q. And you were never there but once?—*A.* Never but once.

Q. You said that Nobody was there in the Room but them two?

A. Yes.

Q. And that you were glad of it?—*A.* Yes.

Q. And that a Bottle of Wine and Glasses were brought, and my Lady toasted Church and King?—*A.* I did.

Q. You gave a Toast after of the Boy in the Basket?—*A.* I did.

Q. Now I ask you, before your giving that Toast, was there any Conversation about her being with Child, or any thing said about it?

A. Not at all.

Q. Was you told in the Parlour that she was with Child?

A. Not at all; there was no Discourse of it but after.

Q. What Condition of Life was you in?

A. My Husband was a Farmer indeed.

Q. Who did he derive his Interest under?—*A.* Madam Pigot.

Q. How much Land did he hold?

A. He paid 10*l.* a Year to Madam Pigot at that Time.

Q. How much Land had you?

A. It was an old Lease, we held above 200 Acres.

Q. What was the Land worth an Acre?

A. Why, really, at that time it might be worth four Shillings an Acre.

Q. You say that they frequently visited you?

A. My Lord did, but my Lady never was there but once.

Q. When they visited you, what Time of the Year was it?

A. As well as I can remember, the latter end of Harvest.

Q. Do you know the Year?—*A.* I cannot tell.

Q. Was it the Harvest after you visited them?—*A.* No, not at all.

Q. Was it more than one?—*A.* It was more than one.

Q. Or two, three, or four after?

A. O dear! it was not so much; the Child was about a Year and half old, or within a Month or two, I cannot exactly tell.

Q. Can you say in what Reign it was?

A. Really, I believe it was after Queen Anne died.

Q. In what manner did they go to your House?

A. My Lady rode in the Chariot, and had a Maid that carried the Child, and my Lord rode with Servants.

Q. What was the Servant's Name in the Chariot?

A. She was a good tight, clean, well-dressed Girl, and that is all I know.

Q. In what manner was the Child dressed?

A. He had a red Coat, and Cambrick Frock, and fine quarter'd Cap, and I think, a red Ribband in it.

Q. Was it a Coat and Breeches?

A. Not a Coat and Breeches; a Frock.

Q. Where do you live now?—*A.* I live now in the County of Kilkenny.

Q. Where there?—*A.* In the Parish of Rowree, at Ballyvally.

Q. Is your Husband living?—*A.* My Husband is not living.

Q. Do you live by yourself there?

A. I live with my Daughter, and we live under my Lord Mountgarra.

Q. What Harvest is this you speak of when my Lord and Lady went to your House?—*A.* It is so long ago, it is hard to know, I must study a while to think of it.

Q. How can you recollect to the being at Dunmaine to a Day, and not now recollect the Year they went to see you?

A. As it did not meddle with me, I did not mind it.

Jury.] Do you know any thing of Mrs. Heath?—*A.* I never had any Acquaintance with her, I heard my Lady had such a Woman.

Court.] Who do you call next?

Mr. Callaghan.] My Lord, we will now produce one Evan Thomas; he is a Basket-maker; he saw my Lady with Child, saw her increase in her Pregnancy, and made the Cradle after she was brought-to-bed, and was paid for it.

7. EVAN THOMAS.

Mr. Callaghan.] Pray, did you know the late Lord Altham?

Evan Thomas.] Yes, and please you.

Q. Did you know my Lady?—*A.* I knew her very well.

Q. Where did you live in the Year 1713?

A. In that Year I lived in Ross.

Q. Where did you live in 1714?

A. I worked in Ross the most of the Year 1714.

Q. Did you see my Lady in those two Years?

A. I have seen her at our Church some several times; in the Year 1714 I have seen her there, to the best of my Knowledge.

Q. How often did you see her there?

A. I seen her two or three times, to the best of my Knowledge; but she might be there oftener, for any Thing I know.

Q. Did she appear to be a slender Woman, or with Child?

A. She appeared to me as if with Child, to the best of my Knowledge.

Q. Did she appear to be big with Child?

A. Not so very big because of their Hoops; I saw her handed into the Coach, or the Chariot, or one of them.

Q. What Trade do you follow?—*A.* I am one that makes all Sorts of Basket-work that are made in the Kingdom.

Mr. Daly.] What, all Sorts of Basket-work?

A. I do not say the best of all Sorts.

Mr. Callaghan.] Did you ever do any Work for Lady Altham?—*A.* I did.

Q. Tell what it was.---*A.* She sent a Servant to me.

Court.] How do you know she sent him?—*A.* He told me.

Q. Did you carry any Work to her House?—*A.* I did not.

Q. What was it you made?

A. I made in the Year 1715, to the best of my Knowledge, a Cradle.

Q. Did you carry it to Lord Altham's House?

A. No, please your Lordship, I did not.

Q. Who did you deliver it to?—*A.* I delivered it to a Man.

Q. Name him.

A. They told me he was one Rowley, a House Steward.

Q. Did you know him?

A. I was nothing acquainted with the Man, but he told me.

Q. Do you make the same kind of Cradles for poor People as for People of Fashion; what Sort of Cradle was it?

A. A good Cradle, I delivered it to the Servant, as I suppose, his Name was Rowley, I was told so.

Q. Did you see the Cradle carried to any particular Place?

A. No, he took it from me out of the House, and gave me two Crowns for it.

Jury.] What became of the Cradle?

A. I do not know, but he took it away.

Court.] Where is Rowley?—*A.* I do not know.

Mr. Callaghan.] For whom did you make that Cradle?

A. Why, the Man came to me.

Q. Do you know who you made it for?

A. He bespoke it for my Lady Altham.

Mr. Harward.] It is strange to my Imagination, my Lord, that it should be suspected, that a Man employed 30 Years ago, to make a Cradle, could be guilty of any Contrivance.

Court.] But this Contrivance may be within these four Months, these six Months, or these twelve Months, and if Hearsay-evidence will convict a Person of any Crime, it may of Treason, and who is or can be safe?

Mr. Just. Blennerhasset.] If you have Rowley, there would be something.

Mr. Harward.] With Submission, my Lord, the Court cannot know whether we are out of the way or not; whatever Secrets are in this Cause are only revealed to us by the Managers of it, and we advise them in the best manner we can to prosecute it.

Court.] As the Time is far spent, we only beg of you to go on in your own way. Call your next Witness.

8. MARTHA TENANT.

Mr. Harding.] My Lord, I am instructed that this Witness was in Company with Lord and Lady Altham the Winter after the Queen's Death, and saw my Lady with child, and that she was quick with Child at that Time.

Court.] I never heard that there was Safety in a Multitude of Witnesses; I have heard it, read it, and you know it, that in a Multitude of Counsellors there was Safety, but never in a Multiplicity of Witnesses.

Mr. Solicitor.] For my Part, my Lord, I think we have established very fully the first Part of this Indictment, not to take up any more Time; but Curiosity makes People glad to see the Bottom of it.

Mr. Harding.] Pray, did you know Arthur late Lord Altham?

Martha Tenant.] I did not know him, I saw him once, and to my Knowledge never since, nor before.

Q. Did you know his Wife?—*A.* I saw her at the same Time at Dinner.

Q. Where did you see them, and when?—*A.* I saw them at one Arthur French's in Fleet Street, they lodged in Fleet-street.

Q. When was it you saw them there?

A. I will tell you how I came to visit there—

Q. What Year was it you saw them there?

A. Well! I cannot justly tell the Year, but it was about the Time that they were *Whig* and *Tory*, and that way.

Q. Pray, recollect yourself.---*A.* I believe it was about—I cannot exactly tell; I believe the Year Queen Anne died, there or thereabouts.

Q. Was it before or after the Queen's Death?

A. And that I cannot tell you neither; but I'll tell you the Time of the Year, it was about Christmas, but I cannot tell whether 1714, or 1715.

Q. Did you observe whether my Lady was or was not with Child?

A. I will tell you what brought me there, the whole Truth is this: Mr. French, every one knew, married my Lady Davis's Daughter, and she was a Relation of mine; and upon the Marriage I entrusted him Money, and went to dunn him, and when I came there I saw a great Dinner and Preparations making, and asked the Reason of it. Says I, what is the Meaning of all these Doings, and you have not got your Wife's Fortune into your Hands yet? It is very ill done of you—

Q. Tell what you know of Lady Altham there. Tell what you know yourself.

A. I will tell you all I know myself. I staid there, and when Dinner was over I saw in the Drawing-room my Lady Altham, as they said she was.

Q. Did you know her?—*A.* Not I indeed.

Q. Can you say it was her?—*A.* They said it was.

Q. But you must only say what you know?

A. Well, I cannot tell you any more then.

Q. Did any remarkable Incident happen while you were at Dinner there?

Court.] Did she take the Title of Lady Altham?

A. She did, and my Lord was there.

Q. Did you ever see them before?—*A.* I never saw them before or after, nor knew none of those Lords or Ladies.

Mr. Harding.] What sort of a Woman was she?

A. A lusty Woman, but my Lord had two Eyes at that Time, and they say he had but one after.

Q. What did you observe of my Lady that Day?

A. She came out after Dinner and was sick; she came into the Drawing-room, and they unlaced her.

Q. Who?—*A.* My Lady Altham, she was called so.

Mr. Harding.] Inform the Court and the Jury, whether any remarkable Incident happened while you were at Dinner there?

A. She was taken sick after Dinner, and came out into the Drawing-room, and we unlaced her, and my Lord said, Mrs. French, it will be your Turn soon to be in the same Condition; and that is all I had to say.

Q. What was the Occasion of his saying so?

A. The Occasion was, that Mrs. French was a new-married Woman.

Mr. Recorder.] She says she did not know either Lord or Lady.

Martha Tenant.] Nor the young Man, nor the old Man.

Mr. Harding.] Inform the Court, whether any Body fainted away, and whether any Account was given of that.

A. My Lady was sick, and unlaced, and my Lord said, Mrs. French, it will be your Turn next; and that is all I know.

9. ANASTACE TOOLE.

Mr. Morton.] We produce this Witness, my Lord, who is a Mantua-maker by Trade, to prove that she made a Silk Gown for Lady Altham, and fitted it on in the Presence of the Traverser, and that my Lady was then with Child.

Mr. Morton.] Did you know my Lady Altham?

Anastace Toole.] I did, Sir.

Q. What Business did you follow?—*A.* Mantua-making.

Q. Were you at any Time, and when employed by her to do any Work for her?

A. I lived with Mrs. Wright the Year that Queen Anne died, for my Husband went to live in the County of Carlow; I went to her the latter-end of the Year 1714, Queen Anne died in August, and the Candlemas following—

Q. What Year?—*A.* The Candlemas after Queen Anne died. And my Mistress sent me with the Coat.

Q. To what Place?—*A.* To Dunmaine.

Q. What did you observe, when you went there?

A. That her Ladyship was big-bellied.

Q. Did you ever fit any Gown upon her?—*A.* I did.

Q. Who was present when you fitted the Gown?

A. Her own Maid, Mrs. Heath.

Q. Would you know her, if you saw her?—*A.* Yes, that is she, I believe.

Q. Now, pray, what Condition did my Lady appear to be in then?

A. Her Ladyship seemed to be in her last Quarter, or pretty nigh it, for she was a tall Woman, and carried her Belly very well.

Court.] You observed that she was big-bellied?—*A.* I did.

Q. Had you had a Child at that Time?

A. I had had a Child and had buried it.

Q. Was you an Apprentice Girl then?—*A.* No, my Husband was

gone to Mr. Wall's in the County of Carlow, and I worked with Mrs. Wright.

Mr. Morton.] Was you married at that Time?—*A.* Yes, Sir, I was.

Q. You were not an Apprentice?—*A.* I was not.

Q. Do you know any more of my Lady's being with Child?

A. No, Sir, I know no more.

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A. I saw my Lady in *Ros* with the Child, and made a Coat for the Child.

Q. How long was it after that you saw the Child in *Ros*?

A. I cannot tell how long.

Q. Who gave you the Stuff to make the Coat for the Child?

A. My Lord himself, he bought it at Mr. Harvey's.

Q. What Stuff was it?

A. One Side was a blue Sattin, and the other a Yellow.

Q. How long after you fitted the Gown on my Lady was it that you

saw this Child at *Ros*?

A. After my Lady came to my Mistress to lodge in *Ros*.

Q. Was it three Months, or four Months, or six Months?

A. Oh! it was more to be sure.

Q. Can you tell how long?—*A.* I cannot tell more than what I know.

Q. Was it a Year after you fitted the Gown that you saw the Child at

Ros?—*A.* It was.

Q. Was it any more?

A. Indeed I cannot justly tell you as to that Part of the Story.

Q. Was Mrs. Heath present when you fitted on the Gown?

A. She was by, and gave me a Piece of white Ribband to tie the Shoulders of it.

Q. Had my Lady left my Lord at this Time when you made the Gown for the Child?—*A.* She had.

Q. Was it a new Gown you made for my Lady, or did you alter an old one?—*A.* It was a new one, a new white Damask.

Q. How often did you see the Child, and where?—*A.* Never but once.

Q. Where was that?—*A.* At my Mistress, Wright's.

Q. Where is that?—*A.* At her own House in *Ros*.

Q. Was that before or after the Coat was made for him?

A. It was after.

Q. Did you never see him before?

A. I never saw him before, but that one time.

Court.] Did you see the Child at the Time my Lord gave you the Silk to make the Coat?—*A.* No, my Lord, I did not.

Cross-Examination.

Mr. Recorder.] How long after you made the Gown was it you saw a Child?—*A.* I cannot justly tell how long.

Q. Did you not say it was a Year?—*A.* I believe it was.

Q. Was it more, a Year and half, or two Years?

A. I cannot tell whether a Year and half, or two Years.

Q. Was the Child weaned?—*A.* He was at that Time.

Q. I ask you, upon your Oath, was it two Years after you made the Gown?

A. I cannot justly tell you how long; it was two Months after my Lord gave me the Silk.

Q. But I must know how long after you made the Gown for my Lady?

A. I cannot tell that.

Q. When was it that my Lord gave you the Gown for the Child?

A. After my Lady came to *Ros*.

Q. When did she come to *Ros*?—*A.* I do not know when she came to it; I know she came on a Sunday Evening.

Q. Where did she lodge when you saw the Child?

A. She lodged at *Ros* then.

Q. Where there?—*A.* At Mrs. Wright's.

Q. Did you hear of the Separation of my Lord and Lady?—*A.* I did.

Q. Was it before or after they parted that you saw this Child at Mrs. Wright's?—*A.* It was after they parted.

Q. Who brought him to Wright's?—*A.* I cannot tell who brought him.

Q. Did my Lady lodge at any other Place before she went to Wright's?

A. Yes.

Q. Where, and how long?

A. At Captain Butler's, I believe six Weeks or two Months.

Q. Where did she go from Captain Butler's?

A. She then came to my Mistress's.

Q. How long did she stay there?

A. To the best of my Knowledge, a Twelvemonth.

Q. When was it that this Child came?

A. After she had been a considerable Time at Mrs. Wright's.

Q. How long?—*A.* I cannot tell how long.

Q. How old was he?—*A.* About two Years old.

Q. Was it half a Year after my Lady came to Wright's that you saw the Child?—*A.* I cannot justly tell you.

Q. Do you know Mrs. Heath?

A. I have seen her before; yes, I know her.

Q. Where was the first Time you saw her?

A. The first Time I saw her was at Dunmaine, and every Day after she came to lodge at my Mistress's.

Jury.] You say you saw a Child at Wright's about two Years old?

A. I did.

Q. Whose Child was it you saw there?—*A.* My Lady's, Sir.

Q. Who told you it was my Lady's Child?

A. My Mistress, Mrs. Wright.

Q. Did my Lady herself tell you it was her Child?

A. I had no Conversation with my Lady. I was working at Doctor Elliot's on the other Side of the Way—

Court.] Are you going, Gentlemen, to the same Point?

Mr. Mac Manus.] I believe, my Lord, every Evidence that goes to the first Point, will go to the second.

Mr. Serj. Marshall.] The next Evidence that we shall produce is Anne Bennet; she was a Servant to Mrs. Giffard of Ballysop, a Lady who appeared at a former Trial; she lived with her some Years, and often saw my Lady with Child, and heard her Mistress talk of her being big-bellied.

10. ANNE BENNET.

Mr. Serj. Marshall.] Did you know my Lord and Lady Altham?

Anne Bennet.] Yes, I did.

Q. When did you know them?—*A.* The latter End of the Year 1714.

Q. Where did they live when you knew them?—*A.* In Dunmaine.

Q. And where did you live then?

A. I lived at *Ballyfop*.

Q. With whom there?—A. Mrs. *Giffard*.

Q. Can you say in what Circumstances Lady *Altham* was, in respect to her Health, when you knew her?

A. When I saw her first of all, Gentlemen, it was about *Christmas* Time, whether before or after I cannot tell; and the next Time it was after *Christmas*, and she looked pretty round; and I said to my Mistress, Had my Lord and Lady never a Child? No, says she, she never had.

Court.] Did you see my Lady with Child?

A. I thought she looked very round, my Lord.

Q. Can you say whether she was with Child or not?

A. Indeed I believe in my Heart she was.

Q. For what Reason did you think so?

A. Because I was the Mother of a Child myself, and knew how she was, she took a Dislike to Victuals at the Table.

Q. How old was you then?

A. Twenty Years of Age, I was the Mother of a Child, and a married Woman too.

Q. You do not appear now to have been that Age at that Time?

A. Indeed then I am fifty-two Years of Age.

Q. Do you know any more than that?—A. No.

Cross-Examination.

Mr. *Le Hunt*.] You say you lived with Mrs. *Giffard*?—A. I did.

Q. How often did my Lady *Altham* visit Mrs. *Giffard*?

A. She visited three Times while I was there.

Q. And how often did your Mistress visit my Lady?

A. She visited my Lady twice.

Q. Was there any great Intimacy between them?

A. There was no great Intimacy, more than that.

Q. Did your Mistress lie-in while you were in the Service?

A. She never did, nor I do not believe she had a Child after I left her.

Q. When did you leave her?—A. I left her in *February*, 1714.

Q. And how long before had she had a Child?

A. I cannot tell, the Child was running about.

Q. Was she with Child in your Time?

A. I cannot tell whether she was with Child, for I did not wash for her.

Mr. *Serj. Marshall*.] What Reason had you to induce you to believe Lady *Altham* was with Child?

A. Because she took a Dislike against Victuals, and was very round.

Q. Did you see her after in any Place?

A. Never saw her before or after.

Court.] Who do you call next?

Mr. *Solicitor*.] I have taken up a Witness, one *Edmond Howletts*, who brings the Matter directly Home to the Traverser. My Lord, he is a Pedlar, a Man that sells Diaper, and other Cloths about the Country, and he will shew that she bought Diaper for the Child's Use just before the Birth.

Mr. *Edmond Malone*.] Every one knows that the material Perjury is the Birth, and if they had not a Mind to raise a Dust, they would go to that directly.

II. EDMOND HOWLETTS.

Mr. *Solicitor General*.] Did you know my Lord and Lady *Altham*?

Edmond Howletts.] Yes, I did, Sir.

Q. Do you know any Thing of a Child that they had?

A. Yes, I did, Sir.

Q. Give an Account of what you know about it.

A. The first Time I was resorting that House with Goods on my Back, and the first I sold there, there was a Woman there, a Waiting-maid, they called Mrs. *Heath*.

Q. Do you know her?—A. I do not know whether I would or no.

Q. Well, go on and tell your Story.

A. And she bought a Piece of Diaper from me for my Lady's Service against her lying-in. There is a Brogue upon my Tongue, Sir, I cannot speak very proper.

Q. What did she buy the Diaper for?

A. The Diaper was provided for lying-in, for Clouts.

Q. For whose lying-in?—A. Lady *Altham*'s.

Q. Who told you so?—A. The Woman they called Mrs. *Heath*.

Q. Would you know her if you were to see her?

A. I did not see her these many Years.

Q. Do you know that Gentlewoman there?

A. She is fatter now than she was at that Time.

Q. Is that she?—A. Why, Sir, I could not swear.

Q. Is that Woman like her?

A. Why then, she is like her sure enough, to the best of my Knowledge.

Q. How often did you see her before that Time?

A. Several Times after that.

Q. What Time was that? Recollect as near as you can.

A. Why then, Sir, it was a little after *Christmas*.

Q. What Year?

A. I believe it is thirty Years now, to the best of my Knowledge.

Q. Do you keep any Book of your Business?

A. I do not keep a Book, nor I do not know how.

Q. What Goods did you carry to sell?

A. I carried Linen Cloths, and Cambricks, and Holland, and Handkerchiefs.

Q. Do you follow that Trade now?

A. I left off that Trade about seven Years ago.

Q. How long did you follow it?—A. I followed it five-and-thirty Years, and I was a Customer at that House that time.

Q. Did you see any thing relating to this Child at any time after that?

A. After that, I was there, Sir, and my Lady *Altham*, and her Maid, and the Nurse, and the Child were coming out of the Pleasure-Garden, and when they saw me they went back, and they bade me come in and open my Pack there; and my Lady bid the Nurse ask what she would have; and said, Mrs. *Heath*, we will see if he has a white silk Hood or Handkerchief, and she bought a white Silk Handkerchief, and red Border about it.

Q. Was it bought for the Nurse?—A. It was.

Q. Who bought it?—A. Mrs. *Heath* cut it off of my Piece, and paid me the Money that my Lady gave to her.

Q. And who gave it to the Nurse?

A. Mrs. *Heath* gave it to the Nurse before my Face, and my Lady bought a Ribband, and Mrs. *Heath* put it on the Child.

Q. Pray, give an Account, do you know any thing else about the Child? Do you remember that my Lord and Lady parted?

A. They parted to my Sorrow, Sir.

Q. How so?

A. There was four Pounds two Shillings due to me: my Lady bought a Piece of Holland for five Pounds five Shillings, and she gave me a Guinea in part; and the Day the Dispute came between them I was going that Way about some Affair of my own, and I heard of it within half a Mile of *Dunmain*.

Q. How far did you live from *Dunmain*?

A. About two Miles I lived from them; and I was going about my Business, and I heard the Noise, there was a great deal to do; and on account of my Money due to me, I went to the House to see after it, if I could get it; and when I came near the House, all the Servants were going to and fro, and I was looking on them, and I saw my Lady in a Coach or Chariot, I do not know which it was. God forbid I should wrong my own Soul.

Court.] Take care that you do not; have a care what you say.

E. *Howletts*.] I stood there, and saw my Lady, and Mrs. *Heath*, and the Child in the Coach. My Lord came down Stairs in a great Passion, and asked Where was the Child? And some of the Servants said, My Lady has it in the Coach; and just as he was going to throw down every thing about him, he took the Child from her. And my Lady said, Pray, my Lord, did you give me your Word and Honour that you would let the Child go with me wherever I would go? says she; and took her white Silk Handkerchief out of the Place where it was, and wiped her Face, and kissed the Child at parting.

Q. Did you see Mrs. *Heath* there; was she present at this Transaction, or was she not?

A. She was the same Person that was with my Lady *Altham* that Day.

Court.] Did the Child go in the Coach?—A. Not at all, Sir.

Jury.] What Day was it that this happened?

A. To the best of my Knowledge, it was *Sunday*.

Q. I ask you the Day of the Month?

A. I do not keep the Month at all, I am no Scholar.

Q. What Time of the Day was it?—A. To the best of my Knowledge, about Ten or Eleven o'Clock in the Morning.

Q. Was it a Coach or a Chariot?—A. I cannot tell.

Cross-Examination.

Mr. *Spring*.] How long have you been a Dealer in the Linen Trade?

E. *Howletts*.] I believe these five-and-thirty Years.

Q. How old are you?—A. I am five-and-fifty Years old.

Q. Where did you live at the time you saw this Child?

A. At *Ballytekin*, within three Miles of *Ros*.

Q. Where in 1713 did you live?—A. I cannot tell; I am no Scholar.

Q. Where in the Year 1718?

A. I cannot tell that Year; I do not understand your Years that way.

Q. Where did you live twenty Years ago?—A. In the Town of *Ros*.

Q. Do you know one *Eleanor Murphy*?—A. I did, Sir.

Q. What Relation is she to you?

A. I have one *Nelly Murphy* a Sister of mine.

Q. How long has she been married?

A. I believe she is married these twenty Years, or near it.

Q. Is not she married thirty Years?

A. I cannot tell whether she be or no.

Q. Is she married nine-and-twenty Years?

A. Indeed I cannot tell, Sir, whether she be or no; I was not by when she was married; she married in the County of *Dublin* here.

Q. What Name did she go by thirty Years ago?

A. Only her own Name.

Q. What was that?—A. *Howletts*.

Q. What Name did she go by nine-and-twenty Years ago?

A. I believe *Howletts*.

Q. Can you write or read?—A. No, I cannot, Sir, and I am sorry for it.

Q. Was you ever Agent to any Gentleman in the County of *Wexford*?

A. I am after looking after some Land belonging to Mr. *Baily*.

Q. Was you ever Agent to him?—A. No.

Q. Did you ever make an Affidavit by the Name of Agent to Mr. *Benjamin Baily*?—A. Hah!

Q. Did you ever call yourself Agent?

A. My Lord, it was a Mistake if I called myself so.

Q. Who drew that Affidavit for you?

A. I cannot tell any such thing.

Court.] Now tell me truly, who wrote that Affidavit? Did you make an Affidavit?—A. Only what I swore before the Commissioners.

Q. Who were they?—A. Upon my Word, I cannot tell.

Mr. *Spring*.] Was there a Paper wrote for you to swear, or put your Mark to it?—A. Hah!

Q. Did not you swear an Affidavit before Dr. *Stopford* in *August* last?

A. Yes, I do not know but I did.

Q. But you know whether you did or not?—A. Why, I believe I did.

Q. Was it read to you before you swore it?

A. It was read to me sure enough.

Q. Who read it?—A. There was a Gentleman there.

Q. What is his Name?—A. Somebody belonging to Mr. *Annesley*.

Q. What is his Name, Man?—A. Upon my Word, I cannot tell.

Q. Upon your Oath, who was he?

A. Upon my Word, I cannot tell the Person.

Court.] Gentlemen, this Man was asked whether he made an Affidavit by the Name of Agent to one Mr. *Baily*, he would not answer for a great while, but seemed to prevaricate, and at last said it was a Mistake if he called himself an Agent. He then was asked if the Affidavit was read to him, and after some Hesitation owned it was read, but does not say by whom, but says he was sworn by Dr. *Stopford*, in *August* last.

Mr. *Spring*.] Upon your Oath, Sir, who was it that read the Affidavit to you?—A. I cannot tell you, upon my Oath.

Q. Was it drawn in *Dublin*, or the County of *Wexford*?

A. To the best of my Knowledge, in *Dublin*.

Q. Where was it drawn?—A. I told you all I had to say.

Q. Who wrote it for you?

A. If I knew that, I would tell you. There was a Clerk there.

Q. Who was he?—A. Somebody that was belonging to Mr. *Annesley*.

Q. Did

Q. Did you tell all you knew in the County of *Wexford*, or City of *Dublin*?—*A.* In *Dublin*.

Q. Did you likewise tell it in the County of *Wexford*?—*A.* I did not till I told it here.

Q. Was your Affidavit read to you?—*A.* Yes, it was.

Q. Who read it?—*A.* I cannot tell.

Q. Were you there called Agent to any Body, and whom?—*A.* It was a Mistake, if I was.

Q. Was you called so, or not?—*A.* I told them I minded some Land belonging to Mr. *Baily*.

Court.] Did they call you Agent, or not?—*A.* To the best of my Knowledge, they did not call me so. All the World knows I was no fit Man to be an Agent to a Gentleman.

Mr. *Spring*.] Had the Coach two Wheels, or four Wheels, you saw my Lady go away in?—*A.* There was four Wheels.

Q. Was it open like a Chair, or close?—*A.* It was close.

Q. Do you know the Difference between a Coach and a Chariot?—*A.* I cannot tell the Difference.

Q. You say it was not open?—*A.* I know it was not open.

Q. How many Horses were there?—*A.* I cannot tell, I think there were four or two, I cannot tell which.

Q. Was it four, or two, or six?—*A.* Two or four, I cannot tell which.

Q. Who was Coachman?—*A.* One *Dennis Cauntton*.

Q. How many Brothers and Sisters have you that are Witnesses in this Cause?—*A.* Have you ever a Sister that lived with one *Macnames*?

Q. I cannot tell whether it was or not.

Q. Did your Sister *Eleanor Murphy* live with *Macnames*?—*A.* I cannot tell whether it was or no.

Q. Do you know any Body she lived with?—*A.* It was from Captain *Butler's* at *Ros* that she went to Lord *Altham's*.

Q. Do you know the Time that she went there?—*A.* Indeed, if I had known this Trouble, I would know a great deal more of it.

Q. Was it before or after you sold the Linen that your Sister went to the Service?—*A.* She was not there the first Time I sold the Clouts, and she went there a little after.

Court.] Did you travel the Kingdom round with your Linens?—*A.* Only the County of *Wexford*.

Court.] I am surprized then, that you do not know the Difference between a Coach and a Chariot.

Mr. *Spring*.] Do you know the great Eclipse of the Sun?—*A.* I do.

Q. Where did you live then?—*A.* I lived then at *Ballyteskin*. I do not know but I was in the House of *Dunmaine* that Day, and coming home within Half a Mile of my own House when the Eclipse came upon me.

Q. Was not you in *Dunmaine* House that Day?—*A.* I am not sure I was there, I was very near them I am sure in the Road home.

Q. Say upon your Oath, whether you were not in the House of *Dunmaine* the Day of that Eclipse?—*A.* I cannot tell whether I was or not.

Q. Was it before or after that Eclipse that your Sister went to live there?—*A.* Why, it is about May the Eclipse came, or the latter End of April; it was before that she went to live there; it was before.

Q. Where did she go to live after she left Lord *Altham's*?—*A.* I think to one *Frank White*.

Q. And where from thence?—*A.* The Time she left Lord *Altham's* she went to her own Father's.

Court.] This Witness has sworn very materially, if he has sworn true.

Mr. *Serjeant Marshall*.] The next Witness I am instructed to produce, is one *Newton Ricketts*, a Coach-maker, and he will prove to your Lordship that Lady *Altham* was very big with Child; that he after was at *Dunmaine*, and employed by Lord *Altham* to make a four-wheeled Chaise, and at the same time my Lady employed him to make a little Chair for the Child.

12. NEWTON RICKETTS.

Mr. *Serjeant Marshall*.] Did you know *Arthur* late Lord *Altham*?—*A.* *Newton Ricketts*.] I did.

Q. Did you know his Lady?—*A.* I did see her, Sir, and was acquainted with her by Name.

Q. Where did you see Lady *Altham*?—*A.* I saw her at *Dunmaine*.

Q. Can you recollect at what Time you saw her there?—*A.* About two-and-thirty or one-and-thirty Years ago.

Q. Which was it?—*A.* It is two-and-thirty Years ago.

Q. How long was you acquainted with her at *Dunmaine*?—*A.* I was acquainted with her for three Years.

Q. Recollect as near as you can, how long ago it is.

Q. It was three-and-thirty, or two-and-thirty Years ago.

Q. Do you recollect when Queen *Anne* died?—*A.* I do not know how long ago it is.

Q. Can you be sure how long ago it is since you knew my Lady at *Dunmaine*?—*A.* I think it is one-and-thirty Years, I cannot remember the Years, or Months, or Weeks.

Q. What Trade do you profess, Friend?—*A.* I profess to be Wheel-wright and Coach-maker.

Q. Were you ever employed by Lord *Altham*, and when?—*A.* Oftentimes, for two or three Years, working at the House from Time to Time.

Q. Did you do any particular Piece of Work for him?—*A.* I made a little Toy-Chair for a Child that was there, that was called Master *Jammy Annesley* that Time in the House.

Q. Who bespoke that Chair?—*A.* The Lord *Altham* desired I should make it; and my Lady and he both came to the Coach-house where I used to work, and desired me to make it.

Q. Where was my Lady at that Time?—*A.* At *Dunmaine*.

Q. Was it he or she that ordered you to make the Chair for the Child?—*A.* My Lord directed me to make it at the Time my Lady was at *Dunmaine*.

Jury.] Did my Lord speak to you himself?

A. He spoke to me himself. Court.] Did he tell you whose Child this was?—*A.* I never ask Questions when I go to Gentlemen's Houses; when I see Masters and Misses, I guess they are their own.

Mr. *Serjeant Marshall*.] Whose Child did you take it to be?—*A.* The Lord and Lady *Altham's* Child.

Q. What did my Lord *Altham* call him?—*A.* He called him *Jammy Annesley*.

Q. How was the Child dressed?—*A.* Dressed as a Gentleman's Son, or young Master should be dressed.

Q. Did you see the Child frequently?—*A.* I saw him very often at *Dunmaine*, and at several Places besides.

Q. How did my Lady behave to the Child?—*A.* I think as a Mother behaves to a Child.

Mr. *Smith*.] Her Behaviour is not more material than her Words. Words are expressive, but Behaviour doubtful.

Cross-Examination.

Mr. *Daly*.] How many Years ago is it since this Chair was bespoke?—*A.* I believe about eight-and-twenty and a Half; eight-and-twenty and six Months, or nine-and-twenty, I cannot tell indeed which.

Q. Did you see the Child at that Time for whom it was to be made?—*A.* I seen the Child; I did, Sir.

Q. Could he walk?—*A.* He just began to walk that Time, about two Years and Half, or Quarter old.

Q. In whose Care was he?—*A.* One *Joan Laffan* took care of him, I believe.

Q. You will consider at the Time this Chair was bespoke from you, the Child was in the Care of *Joan Laffan*?—*A.* Yes, *Joan Laffan* took care of it, I think.

Q. Pray, will you tell me another Thing, can you name any Servant in the House at that Time?—*A.* I believe there was one *Martin Nieff*, and *Anthony Dyer*, and some other Servants that are dead and gone.

Q. Was *Nieff* present?—*A.* I believe he was, and *Charles Magher*.

Mr. *Serjeant Marshall*.] Are you sure of that?—*A.* I am sure, I think they were.

Q. And *Joan Laffan* was the Person that took care of the Child?—*A.* I think she did.

Mr. *Daly*.] Do you know one Mr. *George Nixon* of *Newton*, in the County of *Wexford*?—*A.* I do.

Q. Now I ask you upon your Oath, had you any Discourse with him concerning the Birth of this Child?—*A.* Upon my Oath, I do not remember it.

Q. Had you with Mr. *Henry Miller*?—*A.* I do not remember I had.

Q. What Age are you?—*A.* I am four-and-fifty and odds.

Q. What Age was you at the Time of making the Chair?—*A.* I was twenty-four Years of Age.

Q. Did you work for yourself then?—*A.* Aye, and for my Father.

Q. Where have you lived ever since?—*A.* Within four Miles of *Wexford*.

Q. The Name of the Place?—*A.* *Bretherty*.

13. ELIZABETH DOYLE.

Mr. *Serjeant Tisdall*.] Did you know Lady *Altham*?—*A.* *Elizabeth Doyle*.] Yes.

Q. Where did you see her?—*A.* At *Dunmaine*.

Q. Did you observe any thing particular about her?—*A.* I observed that she was with Child.

Q. How do you know that?—*A.* By her big Belly.

Q. What Time was this?—*A.* In *March*.

Q. What Year?—*A.* About the Time of the Queen's Death.

Q. Was it before or after the Queen died?—*A.* After.

Q. Have you no other Reason to know my Lady was with Child?—*A.* Yes, she hired my Mother to nurse the Child.

Q. Was you by?—*A.* Yes, I was.

Q. Did your Mother nurse the Child?—*A.* No, she took a Fever, and could not nurse the Child.

Q. Where was it that my Lady agreed with her?—*A.* At *Dunmaine*.

Q. Who nursed the Child after, do you know?—*A.* I cannot tell, Sir, of my own Knowledge.

Q. Do you know Mrs. *Heath*?—*A.* I do not know Mrs. *Heath*; my Lady desired one *Mary* to bring a Glas of Wine to my Mother, and that is all that I know.

Q. Was any Body present but you when your Mother was hired?—*A.* I remember Nobody but my Lord and Lady.

Q. Was my Lord by?—*A.* Yes, Sir, he was.

Q. What was your Mother's Name?—*A.* My Mother's Name was *Elizabeth Richardson*, and my Father's *William*.

Q. What was your Father?—*A.* He made Bricks for my Lord, and for 'Squire *Loftus*, and a great many Gentlemen.

Q. Where was you born?—*A.* I was born in *Waterford*.

Jury.] How near did you live to *Dunmaine*?—*A.* I lived no nearer *Dunmaine* than *Waterford*.

Cross-Examination.

Mr. *Le Hunte*.] How old are you?—*A.* About six-and-forty.

Mr. *Smith*.] You say, I think, that you saw Lady *Altham* at *Dunmaine* and with Child?—*A.* Yes, Sir.

Q. Can you recollect the particular Time?—*A.* In *March*.

Q. What Year was it?—*A.* Indeed, Sir, I cannot tell.

Q. How many Years ago is it?—*A.* About thirty Years ago.

Q. How old were you at that Time?—*A.* I do not know, but I know how old I am now.

Q. How old are you now?—*A.* Six-and-forty.

Q. Where did you live at the Time you saw my Lady at *Dunmaine*?—*A.* In *Camolin*.

Q. How far from *Dunmaine* is that?—*A.* I believe about twenty Miles.

Q. Upon

Q. Upon what Occasion did you come to *Dunmaine* ?
 A. My Father was making Bricks ; he was digging the Clay that time.
 Q. How came you to come so far to see your Father ?
 A. Because my Friends were in *Waterford*, and they were going to leave me there.
 Q. Who were present at the hiring your Mother for Nurse ?
 A. None present at the hiring my Mother but my Lord and Lady, and only the Woman that my Lady called *Mary*.
 Q. Who was she ?—A. I cannot tell, except her own Maid.
 Q. Pray, then, what Part of the House was this in ?
 A. In the left-hand Parlour.
 Q. How came you to be in that Parlour ?
 A. By reason my Lady desired my Mother to come in.
 Q. Was that any Business of your's ?—A. I was along with her.
 Q. What do you call the left-hand Parlour ?
 A. The left-hand Parlour, as you come from the big Door.
 Q. When did you see the House of *Dunmaine* ?
 A. I have seen it oftener than once.
 Q. How long is it since you were there last ?—A. I forget, Sir.
 Q. Pray recollect, was it in *July*, *August*, *September*, or *October* last, or not ?
 A. Why then indeed I cannot tell.
 Q. Was it last *Summer* ?—A. It was.
 Q. Was you carried there ?—A. I was.
 Q. By whom ?—A. I rode there upon a Horse.
 Q. What Company occasioned you to go there ; who desired you to go there or sent for you ?
 A. I went there by the reason that I was desired, if I knew any thing of Mr. *Annesley*, and I went there to give an Account to Mr. *Annesley* what I could tell.
 Q. Who took you there ?—A. A Man I hired took me there.
 Q. Who sent for you ?
 A. *Madam Coles* desired me to go along with her.
 Q. Was *Madam Coles* there ?—A. She and Mr. *Coles* too were there.
 Q. Who was it you spoke to there concerning this Affair ?
 A. I spoke to the Gentlemen in the Room.
 Q. What Gentlemen were there ?
 A. Counsellor *Fitz-Gerald*, and Mr. *Annesley*, and Mr. *Mac Kercher*, and Mr. *Coles*, and Mr. *Kennedy*.
 Q. How long had you been absent from *Dunmaine* ?
 A. I believe about Twelve Years or Thirteen.
 Q. Did you take particular Notice the last Time you were there of the House ?—A. Indeed I did not.
 Q. I ask you, whether you did not make an Affidavit touching this Matter in *August* last ?—A. Indeed, Sir, I did not.
 Q. Did you tell Mr. *Lambert*, that you had great Discoveries to make to Lord *Anglesea* ?—A. No, Sir, I did not.
 Mr. *Walsh*.] My Lord, we shall produce one that lived in the Neighbourhood of *Dunmaine*, and who often visited Lord and Lady *Altham*, when my Lady was big with Child, and just before her Lying-in, who will give your Lordship Satisfaction that she was with Child, and that he saw the Child often after at the House.

14. JAMES SINNOT.

Mr. *Walsh*.] Pray, Sir, did you know Lord *Altham* ?
 James *Sinnot*.] Yes, Sir, that lived in *Dunmaine*.
 Q. Did you know him when he lived there ?—A. Yes, Sir, I did.
 Q. Were you acquainted with him ?—A. I was acquainted with him.
 Q. How near did you live to *Dunmaine* ?
 A. I lived within six or seven Miles.
 Q. Were you acquainted with my Lady *Altham* ?
 A. No, I was not acquainted with my Lady, but saw her once.
 Q. Where ?—A. Standing at her own Door.
 Q. Can you recollect the Time you saw her ?
 A. I believe I saw her, for I rode with a Gentleman there, *Anthony Colclough*, she came to the Door to speak to Mr. *Colclough*.
 Q. How did Mr. *Colclough* address her ?—A. The Lady *Altham*, Sir.
 Q. When was this ?
 A. It was in *February* or *March*, I cannot exactly tell.
 Q. In what Year ?—A. This Time thirty Years will be soon, to the best of my Remembrance.
 Q. Where was it you saw her ?—A. I saw her at the Door.
 Q. Did you take any particular Notice of her ?
 A. I took Notice of her that she was with Child.
 Q. What Reason have you for saying that ?
 A. Because she seemed big-bellied to me, that is all the Knowledge I have in them Sort of Things.
 Q. Did you see my Lord *Altham* after ?
 A. I saw Lord *Altham* after at my Father's House, and at his own House ; he dined and supped at my Father's.
 Q. Did you know the Person you saw was Lady *Altham* ?
 A. I did not know her, but as Mr. *Colclough* told me it was Lady *Altham*.
 Q. Was you ever at Lord *Altham*'s after ?—A. I was.
 Q. Did you see ever a Child there ?—A. I saw a Child there.
 Q. What brought you there ?—A. I went with a Gentleman there.
 Q. Did you see Lord *Altham* then ?—A. I saw Lord *Altham*, Sir.
 Q. And you saw a Child there ?—A. I saw a Child, Sir.
 Q. Whose was it ?
 A. Lord *Altham* ordered that he should be brought up to the Table to us.
 Q. Who was it that was with you ?
 A. To the Gentleman who was with me, that he might see his Son and Heir.
 Q. Who was he ?—A. Mr. *Ivery*.
 Q. How was that Child dressed ?—A. I cannot recollect.
 Q. Do you know where my Lady was at this Time that you saw the Child ?
 A. I do not know ; I did not see her that Day.
 Q. How long was this after you first saw her ?

A. The Summer following, *May* or *June*, I do not know which.
 Court.] Was you ever examined in the Court of Exchequer ?
 A. No, Sir.
 Q. Was you at *Dunmaine* after this ?
 A. I was at *Dunmaine* with Mr. *Anthony Colclough* afterwards.
 Q. Did you never see my Lady but once ?
 A. Never saw her but once.
 Q. Nor the Child but the one Time ?—A. No.
 Q. How old was the Child then ?—A. I cannot tell.
 Q. Could it walk ?—A. It could not walk.
 Q. How often were you at *Dunmaine* after ?
 A. I was there but the one Time after with *Anthony Colclough*.
 Q. How often were you there in all ?—A. Never but three Times in Lord *Altham*'s Time.

Cross-Examination.

Mr. *Bradstreet*.] I think you say you never saw my Lady but that one Time ?—A. Never saw her before or after.
 Q. What Sort of Woman was she ?
 A. I did not take Notice what Sort of Woman.
 Q. But you took Notice that she appeared big ?—A. Yes, Sir.
 Q. Had she large Breasts ?—A. I did not mind that.
 Q. Was she a tall Woman ?—A. She was neither tall nor short.
 Q. What did you follow then ?—A. I followed Farming then.
 Q. How came you to go with *Anthony Colclough* there ?
 A. Because I always kept him Company when he thought it was proper.
 Q. Did you hear of any Quarrel there was between my Lord and Mr. *Colclough* ?—A. I heard of no Quarrel between them.
 Q. Who knocked at the Door, when you and Mr. *Colclough* went there ?
 A. Some Girl or Maid was at it.
 Q. Who did Mr. *Colclough* ask for ?
 A. He asked for Lord *Altham*, and they told him he was gone abroad.
 Q. Did he go into the House ?—A. He did not go in.
 Q. Did he ask to see my Lady ?
 A. He did not ask to see my Lady, he was wheeling off, when she came out and stopped him.
 Q. Do you remember to see any Body at any Door seven-and-twenty Years ago ?—A. Indeed I do.
 Q. Who ? Name them.
 A. They were no People of Note, worth remarking.
 Q. Were you ever before a Jury before ?—A. Never.
 Jury.] Do not you say that Lord *Altham* went to your Father's House, and dined and supped there ?
 A. He did, and staid all Night.
 Q. Was that before or after my Lady was brought-to-bed ?
 A. It was before.
 Q. What Time of the Year was it ?
 A. It was in *March* or *April* ; he was there two or three Nights.
 Q. Was it before that that you saw her with Child ?—A. It was.
 Q. Was she brought-to-bed then ?—A. No, Sir.
 Q. How soon after was it ?
 A. I do not know, it may be the *May* following.
 Q. And it was in *March* or *April* he was at your House ?—A. It was.
 Court.] Gentlemen, have you any other Witnesses ?
 Mr. *Serj. Tisdall*.] We have, my Lord.
 Court.] Pray then send for them.

15. JAMES FITZ-PATRICK.

Mr. *Harward*.] Were you acquainted with Lord and Lady *Altham* ?
 James *Fitz-Patrick*.] I knew them particularly well, Sir.
 Q. Pray, Sir, did you know them at *Dunmaine* ?—A. I did, Sir.
 Q. Did you live in that Country ?
 A. Within five or six Miles of them, Sir.
 Q. Were you frequently at *Dunmaine* ?—A. I was pretty often there.
 Q. Did you know one Mrs. *Mary Heath* ?—A. I have seen her at *Dunmaine*. I cannot tell whether I should know her again.
 Q. Do you think if you saw her you should know her again ?
 A. I do not think I should know her again.
 Q. Do you remember the Name *Mary Heath* ?
 A. I do remember *Mary Heath* very well, Sir.
 Q. Now you that were intimately acquainted with my Lord and Lady, as you say, did you observe any Child in the Family ?
 A. Why really, Gentlemen, I saw the Child very often after my Lady parted *Dunmaine*, and to the best of my Memory, I saw the Child there one Day in the Forenoon while my Lady was there, and Mrs. *Mary Heath*, I saw her ; and Lord *Altham* was pleased to be towzing and kissing her, and she told him, if he would not give over, she would call to my Lady ; and I saw a clean dressed Woman with a Child in her Arms come to the Place where I was, to the best of my Memory, I cannot say positively.
 Q. Whose Child was it ?—A. I cannot tell, I took it to be my Lord's.
 Q. What Reasons had you to take it to be his ?
 A. Because my Lord had introduced the Child to me some time before.
 Q. Introduced him ! How ? What did my Lord say ?
 A. I cannot tell the Words, but he introduced him to me after a friendly Manner.
 Q. How did my Lord behave to that Child ?
 A. He was very fond of him, as fond as of his Eyes, and kept him like a Gentleman's Child.
 Court.] Did you see him in my Lady's Time ?
 A. I cannot say positively that I saw him in my Lady's Time ; the greatest Freedom I had with my Lord *Altham* was after my Lady's Departure.
 Q. Can you take upon you to say that the Child you saw was my Lord's Child ?

Q. I took him to be Lord Altham's, and my Lord had that Regard for that he would not introduce an illegitimate Child to me.
 Q. When you first saw this Child, did you see it before the Separation?
 A. To the best of my Memory, I did once.
 Q. Can you swear positively you did?
 A. I cannot swear positively.
 Q. Now, at the Time that you saw this Child to the best of your Memory before the Separation, did you see Mrs. Heath?—A. I did, Sir.
 Q. Had she the Care of any body upon her at that Time?
 A. Not as I know of.
 Q. Did she take Notice of any Child?
 A. I cannot tell whether she did or not.
 Q. Did you ever see this Child in my Lady's Company?
 A. I never did, Sir.
 Q. How did my Lord treat this Child, did he use him with any particular Fondness?—A. I know my Lord was very fond of him.
 Mr. Harward.] There can be no legal Evidence, I find, but one that is actually present at his Birth.
 Court.] You mistake the Court, Mr. Harward.
 Mr. Harward.] My Lord, I am sure I would not willingly mistake the Court, but what I contend for is, that I have a Right to ask this Question; I humbly apprehend I have, for it is a Point of the Perjury, that there was a Child taken to be my Lady Altham's Child at Dunmaine, and this being the Case, I would ask him whether there was any Child in the Family as the Child of the Family?
 Mr. Smith.] My Lord, this is not the Point, the Point is—
 Court.] Ask him in the very Words of the Indictment, if you will ask him.
 Court.] Was there a Child of Lord and Lady Altham's living at Dunmaine while Mrs. Heath was there, to your Knowledge, as the Child of that Family, while my Lady was at Dunmaine?
 A. Really, my Lord, there was no doubt upon me but there was such Child.
 Q. Can you say positively you saw a Child there while my Lady was there?
 A. To the best of my Memory, I did see the Child while my Lady was there.

Cross-Examination.

Mr. Le Hunts.] Where do you live?—A. At Cloughleagh.
 Q. How long have you lived there?—A. These four-and-thirty Years.
 Q. Was you examined on the late Trial in the Court of Exchequer?
 A. No.
 Q. Did you know of that Trial?—A. I did hear of it.
 Q. When was it you first discovered your Knowledge of this Transaction?—A. I cannot tell.
 Q. Was it before the Trial? How came you to be a Witness now and not then?
 A. Because I was subpoena'd now, and was not then.
 Q. Did you ever see Mr. MacKercher?
 A. I have seen him very often.
 Q. Did you see him before the Trial in Ejectment in the Exchequer?
 A. I never did.
 Q. When did you first see him?
 A. I cannot exactly tell you when I saw him.
 Q. You know you are a skilful Man at the Assizes, why did you not disclose this Matter before?
 A. It was fore against my Will that I was brought in at all.
 Q. Do you know Mr. William Sutton?—A. I do.
 Q. Is he a Man of Honour?—A. He is, I believe.
 Q. Had you any, and what Discourse with him about this Matter?
 A. I never had any Discourse with him.
 Jury.] You say you never saw my Lady Altham take Notice of the Child?—A. I never saw them together.
 Q. Did not you say that you were at the House before my Lord and Lady parted, and saw that Child then?—A. I did, Sir.
 Q. Did you know whose Child it was?
 A. I believed it was Lord Altham's.
 Q. Was you told so?—A. I do not know whether I was or no.
 Q. How did you know then that it was their Child?
 A. I took it for granted.
 Q. How old was the Child when you saw it first?
 A. Really, I cannot tell; about eighteen Months, or thereabouts.
 Q. Pray, Sir, was it running about?
 A. It was in the Arms of a Maid or Woman.
 Q. Was she in the Habit or Dress of a Servant of the Family?
 A. She was very clean.
 Q. How was the Child dressed?—A. Oh, the Child was very clean.
 Q. So you know no more of this than that you took it to be their Child of your own Accord?—A. I was not, nor did not doubt it at all.
 Mr. Le Hunts.] Are you sure my Lady was at Dunmaine when you saw the Child there?
 A. I saw it at Dunmaine after the Separation I know, my Lady I believe was not there.
 Q. Was my Lord fond of it at that Time?
 A. Aye, and introduced him to me.
 Q. Did he mention the Mother of the Child?
 A. He did not mention the Mother.
 Q. Who was Butler then?
 A. I cannot tell any of the Servants, nor what Servants I kept myself at that Time. I saw Taylor and Sutton.

16. JANE MURPHY.

Mr. Robins.] My Lord, this Witness was sent for by my Lady Altham to be a Nurse, and in the Presence of my Lady gave the Child Suck, and would have been hired to nurse the Child, but her Husband would not let her stay in the House, and my Lady would not let the Child go out.
 Mr. Robins.] Did you know my Lady Altham?
 Jane Murphy.] I saw her but once in my Life.
 Q. When was that?
 A. It is about nine-and-twenty or thirty Years this May coming, thereabouts.
 Q. What was the Occasion of your going to see her?
 A. My Lord spoke to me two or three Times to go nurse this Boy.
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Q. Did you see ever a Child there?—A. I did, Sir.
 Q. How old was that Child then?
 A. About a Month or three Weeks, there or thereabouts.
 Q. Who was present when you saw the Child?
 A. My Lady, and the Woman that brought the Child into my Lady's Room.
 Q. Do you know who that Woman was?
 A. I do not know who she was, I knew no Servant but Bryan MacCormack.
 Q. Where did you live then?
 A. I lived then at the Salt Mills of Tynern, by the Sea-side.
 Q. How far is that from Dunmaine?
 A. Four Miles from Dunmaine, never reckoned but four.
 Q. What was it you did or said to my Lady?
 A. I told my Lady that my Lord sent a Messenger for me to nurse the Child.
 Q. And did you nurse the Child?—A. Indeed I did not nurse him.
 Q. What was the Reason you did not?
 A. My Lady would not let me have the Child out, and I would not stay in the House.
 Court.] Did you ever see my Lady before?—A. I never did.
 Q. Nor since?—A. No.
 Q. Would you know the Woman, if you saw her, that brought the Child into the Room?
 A. I cannot tell whether I would know her or no.
 Q. Did you ever see her since?—A. I never saw her since.
 Jury.] Who nursed the Child the first three Weeks?
 A. I did not examine, nor cannot tell.
 Mr. Daly.] Whose Cloak is that?—A. It is my own.
 Mr. Daly.] I do not believe you.
 Jane Murphy.] Faith, and you may, and I've wore a better before now.
 Mr. MacManus.] The next Witness is Dennis Redmond. This Witness will prove to your Lordship that Lady Altham was with Child, and brought-to-bed of a Child; that he was the Person sent for the Midwife on that Occasion; that he brought one Mrs. Shiels, a Midwife of Ross, to Dunmaine; and that my Lady was delivered of a Child.

17. DENNIS REDMOND.

Mr. MacManus.] Did you know the late Lord and Lady Altham?
 Dennis Redmond.] I did, I knew them both.
 Q. How came you to know them?—A. Because I was a Servant.
 Q. Where did they live then?—A. At Dunmaine.
 Q. Did you frequently see my Lady Altham?—A. I did.
 Q. Was she, or was she not with Child during the Time of your Service?
 A. She was, and all the Servants round said that she was, she looked big.
 Q. Was there any young Child in that Family?—A. There was.
 Q. Whose was it?—A. It was reputed to be Lord and Lady Altham's.
 Q. Was you sent to Ross on any, and what Occasion?
 A. I was, for a Midwife.
 Q. Who sent you?—A. Mrs. Heath.
 Q. Do you know her?—A. I ought to know her.
 Q. Look about and see if you know her.
 A. Upon my Word, I cannot swear directly that that is Mrs. Heath, but that was my Lady's Maid.
 Q. Who sent you of that Errand?—A. My Lady's Maid did.
 Q. Did you go for the Midwife?—A. I went for her.
 Q. And did you bring her?—A. I got the Midwife.
 Q. Who was she?—A. One Mrs. Shiels.
 Q. What did you then do?—A. I fetched her home to Dunmaine.
 Q. What happened after she came to the House of Dunmaine?
 A. Why, after I brought her home, that Night it was a Noise with them all, every one, that my Lady was brought-to-bed of a Son.
 Q. Did you see the Child?—A. I seen him afterwards.
 Q. How soon after the Midwife left the House?
 A. I cannot tell how soon.
 Q. Did you see him the next Day?—A. Not the next Day.
 Q. Did you in five Days, or ten Days?—A. No, I believe not.
 Q. Did you in a Month?—A. I did in a Month.
 Q. In whose Care was it?
 A. I cannot tell, I seen it among the Girls, among the Servants as they were.
 Q. Did you know Joan Laffan?—A. I did.
 Q. And Mrs. Heath?—A. Yes.
 Q. In whose Care did you see it? Name them particularly.
 A. I seen the Child with both one and the other several Times.
 Q. Name them.
 A. Mrs. Heath and Joan Laffan, and with other Girls that I cannot remember.
 Q. Were there any Rejoicings the Night you brought the Midwife?
 A. There was the Night after.
 Q. What was the Nature of that Rejoicing?
 A. There was a Fire there up in the Avenue among the Trees.

Cross-Examination.

Mr. Daly.] Did you know one Mrs. Hesther that lived in this Family?
 A. I did, very well.
 Q. Did not they call her my Lady sometimes?
 A. I never heard her called so in my Life.
 Q. Was not she with Child while you were a Servant, upon your Oath?
 A. Upon my Oath, I cannot tell whether she was or not.
 Q. Did not you go, upon your Oath, for a Midwife to lay her?
 A. Upon my Oath, I never did.
 Q. Do you know one Mr. William Sutton of Longrainge?—A. I do.
 Q. What was he?—A. He is a Gentleman.
 Q. Had you ever any Discourse with him concerning your going for a Midwife, and for whom?
 A. Upon my Oath, I never had with Mr. Sutton concerning going for a Midwife for any Person, not that I know of, Sir.
 Q. Do you know Captain Orfeur?—A. I do.
 Q. Had you any Discourse with him?
 A. I had Discourse with him.

Q. Who is he?—A. He is Colonel Palliser's Son-in-law; I was there one Night after riding a Horse for him.

Q. What Servants lived at Dunmaine at this Time? Name them; who was the Butler?—A. It is hard for me to remember at this Time.

Q. Upon your Oath, who was the Butler?—A. One Magher, to the best of my Knowledge, and there was one Dyer there.

Q. Was his Name Anthony?—A. Anthony.

Q. Was he or you in the Service first?—A. I was in the Service before he came there.

Q. What other Servants can you recollect; do you know Mrs. Setwright?—A. If she was there I knew her; she may be there for me, it is out of my Mind.

Q. Who was the House-keeper?—A. I do not know as for that, because there was a Cook there still.

Q. Do you remember the Name of Setwright?—A. I think I remember to hear talk of her.

Q. Who was Coachman?—A. John Weedon.

Q. Was his Wife there?—A. His Wife was living at the Bridge below at this Time.

Q. Did Joan Laffan live in the House at this Time that you brought the Midwife?—A. Upon my Oath, I cannot tell now.

Q. What do you believe?—A. I do not know whether she was or not, for there were several Servants there, and a great many that I do not know now.

Q. Pray, did you ever see this Child in the Hands or Care of Joan Laffan?—A. I did, Sir.

Q. Was not that after my Lord and Lady parted?—A. It was after they parted.

Q. Was he ever in her Care before they parted? In her Care or Hands?—A. How could I mind all these Things?

Q. You must recollect.—A. Upon my Word, I cannot tell.

Q. What Service were you in?—A. After the Hounds and the Hunters.

Q. After them?—A. Aye, taking care of them, and hunt them too, and would to this Day, and ride a Horse too.

Q. When was it my Lord and Lady parted?—A. I cannot be exact.

Q. When did you bring the Midwife there?—A. I cannot keep a Memory of what Year, nor I am no Scholar to keep that in my Head.

Q. Do not you remember the Separation?—A. I remember the Time they parted, but cannot tell what Day of the Week, but I think a Holyday.

Q. What Time of the Day was it? Was it in the Morning?—A. I cannot remember whether it was or not now.

Q. Did my Lady go in a Coach, or on Horseback?—A. In a Coach or Chariot.

Q. How long did you continue in the Service after they parted?—A. I did not stay long there after.

Q. How long?—A. I cannot tell how long, because my Father and Mother were in the Town of Dunmaine, and I went to them; upon my Word I cannot tell how long.

Q. Where did my Lady go?—A. To Ross.

Q. How long did you live in the Service in all?—A. About three Years, or full three Years, or something better, to the best of my Knowledge.

Q. Had not Joan Landy a Child a-nursing at her House?—A. She had my Lord's Child a-nursing.

Q. Was not that Child brought into the House of Dunmaine after my Lord and Lady parted?—A. He used to come in before and after.

Q. But did not he come in for good and all after they parted?—A. He did come for good and all, and was put into the Care of Joan Laffan.

Q. How came he to be taken from Joan Landy?—A. I cannot tell, without he had done nursing.

Q. How long did you live at Dunmaine before my Lady came there?—A. I was there before either of them came.

Q. How long was you in the Service?—A. About three Years or better.

Q. What Time did my Lord and Lady come down?—A. I cannot remember.

Q. How long had you been a Servant before my Lady first came down?—A. I cannot tell how long, but it is three Years I served in all.

Q. How long was you in the Service before she came, and how long after?—A. Let me never go but I cannot remember.

Q. Did not you swear when you were examined on the former Trial that you were two Years in the Service before my Lady came to Dunmaine?—A. I was there; I cannot be exactly how long.

Q. And how long of that three Years was you there after they came down?—A. Why, I believe, to the best of my Knowledge, a Year or something better, I cannot be exact.

Q. Will you tell me how soon after they came down my Lady was delivered of this Child?—A. Indeed, I cannot remember.

Q. Was it a Year, or half a Year, or what Time?—A. I cannot tell.

Q. Was you a Servant when she was delivered?—A. I was.

Q. Were you there when Sarah Weedon came down?—A. I was there before she came into the Place at all.

Q. Did you and Mrs. Shiels discourse as you were coming to Dunmaine?—A. How can I remember?

Q. Could she speak English?—A. She could, indeed.

Q. Is she alive?—A. I cannot tell whether she is or not.

Q. Was she an Irish Woman?—A. I cannot tell whether she was or not.

Jury.] You say, Sir, that you saw Joan Landy's Child in the House of Dunmaine before the Separation?—A. In the House I did backwards and forwards.

Q. Did any body take Notice of it?—A. Every one of the Family, one from another used to handle and play with it.

Q. Did you observe my Lord to play with it?—A. I did, and was as fond of him as could be.

Q. Now, you say that after my Lady was turned away, that Child was actually brought home to Dunmaine House?—A. He was that very Time.

Q. And you saw my Lord fond of him then?—A. I saw him fond of him then and after.

Q. What became of my Lady's Child?—A. Why, I believe, this was my Lady's Child; they all said so.

Q. Did not you say it was Joan Landy's Child that was brought to the House?—A. He did come in, the Child she nursed.

Mr. Daly.] Had not Joan Landy a Child?—A. She had, sure enough.

Q. Was not he got by my Lord?—A. They said it was.

Q. Who nursed her Child?—A. I cannot tell, except herself nursed her Child.

Jury.] Mr. Daly asked him, my Lord, who was the Father of Joan Landy's Child, and he says my Lord was; and that she nursed that Child.

Mr. Sol. Gen.] This is a Matter ought to be well understood. The Jury apprehended the Child this Man meant, was the Bastard-child of my Lord Altham by Joan Landy; I desire to know which Child you meant?

Dennis Redmond.] I say, there was a Child that Joan Landy had by a Sailor, or my Lord, or somebody; but this Child did not come to Dunmaine.

Jury.] Had Joan Landy a Child?—A. I cannot tell whether she had of her own Body.

Q. Was she with Child at Dunmaine while you were a Servant there?—A. She was with Child in the Town.

Mr. Daly.] By the Virtue of your Oath, was she or was she not a Servant in the House when my Lady came down first?—A. By virtue of my Oath, I cannot tell.

Q. Did she live there?—A. She was in the Town, to be sure.

Q. Where was Joan Landy when you went for the Midwife?—A. In her Father's House.

Q. How near was that to my Lord's House?—A. It was just below the Dog-kennel.

Jury.] Was not Joan Landy a Servant in the House when my Lady came home?—A. I cannot tell whether she was or not.

Mr. Daly.] Did not you swear on the Trial in the Exchequer, that she was in the House when my Lady came down?—A. She may come in and out, and I am not full sure whether she was or not.

Mr. Smith.] I hope the Jury will take notice that he refuses to answer the Question.

Mr. Daly.] Do you remember Eleanor Murphy and Mary Doyle?—A. Mary Doyle I remember; there were so many they went out of my Mind.

Q. Do you remember Nelly Murphy?—A. I cannot tell whether I do remember Nelly Murphy or not.

Q. Cannot you say whether you do or no?—A. It is impossible to remember, when there were so many of them.

Mr. Callaghan.] We shall now produce Eleanor Murphy.

Mr. Smith.] My Lord, this Witness has been here while Redmond was examined, and has heard what he said upon the Table; and it was a Rule made by your Lordship, that they should not examine any Witness that came into Court before they were called.

Mr. Nelson.] My Lord, I sent for her to have her ready, thinking the Cross-Examination of Redmond would not hold long, and she is but just come.

18. ELEANOR MURPHY.

Mr. Callaghan.] Did you know Lord and Lady Altham?—A. Eleanor Murphy.] Yes.

Q. Pray, was you ever at Dunmaine?—A. Yes.

Q. Did you live there as a Servant?—A. I did.

Q. With whom there?—A. With Lord and Lady Altham.

Q. Can you tell whether my Lady was with Child at any Time, or when?—A. I know she was delivered of a Child.

Q. How do you know that?—A. Because I seen her the Night she was delivered.

Q. Give an Account of all you know of that Matter.

A. Mrs. Heath called me up, and desired me to bring up a Saucepan of Water, and have it warmed.

Court.] Do you know that Mrs. Heath?—A. I cannot tell.

Q. What was she?—A. She was my Lady's Woman, Waiting-maid.

Q. Well, go on.

A. I brought up the Water in the Saucepan, and set it upon the big Parlour Fire. Mrs. Heath called me a little while after to bring it up to the Room in a brown Pan, and I went to my Lady's Room with it, where my Lady was upon her Knees, and she put her Finger in it to see whether it was too hot or cold; and she teamed some Brandy in it to strengthen the Water, as I suppose, to wash the Child.

Mr. Callaghan.] Where was Mrs. Heath?—A. She was attending my Lady.

Q. Do you know of what my Lady was delivered?—A. It was a Boy, for I saw it washed, and Mrs. Shiels put her Hand in her Right-hand Pocket, and brought out her Scissars and cut his Navel-string.

Q. Who were present at this Birth?—A. There were a great many Gentlemen in the Room that I did not know; but I knew one of them, Madam Butler from Ross was there.

Q. Were there any publick Rejoicings at Dunmaine on this Occasion?—A. Yes, the second Night after the Child was born there was a Bonfire alighted by Mr. Taylor's Order and Mrs. Heath.

Q. Do you remember the Christening of this Child?—A. I knew the Day appointed for it to be christened; about a Month or five Weeks after there was a great Gathering for it of many Things.

Q. Was it christened?—A. Doctor Lloyd came there I suppose to christen the Child.

Q. Who was he?—A. He was the Minister of Ross, Sir; I knew him before and after.

Q. Was it Mr. Lloyd that christened it?—A. It was he that christened the Child.

Q. What Name was given to it?—A. Mrs. Heath came down to the Hall and told among the Servants he was called James Annesley.

Jury.] That was his Christian Name?—A. Yes, James Annesley was his Christian Name.

Mr. Callaghan.] What Name was he christened by?—A. He was christened James Annesley.

Q. Do you mean that he was christened James or James Annesley?—A. James Annesley.

Q. Was that his Christian Name only, or his Christian and Surname?—A. That was the Christian Name and Surname and all, and they said it Court.]

Chief.] What was he called when he was christened?
A. James Annesley he was called indeed.
Q. Was he christened James Annesley?
A. He was christened James Annesley.
Mr. Callaghan.] Did you see the Child after at Dunmaine?
A. Yes, I did.
Q. How often, once or twice?
A. Several times, with Mrs. Heath a-dressing of him, when he would be sent for; and there never was a Woman loved a Child better than she did James Annesley.
Mr. Le Hunt.] The Jury want to know if he was christened James Annesley?
Eleanor Murphy.] He was christened James Annesley.
Jury.] How do you know that?
A. This was what I heard Mrs. Heath tell to all the Servants in the Hall.
Mr. Callaghan.] Pray, how long did you continue after this Christening at Dunmaine?
A. A good while.
Q. How long?
A. I believe a Quarter of a Year.
Q. Where was that Child during that Time?
A. He was sent to Joan Landy's out to nurse, she took him with her.
Q. Do you remember the Time of my Lord and Lady's parting?
A. I was not there then.
Q. But do you remember the Time?
A. I do not remember the Time.
Q. Was it before or after that, that Joan Landy got the Nursing?
A. She got the Nursing the Day that he was christened; she came to nurse him the Day before.
Q. Where did you go when you left Dunmaine?
A. I went to Ross, after I left Dunmaine.
Q. Did you see the Child after?
A. I never saw the Child after, only once that he came to Ross with my Lord in the Coach.
Q. Do you understand what a Christian Name and what a Surname is?
A. Yes.
Q. What was the Child's Surname?
A. His Surname is Annesley.
Q. And what his Christian Name?
A. His Christian Name is James.
Q. Was Annesley his Surname or Christian Name when he was christened?
A. It was a Surname, Annesley.

Cross-Examination.

Mr. Spring.] Tell me, recollect who were present when the Child was born besides you?
A. There were several.
Q. Name them.
A. Madam Butler.
Q. Who else?
A. I do not know it is so long ago, I should have a good Head to remember them.
Q. Do you remember were any of the Servants by?
A. I remember some of the Servants, Mary Doyle was by.
Q. Was Mary Doyle in the Room?
A. She was in the Room, and Mrs. Heath.
Q. And who else?
A. Why, some Gentlemen, I cannot tell who they were.
Q. Have not you as good a Memory now as a Year ago?
A. I have not.
Q. Is not it as good now as last Year?
A. I do not know but it is.
Q. Was not Mary Doyle there and Madam Butler?
A. Yes, they were.
Q. Do you remember any more?
A. I do not remember any more.
Q. How long had Mary Doyle been in the Service before the Birth?
A. I cannot tell indeed that.
Q. What Name did she go by then?
A. By Mary Doyle.
Q. She was not married then?
A. I never heard she was.
Q. Which of you was in the Service first?
A. I was first.
Q. How long, pray?
A. Why, a good while; I do not remember how long.
Q. How long was you there after the Child was born?
A. I was there half a Year almost, not half a Year.
Q. And how long was you there before?
A. Near hand a Quarter before.
Q. What was you in the Family?
A. I was Laundry-Maid.
Q. Was you the head Laundry-Maid?
A. No.
Q. What was the Name of the upper one?
A. I cannot remember her Name.
Q. Recollect.
A. It was a strange sort of a Name, I cannot recollect it now.
Q. How long do you say you lived in the Service before the Birth?
A. Near hand a Quarter of a Year.
Q. And how long after?
A. About half a Year.
Q. Where was you at the Time of the great Eclipse?
A. I do not know.
Q. Do you remember it?
A. I do not remember it, but I remember there was great Thunder and Rain.
Q. Do not you remember the great Eclipse several Years ago?
A. I do not remember it now, but I remember Thunder and Rain.
Q. How came you to remember last Year what you do not remember now?
A. Why, what did I remember then?
Mr. Spring.] The Eclipse.
Q. I ask you, upon your Oath, where you were at the Time of the Eclipse?
A. I was at Captain Butler's at this Time of the Thunder and Rain.
Q. Was there any Darkeness of the Sun in the Morning at the time of that Thunder and Rain?
A. I do not remember it.
Q. Were you not a Servant at Captain Butler's at the Time of the Eclipse?
A. I was there when this Thunder and Rain was, the Eclipse was in the Evening.
Q. By virtue of your Oath, do not you remember the great Eclipse of the Sun?
A. By the virtue of my Oath, I do not remember any other.
Q. Was that Thunder before or after the Child was born?
A. The Thunder was since he was born.
Q. Was not you in Captain Butler's Service then?
A. I was in Captain Butler's House, but not in the Service.
Q. Was not you a Servant at Dunmaine before Lady Altham came to Dunmaine?

A. I was not in it when she came there, it was Mrs. Heath hired me.
Court.] How long did you live at Dunmaine before my Lady came?
A. She was there before I went there.
Q. How long were you in the Service before my Lady was brought-to-Bed?
A. Near a Quarter of a Year.
Q. And how long after?
A. Half a Year.
Q. Do you remember the great Darkeness?
A. I do not, my Lord.
Q. But you were asked whether you remembered it when you were examined on the Trial in the Exchequer, and you said you did.
A. Why, they only asked me then if I remembered the Eclipse, and I said I remember that there was such a Thing.
Q. By virtue of your Oath, did you never say that you remembered the Eclipse?
A. I do remember that Darkeness.
Q. What Darkeness was it?
A. It was a Thunder and Rain.
Q. Was that while you lived at Dunmaine?
A. It was after I left Dunmaine.
Q. What time of the Day was it?
A. It was in the Evening; in the Afternoon.
Q. How long did it continue?
A. The Rain held a Quarter of an Hour.
Q. Did you mention any Thunder and Rain when you was examined before?
A. I was not asked any, my Lord.
Q. Do you remember an Eclipse that happened about the time of the Birth?
A. I do not remember any but that Eclipse that was in the Evening, that there was Thunder and Rain along with it.
Mr. Spring.] Were you not at Dunmaine House when my Lady came down?
A. No, I was not.
Q. Did you ever see her before you saw her at Dunmaine?
A. No indeed, I never did.
Q. Did she go to Dublin while you were in the Service?
A. Not that I know of.
Q. Could she be absent a Month or two and you not know of it?
A. No, she was not, in my Service at all, without she'd go to Church.
Q. Did not you swear formerly that you were in the House when my Lady came first?
A. Indeed, I did not.
Q. Where was you hired?
A. By Mrs. Heath.
Q. Where?
A. In the Parlour at Dunmaine.
Q. And you never saw Lady Altham before?
A. Indeed, I never did.
Q. Did not you say, when you were examined before, that you had seen her at Ross?
A. Indeed I did not, without they took me up wrong.
Court.] Did not you swear upon that Trial, that you were in the Service a good while before my Lady came down?
A. No, upon my Word I did not, my Lord.
Mr. Spring.] Did you not say, that the first Time you saw my Lady was at Captain Butler's before you were a Servant at Dunmaine?
A. Upon my Oath, I did not, that I remember.
Q. Now, I ask you who were the Godfathers and Godmother to this Child?
A. Mr. Colclough, Mr. Cliff, and Mrs. Pigot were Gossips.
Q. What Colclough?
A. Of Rossigarland.
Q. What was his Christian Name?
A. Anthony Colclough.
Q. Who were the other Gossips?
A. Counsellor Cliff, and Madam Pigot of Tyntern.
Q. Whose Wife was she?
A. Why, was not she Captain Pigot's of Tyntern?
Q. I ask you whose Wife she was?
A. She was called Madam Pigot of Tyntern.
Q. Was not she Captain Pigot's Wife?
A. I cannot tell, but she went by that Name.
Q. By what Name did you pass yourself at that time?
A. Eleanor Howlett, and my Husband's Name is Murphy.
Q. Do you know one Bridget Howlett?
A. Yes.
Q. Was she a Servant to my Lord Altham?
A. We lived there at the same time.
Q. Who was Butler then?
A. Charles Magher was Butler.
Q. Did you know one Rolph that was Butler?
A. Rolph was not there in my Time.
Q. Did you know Mrs. Weedon? Was she in the House?
A. I heard talk of her; she was not in the House because she was under an ill Character.
Q. Where did she live then?
A. She was at the Bridge below.
Q. How near was that to Dunmaine?
A. To the best of my Knowledge near half a Mile, I cannot tell how long.
Q. Do you remember Mrs. Setwright?
A. I do not remember her.
Q. Who was House-keeper?
A. I think, Mary Doyle, that had the Name of House-keeper.
Q. Where did you live before you came to Captain Butler's?
A. At Frank White's, in Ross.
Q. Where did you live after you left Lord Altham's?
A. At no Place, I was with my own People.
Q. Did you ever live with one Macnamee?
A. I did indeed.
Q. Did you live with him before or after you left Lord Altham's?
A. That was after I left Lord Altham's.
Jury.] Name the Gossips over again; how many were there?
A. Three.
Q. Name them.
A. Counsellor Cliff, Anthony Colclough from Rossigarland, and Mrs. Pigot of Tyntern.
Court.] This is a positive Witness to the Birth, if you can possibly believe, Gentlemen, that she is a Woman that deserves your Credit.
Mr. Serj. Marshall.] I hope your Lordship won't make any Remarks upon the Witnesses till we come to the Close; if we are to support the Credit of our Witnesses, as they appear, we shall never have done.
Court.] I say, if she be a Person of Credit; you would not have me say, she is a Person of undoubted Credit.

19. MARY DOYLE.

Mr. Harding.] The next Witness we produce is *Mary Doyle*; she, my Lord, is a Witness to the Birth.

Q. Did you know *Arthur* late Lord *Altham*?

Mary Doyle.] Yes, Sir, I did.

Q. Did you know his Lady?—A. Yes, Sir.

Q. How came you to know them?—A. Because I was their Servant, Sir.

Q. When was you in their Service?—A. That is a good while ago, it is hard for me to remember it now.

Q. How long do you think it is?—A. I believe, to the best of my Knowledge, nine or ten-and-thirty Years this *May* next.

Q. How long do you say it is?—A. It is nine-and-thirty this *May*.

Q. Recollect, Woman, how many Years is it since you lived there; is it nine-and-twenty, or thirty, or how many?

A. It is thirty this *May*, since you will have it so.

Q. During your Knowledge of Lady *Altham* was she with Child?

A. She was with Child.

Q. Was she delivered?—A. She was indeed.

Q. Where?—A. In her own House at *Dunmaine*, Sir.

Q. How do you know that?—A. I was by, Sir.

Q. Was you present?—A. I was indeed.

Q. Was any body else present?—A. There was.

Q. Who?—A. Three or four Servants.

Q. Who were they?—A. One *Nell Murphy*, and Mrs. *Heath* first, and *Eleanor Murphy*.

Q. Were there any Gentlemen there?—A. There was *Madam Butler*, and some others I do not know.

Q. Was the Child christened?—A. He was.

Q. By whom?—A. By one *Lloyd* out of *Ros*.

Q. Who was he?—A. A Minister and Curate.

Q. Of what Place?—A. Of *Ros*.

Q. Who were the Godfathers and Godmother?

A. To the best of my Knowledge, Mr. *Colebush*, Mrs. *Piget* of *Tyntern*, and Mr. *Cliff* from *Ros*.

Q. Were there any Rejoicings upon that Account?—A. A great deal, Sir.

Q. When and where?—A. In the House.

Q. Tell what Rejoicings there were.—A. There were the best of Liquors, and the best of Eating and Rejoicing every way.

Q. Was there a Bonfire?—A. There was.

Q. When was that Bonfire?—A. The Night after the Child was born.

Q. Pray now, what came of that Child after?

A. Indeed I do not know; there was a Nurse there that had him, for I left the Place a few Days after he was christened.

Q. What was the Nurse's Name?

A. To the best of my Knowledge, her Name was *Landy*.

Q. How long did you stay after the Christening?

A. I left the House a few Days after.

Court.] Did you see my Lady delivered?—A. Indeed I did, I was an Eye-witness to it, for I was in the Room all along.

Q. Are you sure whether Mrs. *Heath* was in the Room or not?

A. Indeed she was from the first to the last.

Cross-Examination.

Mr. Spring.] You say *Joan Landy* was the Nurse?—A. Yes, Sir.

Q. Was she married or a single Woman?

A. I heard by every Body in the House that she was married.

Q. To whom?—A. To one *Mac Cormack*.

Q. Were they living together at that time in their own House?

A. I do not know whether they were or not.

Q. Where did they live then?—A. They lived in the Town.

Q. At what time was this Birth and Christening?

A. It was in the Month of *May*.

Q. The latter End or the Beginning of *May*?

A. The latter End of *May*.

Court.] How long was it between the Birth and the Christening?

A. Between three and four Weeks, or thereabouts.

Q. Was it both born and christened in *May*?

A. He was born the latter End of the Month of *May*.

Q. Was you there at the Christening, or did you leave the Service before it?—A. It was after the Christening I left the House.

Q. What was your Service?—A. A Chamber-maid, my Lord.

Mr. Spring.] How long was you in that Service before this Child was born?—A. Just three Months.

Q. How long before this was you acquainted with *Joan Landy*?

A. Never 'till I seen her there.

Q. Do you know whether she had a Child or not?

A. I heard that she had a Child.

Q. By whom?—A. I do not know by whom.

Q. You said just now that Mrs. *Heath*, Mrs. *Butler* and *Nelly Murphy* were present at the Birth?—A. I did, Sir.

Q. Were there any more but them?

A. Indeed I do not know, for my Part I do not remember them.

Q. How long before that had you known *Eleanor Murphy*?

A. I never seen her till I saw her there.

Q. What was her name then?—A. *Eleanor Howlett*.

Q. Had you ever any Children?—A. I ought to have one Boy.

Q. How old is he?

A. He is thirty Years of Age, but I had a Son before that time.

Q. Which was in the Service first, you or *Nelly Murphy*?

A. She was in the House before me, and after to the best of my Knowledge.

Q. What is your Son's Name?—A. *Edward Cosker*.

Q. How many Husbands have you had?

A. I never married but one Man.

Q. How comes you to go by the Name of *Doyle*?

A. *Mary Doyle* is my own maiden Name.

Q. Where do you live now?—A. I live now at the Port of *Dunmaine*.

Q. How came you to file yourself, in an Affidavit you lately made,

Mary Doyle of *Ravilly*?—A. Because I lived there.

Q. How many Years ago is it since you lived there?

A. Thirty Years this *May* since I lived there.

Q. Was you married when you lived there?

A. I was five Years before that a married Woman.

Q. Where did you live before you came to *Ravilly*?

A. In the County of *Wexford*.

Q. Where there?—A. I forgot the Name of the Place.

Q. Recollect where you lived before you lived at *Ravilly*?

A. At *Harrostown*.

Q. How long did you live there?—A. I cannot remember.

Q. Where did you live before you lived at *Harrostown*?

A. I lived in the County of *Wicklow*.

Q. Where there?

A. Oh! the Lord knows where, I cannot remember.

Q. Where did you go when you left *Ravilly*?

A. To *Low Grange* in the County of *Kilkenny*.

Q. Do you know one *Daniel Hughes*?—A. I do.

Q. Did he ever live with you?

A. He lived in the House with me at *Ravilly*.

Q. What is he to you?—A. He is my Husband's Nephew.

Q. How long did you live at *Low Grange*?—A. I lived Six Years there.

Q. How long at *Ravilly*?—A. Six Years. And it was the Year that I

went to *Ravilly* that I was at *Dunmaine*, for my Husband and I parted.

Q. Where did your Husband and you part?—A. We parted there.

Q. Where?—A. At *Harrostown*.

Q. When was you brought-to-bed of your Son?—A. The Lord knows.

Q. Was you in Service before you went to *Dunmaine*?

A. I was, in the County of *Wexford* and County of *Wicklow*.

Q. Where?—A. At one *Osborne's*.

Q. How long did you live there?—A. I was a Twelvemonth there.

Q. Was that before or after you were married?

A. Before I was married.

Q. How old do you say your Son is?

A. I say he is thirty Years old next *May*.

Q. Where was he born?—A. I cannot remember.

Q. Do you know *Robert Cosker*?—A. I do know him.

Court.] What is the Tendency of this Examination?

Mr. Spring.] This Examination tends to prove, that she was a married Woman, and lived with her Husband at the Time she pretends she was a Servant at *Dunmaine*?

Q. Who was Cook at *Dunmaine*?—A. I do not know his Name.

Q. Did you know the House-keeper?—A. I do not remember.

Q. Do you remember Major *Fitz-gerald's* being at *Dunmaine*?

A. There was one *Fitz-gerald* that lay there one Night, and I do not know whether he was a Major or a Captain; the Servants told me he was one out of the County of *Carlow*.

Q. Do you remember *Sarah Weedon*?

A. I never seen *Sarah Weedon* but once.

Q. Did you know Mrs. *Setwright* the Housekeeper?

A. I never knew her, I do not know what was her Name.

Q. Who was the Landlady?—A. There was *Nelly Murphy* and another over her, but I do not remember her.

Q. Who was Butler?—A. One *Magher*.

Q. Do you remember *Bourk* the Postillion?—A. Indeed I do not.

Q. How long before you left the Service did *Dennis Redmond* leave it?

A. He was there before me and after me.

Q. How long did you stay there after this Birth?

A. I stayed after the Christening two or three Days.

Q. Do you remember the great Eclipse of the Sun?

A. I do not remember it.

Mr. Morton.] The next Witness will be one *Mary Freeman*, who will prove to your Lordship and the Jury, that she saw my Lady *Altham* at *Dunmaine* big with Child, and saw the Child in the Care of *Joan Laffan*; that Mrs. *Heath* was particularly fond of it, and that she has seen the Child with my Lady in a Coach frequently afterwards.

20. MARY FREEMAN.

Mr. Morton.] Did you know the late Lady *Altham*?

Mary Freeman.] I did, Sir.

Q. Where did you first see her?—A. In *Tyntern*, at *Madam Pigot's*.

Q. At the time you knew her there, what Condition did she appear to be in?

A. She appeared to me as a Woman in her Case, with Child.

Q. Did she appear big?—A. She did indeed, Sir.

Q. At what time was this?—A. To the best of my Knowledge, it was a little before *Christmas* in the Year that King *George* the First came in.

Q. Can you recollect whether before or after *Christmas*?

A. That was the time that *Esquire Pigot* had the Bonfire in *Tyntern*.

Q. Was it before or after that Bonfire?

A. Before the Bonfire, for we had it at *Michaelmas*.

Q. Did you ever see my Lady afterwards, and where?

A. I seen her in *Dunmaine* very often.

Q. When you saw her there, did you see any Child in and about that House?—A. I did indeed, upon my Word.

Q. What Child was it?

A. I seen the Child with *Joan Laffan* tending of it, at the time *Madam Pigot* sent a Letter by me there; I seen it mighty well dressed with *Joan Laffan* in *Dunmaine* House, at the time of the Letter I was sent with to be delivered to my Lady *Altham*.

Q. Did you deliver the Letter?

A. I gave it to Mrs. *Heath*, into her own Hands, and she went up Stairs with it to my Lady, and told me when she came down, that my Lady was unwell, and could not give me an Answer.

Q. Did

Mr. Serj.

Thomas L.

Q. Do you

Q. Were you

Q. I served

at *Dunmaine*

Q. In what

Q. To the

Q. And was

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Q. Did you see the Child at that Time?
 A. I did see the Child that very infant in the Presence of Mrs. Heath.
 Q. Was Mrs. Heath present?
 A. It was in her Presence the Minute that I delivered the Letter: *Joan Laffan* was in the Kitchen with the Child in her Arms.
 Q. What Time of the Year was this?
 A. It was about this Time of the Year, I cannot tell what Time.
 Q. Are you sure that Mrs. Heath was present and saw the Child?
 A. *Joan Laffan* had the Child in her Arms in the Presence of Mrs. Heath, when I delivered the Letter to her.
 Q. Mr. Morton.] At the Time you saw this Child, then or any other Time, what Notice did you see Mrs. Heath take of it?
 A. Why indeed, Sir, upon my Word, I know no more than that I was going to the Fair of *Rosfs*, and I saw her bring out the Child, and she put a Bundle of Cloaths into my Lady's Coach —
 Q. But I ask you, whether at the Time that you saw this Child when you went with the Letter, and then observed this Child in Mrs. Heath's Presence, you observed Mrs. Heath to take any Notice of it?
 A. She did take Notice of it, particular Notice, and was playing with it; indeed she was.
 Q. How old was the Child then?
 A. It was about a Year and half old, to the best of my Knowledge.
 Q. What sort of a Child was it?
 A. It was a pretty light-headed Child.
 Q. Did Mrs. Heath take Notice of it as the Child of a Person of Consequence?
 A. She did indeed.
 Q. As the Child of whom?
 A. As a Gentleman's Child.
 Q. Whose Child was it considered to be?
 A. It was considered my Lady *Altham's* and my Lord's; as I heard, it was called the young Lord, young *Jemmy Annesley*; any other I cannot tell you.
 Q. I ask you whether at any Time after this, you saw this Child in company with Lady *Altham*?
 A. I did.
 Q. Where was the next Place?
 A. I did not see it after that Time, to the best of my Knowledge, 'till I seen him at *Rosfs* at *Madam Butler's*.
 Q. Who did you see him with there?
 A. He was in *Madam Butler's* Arms, for he was brought from *Dunmaine* that very Day, and she received the Child and carried it up Stairs to my Lady.
 Q. Who brought it to *Rosfs*?
 A. I cannot tell.
 Q. At this Time in whose Company was it?
 A. There was Nobody but Mrs. Heath that came down Stairs.
 Q. Now I ask you whether the Child that you saw after at *Rosfs* was the same you saw at *Dunmaine*?
 A. I cannot tell that, Sir, but the Child was there.
 Q. Was Mrs. Heath present at *Butler's*?
 A. She was indeed.
 Q. Did she at that Place take any Notice of the Child?
 A. I cannot tell you, Sir, it was at the Head of the Stairs, and I cannot tell that.

Cross-Examination.

Mr. Ed. Malone.] Do you remember the Year that you saw my Lady with Child?
 A. The Year King *George* the first came in.
 Q. Was she big with Child then?
 A. She was.
 Q. You say it was the Year King *George* came in?
 A. It was the Year he came in.
 Q. Was it not about *Christmas* you said?
 A. And was not that the Year King *George* came in?
 Q. I ask you, if you did not say you saw my Lady big with Child about *Christmas*?
 A. It was about *Christmas*.
 Q. Where did you see her then?
 A. At *Tyntern*.
 Q. Was it before or after *Christmas*?
 A. It was before.
 Q. You went from Mrs. *Pigot's* with a Letter to *Dunmaine*?
 A. I did, Sir.
 Q. What Time of the Year was it?
 A. In the Spring.
 Q. Of what Year?
 A. I cannot tell as to that.
 Q. Was it the next Spring after you saw her with Child?
 A. Indeed it was not, nor the Spring after.
 Q. See if you can recollect the Year?
 A. I cannot recollect the Year.
 Q. You knew Counsellor *Pigot*?
 A. I knew him very well.
 Q. Had any Accident happened to him then?
 A. No, Sir, it was after.
 Q. How soon after?
 A. I do not know.
 Q. Did not he break his Leg in the County of *Tipperary*?
 A. I cannot tell that.
 Q. Do you remember the Time he broke his Leg?
 A. I was not in the Family then, but in the Town.
 Q. Was Mrs. *Pigot* at home when he broke his Leg?
 A. I believe so.
 Q. Did she go to him?
 A. She went to him.
 Q. Did she go from *Tyntern* to him?
 A. She did.
 Q. Mr. Serj. Marshall.] The next Witness is one *Thomas Elton*, by Trade *Glazier*; he was called to *Dunmaine* upon some necessary Repairs of that House some time after the Birth of Mr. *Annesley*; and he will give your Lordship an Account that he saw this Child in the House, when he was at Work, greatly taken care of by his Father and Mother, and I believe by the Prisoner at the Bar.
 Q. Mr. Serj. Marshall.] If you have any new Witnesses to any new Matter, produce them; you have produced Witnesses to all the Points of the Indictment ready.

21. THOMAS ELTON.

Mr. Serj. Marshall.] Pray, Sir, what Trade do you follow?
 A. *Thomas Elton*.] I am a *Glazier*.
 Q. Do you know a Place called *Dunmaine*?
 A. I do, Sir.
 Q. Were you at any Time and when at that House?
 A. I served my Apprenticeship in *Rosfs* to *James Morris of Rosfs*, and I was at *Dunmaine* House several times.
 Q. In what Year?
 A. To the best of my Memory, I was bound Apprentice in the Year 1715.
 Q. And what Time was you at *Dunmaine* House?

A. I was there I believe at several Times.
 Q. Name any particular Time.
 A. I was there in that same Year, and in 1716 and 1717, and 'till the Separation of my Lord and Lady was.
 Q. Who did you see there?
 A. The Lord and the Lady was there.
 Q. Whom else did you see?
 A. I seen *Arthur Lord Altham* and his Lady, I seen *Mary Heath*.
 Q. Do you know any other of that Family that were there?
 A. I have remembered to see a Child there.
 Q. What Child was that?
 A. A Child as I thought was the Son of *Arthur Lord Altham*.
 Q. Where was Lady *Altham* when you saw this Son?
 A. In the House, Sir.
 Q. In what Manner was this Child treated?
 A. If you please I will tell you. I am a *Glazier* by Trade, and at Work in the House at several Times I was.
 Q. What Year was this that you saw the Child?
 A. In the Year 1716, to the best of my Knowledge; and upon the same, I was up in the Lady's Chamber at Work, and a Messenger came up, I did not turn my Face about, nor do not know who it was, and I heard a Messenger say, Young Master is below: in some time after my Lady called *Mary Heath*, and said, Go and bring up my Child. With that, I seen the Child coming up, and upon the same, my Lady embraced it as she was sitting upon the Bed.
 Q. What Year was this?
 A. I think it was 1716. And she kept it there, during the Time I was at Work, which was close upon an Hour.

Cross-Examination.

Mr. Recorder.] Say in what time of the Year 1716 this was?
 A. I cannot tell.
 Q. Was it in Spring, or Summer, or Winter?
 A. I cannot tell, upon my Word.
 Q. Was it after, or before *Christmas*?
 A. Indeed I cannot tell, Sir.
 Q. Upon your Oath, was not it in the Year 1717?
 A. Upon my Oath, it was not in 1717.
 Q. Well then, what time was it in 1716?
 A. I cannot tell, Sir.
 Q. Upon your Oath, was it in 1716?
 A. It was in 1716, but I cannot particularly guess at the Time; I cannot contain that, it is so long ago.
 Q. Mr. Proby, Juror.] How old was the Child?
 A. As near as I can guess, a Year and half, or thereabouts.
 Q. Did you ever hold any Discourse within these few Days with any body upon the Road?
 A. I did not, upon my Oath.
 Q. Did you see Nobody in a *Finglafs Chaise* between *Kilullen* Bridge and this?
 A. I believe I saw your Face.
 Q. Do you remember what you told me then about your Knowledge of this Affair?
 A. I do not remember.
 Q. Mr. Proby.] You told me then you had a Subpoena the Day before, and thought it was very hard you should not know sooner what you had to swear; and swore by your Maker there, you knew nothing of the Matter. You said further, you were in so great a Passion you threw the Subpoena and Shilling into the Fire.
 Q. N. B. Witness *Elton* produced a Paper and said, Here is the Subpoena.
 Q. Mr. Solicitor General.] I am now, with some Satisfaction, to inform your Lordships that we shall call Mr. *Higginson*; he is a Person of some Reputation. We should not call him so early, but that he is falling sick and not able to attend any longer. This Gentleman will endeavour to prove that he was at *Dunmaine* at the Time of the Assizes of *Wexford*, and we will now produce him, though out of time, to shew where my Lady was at that time, and of her being then with Child. You will observe he is now called by way of Anticipation, and before his time.
 Q. Mr. Proby.] My Lord, I have something further to mention that this Man told me, which I had forgot.
 Q. Mr. Serj. Marshall.] I desire, my Lord, that Mr. *Proby* may be sworn.
 Q. Court.] You must be sworn, Sir.
 Q. Mr. Proby sworn to give Evidence to the Court, and his Fellow-jurors.] When he told me that it was very hard he should have such short Warning, and did not know what he had to swear, I desired him by all means to make haste, for the Trial would be very soon, to get to Town and be instructed there. So I will, says he; and immediately he set into a Gallop, and I never saw him 'till now since.

Q. Mr. Serj. Marshall.] What were the Words he said to you?
 A. He told me, that he was in such a Passion, that he threw the Subpoena and the Shilling into the Fire.
 Q. Mr. Solicitor.] It shews he was a most unwilling Witness.
 Q. Mr. Proby.] His Words were these, By G—d I know nothing of the Matter.
 Q. Mr. Serj. Marshall.] Do not you apprehend that the Man meant by that, that he did not know any thing of the Birth of this Child?
 A. I cannot tell what he meant.
 Q. Upon your Oath, Sir, what do you think he meant?
 A. Upon my Oath, Sir, I believe from the subsequent Expressions, that he knew nothing at all of the Affair.
 Q. Might not such a Person as you saw here clearly imagine, that his seeing a Child in that House was nothing material, if he knew nothing of the Birth of that Child?
 A. He told me he was summoned on the Trial between the old and young Lord, and swore by G—d he knew nothing of the Matter.
 Q. But might not he think that he knew nothing material?
 Q. Mr. Recorder.] The Jury will judge of that.

22. MR. THOMAS HIGGINSON.

Mr. Solicitor.] Mr. *Higginson*, pray did you know the late Lord and Lady *Altham*?
 A. Mr. *Higginson*.] Yes.
 Q. Do you remember to have seen either of them, and when, in the Year 1714 or 1715?
 A. I saw Lord *Altham* very often; I had the Honour to receive from the Year 1710, *Arthur Lord Altham's* Rents for Part of his Estate.
 Q. You saw my Lord *Altham* very often?

A. I saw him very often.
 Q. Do you remember to have seen either of them about the Middle of April 1715?—A. Yes, the Middle of April 1715 I called at Dunmaine.

Q. How came you to call there?
 A. I was Receiver to Arthur Lord Altham, and Arthur late Earl of Anglesea.

Q. Go on, and give an Account of what you know of this Family.
 A. My Lady I saw when I called at Dunmaine, my Lord was not at home.

Q. Do you know any thing of her being with Child?
 A. That time I saw her, I took her to be big with Child.

Court.] What time was that?—Q. In the Middle of April 1715.
 Mr. Solicitor.] What time in April do you say?
 A. The Middle, in Easter Week 1715.

Q. Where did you see her then?—A. At Dunmaine.
 Q. Inform the Court and Jury what Look or Appearance she had of being with Child.

A. She appeared to be big with Child to me, and towards the last Month of her time.

Q. Tell us wherefore it is that you have made yourself sure it was then?
 A. I had a Pocket-book in which I kept my Memorandums; I was receiving Rents for the Earl of Anglesea, and I sent my Son to receive the Rents of the Nanny-water Estate for Lord Altham; I knew he would be at home with the Money; and I called there for Lord Altham to send one to Eniscorthy with me for the Money.

The Witness's Voice being weak, Mr. Smith, an Officer of the Court, is directed to repeat what he should say.

Mr. Smith.] Tell what you say, Sentence by Sentence, and I will repeat it.

Mr. Higginson.] I called to see if Lord Altham was at home to send one with me to Eniscorthy, to get some Money for himself.

Q. Did you see my Lady or my Lord at that time?—A. My Lady only.

Q. How can you be particular concerning the time of your being at Dunmaine?

A. Because the Days that I received Lord Annesley's Rents I had it entered in my Pocket-book, and I gave the Book to the Prime Serjeant Malone at the last Trial.

Q. What were the Contents of that Book?—A. Lord Anglesea's Receipts.

Q. You say Lady Altham looked like a Woman big with Child?

A. She did.

Q. What Conversation had you with her then?

A. Very little, only that I asked for my Lord, and told her what I called for; for I dared not go into the House, for if I had, Lord Anglesea would have turned me out of the Receipt of his Rents.

Q. Tell what passed between my Lady and you.

A. I told her I called to get my Lord to send one with me to Eniscorthy; and my Lady came down and made me drink, and I drank a good Deliverance to her Ladyship in two Glasses of White-wine.

Q. Who did you see with my Lady?

A. The Maid was there, but I do not know her Name.

Q. Now tell us how did you dispose of yourself after you left Dunmaine?

A. I went to Eniscorthy, and dined with Major Rogers that Day there.

Q. Where did you go from thence?

A. To a Friend's House in Wexford early next Morning, Thursday Morning.

Q. Recollect the Day you were at Dunmaine?

A. I was there on Thursday going, and Tuesday coming back.

Q. What Day did you go from Dunmaine to Eniscorthy?

A. I came from Dunmaine to Eniscorthy on Tuesday.

Q. How long did you stay at Wexford then?

A. Not above an Hour I believe, we had but one Pint of Wine.

Q. Did you see Lord Altham at that Assizes?

A. Yes, he gave me the Receipt.

Q. Did you see my Lady there?—A. No, I did not, nor hear of her.

Q. Do you believe, if she had been there, you would not have known it? Could she be there, and you not see her?

A. She might be there for me.

Q. Pray, Sir, you say you were Receiver to my Lord Anglesea, did there come any Account to the Earl of Anglesea of the Birth of a Child?

Peppard's-Castle.	Mr. William White.	is	Debtr.	Year Month and Day	Contra	— is —	Credr.
				1715	2 Bills		4 10
				March 28	Dit. in full Michaelmas		11 17 8
				April 18	1714		

Mr. Le Hunte.] Where was this Book kept?

A. When John Wilson came to receive the Rents of Lord Anglesea after me, I lent it to him.

Court.] Can you now say that it was the 18th of April, Easter-Tuesday, that you were at Dunmaine, since it appears by your Book you entered Receipts of that Date elsewhere?

A. I left eight Receipts for my Son and Murphy, to give the People that paid the Money.

Q. How came you to enter them the fifteenth and eighteenth?

A. Because they were to go there them Days.

Q. Since your Book shews your Hand-writing at another Place, the time you say you were at Dunmaine, can you, from any other Circumstance, recollect that it was Tuesday the 18th of April that you were at Dunmaine?

A. I believe it was Tuesday the 18th by my Pocket-book.

Court.] See and get an Almanack for the Year 1715.

Q. Does your Pocket-book and this Book contain the same things?

A. The Pocket-book is of different Things from this Book.

Mr. Le Hunte.] Did not you swear on the Trial in the Exchequer, that you received four Pounds from Mr. Houghton the Day before you went to Dunmaine?

A. I believe so.

Q. What Day did you receive that Money?

A. I believe it was on Monday Morning.

A. Several of Ross Tenants did come to Lord Anglesea in July.

Cross-Examination.

Mr. Le Hunte.] Pray, Sir, do not you say that you were at Dunmaine on Easter-Tuesday?—A. I was there on Thursday and Tuesday.

Q. Was you there on Easter-Tuesday?—A. I was.

Q. What Year was it?

A. By my Books on Easter-Tuesday in the Year 1715.

Q. Where was you the Monday before?

A. I believe I was at Mr. Giffard's; I was at Houghton's; I know I was in that Neighbourhood on Easter-Monday.

Q. Upon your Oath, Sir, where were you on Easter-Monday?

A. I believe I was at Mr. Thomas Houghton's on Easter-Monday.

Q. How near is that to Dunmaine?—A. I believe four or five Miles.

Q. Why are you so certain of being at Dunmaine and at Houghton's on Easter-Monday and Tuesday?

A. Those were the Days I received Money, and they were entered in my Book, that is the Reason of my Certainty.

Q. Do you know a Place called Peppard's-Castle?—A. I do know it.

Q. How far from Dunmaine is Peppard's-Castle?

A. Which Way would you have me go?

Q. The common Road. How many Miles distant is it?

A. I believe sixteen Miles.

Q. Where were you upon Easter-Sunday?—A. I believe at Clomines.

Q. How near is that to Dunmaine?

A. Four or five Miles, I do not know well.

Q. How far is Clomines from Peppard's-Castle?

A. I believe as far as Dunmaine, it cannot be less than sixteen Miles.

Q. Look at that Paper and see if it be your Hand-writing; is that your Name?—A. I believe it is.

Q. When you gave Receipts, did you date them on the Days the Tenants paid you the Money?—A. Some I did, and some I did not.

Q. Explain yourself.

A. When I would go abroad, I would leave Receipts drawn according to the Days the Tenants promised to pay their Rents, some with my Wife, and some with my Son, and some with Timothy Murphy that received for me.

Q. Is that all your Hand-writing?—A. I believe it is.

Mr. Le Hunte.] I desire that Paper may be read against himself.

Clerk of the Crown.] Received from Mr. William White now and formerly the Sum of twenty-five Pounds Sterl. in full his last Michaelmas Rent, due out of Peppard's-Castle, &c. to the Right Hon. Arthur Earl of Anglesea, received by his Lops Order this 18th April 1715.

254. 0 0

Tho. Higginson.

Court.] That is Easter-Monday that Year?

Mr. Higginson.] I will tell your Lordship how that was. I was to pay Major Rogers Money for Timber for my Lord Anglesea, and I left my Son the Receipt to get the Money, who was to meet me there with it.

Q. Is the Date your own Hand?—A. Yes, I believe it is.

Q. And did you date Receipts before you received the Money?

A. Yes, very often.

Mr. Le Hunte.] What time did you enter this Receipt in your Book?

A. When I came home again.

Q. When was that?—A. I entered it on Wednesday, when he brought me the Money to Eniscorthy.

Q. What Money did he bring?

A. He brought me sixty odd Pounds; I gave him eight Receipts to call upon the People with them, and I got the Money on Wednesday.

Q. When did you enter those Receipts in your Book?

A. I believe I entered them before I went from home.

Q. How so?—A. Because they promised me the Payment.

Q. Did you draw this Receipt at the time that it bears Date.

A. I gave this Receipt to Tim Murphy or my Son before I went away, and they told me they would be there that Day with the Money.

Q. See if this be your Book and Hand-writing?—A. It is.

Q. Was this Book kept by you?—A. It was. I lent it to Mr. Wilson.

Q. Is that Entry your Hand-writing?—A. It is my Hand-writing.

Q. When was it entered?—A. It was entered when I came back.

Mr. Mark Whyte.] Reads the Title, viz.

Q. What was the Denomination that Rent was paid for?

A. I do not know indeed, I know no Denomination now, but only Ballysep and Dunmaine.

Q. Did not you swear that you received from Mr. Giffard of Ballysep Ten Pounds on Tuesday?—A. Yes, I did.

Q. Was not that the Day you went to Dunmaine?

A. Yes, I believe I did that Morning.

Q. Did not you say, you received from Patrick Sutton twenty Pounds the Day before?

A. I received some on Friday, and Saturday, and wanted forty Shillings; and they sent it after me on Monday.

Q. Did you swear, or did you not, that you received Sutton's Money on Monday?

A. I did not on Monday. I wanted about forty Shillings, and I got that on Monday or Tuesday following.

Q. Upon your Oath, Sir, did you not swear that you received twenty Pounds from Colonel Sutton on Monday?

A. I do not know whether I did or no; I did receive twenty Pounds in all; but I said then as I say now, that there was forty Shillings behind and he sent it after me on Monday.

Q. What Day did you receive the Money from Mr. Giffard?

A. On Monday I believe.

Q. What did you receive the Money from Mr. Sutton for?

A. It was for the Rent of Clomines.

Q. Lo

Q. Look at that Book now; is that your Hand-writing?
A. The upper Part is, that is my Hand-writing.

Q. And whose is the other?

A. That is my Son's; I told Counsellor Ford so before at Wexford.

Col. Wallis	is	Debtor	Year Month and Day
Arrears			1713.
			Novemb. 30.
			1714 June 17th.
			November 2d.
			1715 April 5th.

His own Writing, 1714 June 17th.
His Son's Writing, 1715 April 5th.

Contra	is	Creditor
Per Higginson's Account		233 14 11½
Do.		48 00 00
Do.		52 00 00
Mr. Giffard.		30 00 00
His own Writing		363 14 11½

Q. Were you present at the Time it was entered?

A. No, he was at *Ros*, and *Joe White* the Merchant gave him a Bill for Thirty Pounds, and I allowed this as Cash, the Tenants all received it as Cash; they had a Share in it, and I allowed it as Cash.

Q. Why did not you make your Entries in your Book at that Period of Time?

A. I had not that Book with me; I had lent it to *John Wilson*.

Q. Was the Money paid by the Tenants at the Time set down in the Book?

A. That was the Bill that every one of them had a Share in.

Q. Was the 30l. received on the 5th of April?—A. The Bill was.

Q. Did not you swear you received the 30l. on Monday?

A. It was good 30l. to me, and so I swore I received it on Monday.

Q. Where is your Pocket-book?—A. I have it not now.

Q. Did not you swear upon your former Examination in the Exchequer, that you were Agent to my Lord *Anglesea* from the Year 1711, to the Year 1717?

A. No, not till the Year 1717; no, if it be 1717, it is wrong printed.

Q. Upon your Oath, was not you Lord *Anglesea's* Agent in the Year 1717?—A. I was not discharged till 1718 or 1719 for that matter, but Mr. *Wilson* came in before that.

Q. Did you continue Agent for my Lord *Anglesea* after the Year 1717?

A. No, nor that Year, but I received for him in 1716.

Q. You received in the Year 1716?—A. I did then in several Places.

Q. Upon your Oath, did you in 1717?

A. I cannot charge my Memory; I am sure I did in 1716.

Q. Look at this Bond, and see if it be your Hand-writing?

A. I did see it, it is.

Mr. *Le Hunte*.] My Lord, this Bond is to shew that he was discharged long before this Time, and we desire it may be read.

Mr. *Marke Whyte* reads part of the Bond, which bears Date the 26th Day of December 1715.

Mr. *Le Hunte*.] Did you ever settle any Account subsequent to the Account in this Book?—A. Yes, I did; six Months after.

Mr. *Solicitor*.] Would you be understood that that was the Book you carried about with you?

A. No, this was the Book that was left at home.

Q. What Book did you take with you commonly?

A. I carried a little Pocket-Book about me.

Mr. *Recorder*.] When you came home to that Book, did you make Entries different from your Pocket-book?—A. Some I did.

Q. How so? then you had no certain Guide for keeping your Accompts?

A. Whenever I was promised any Money, I entered it down in that Book the Day I expected to receive it, and left Receipts with my Wife or Son, for I was very much abroad.

Q. How could you enter the Day before you knew you would be paid?

A. They would keep the Receipts till they got the Money.

Mr. *Serjeant Marshall*.] My Lord, I desire the whole Conditions and all the Bond may be read; Mr. *White* read only a Part of it, and I must insist upon the whole being read, to shew that he might have received the Rents for a Year after the Date thereof.

Mr. *Bowden* reads the Bond as follows:

"Know all Men by these Presents, that I *Thomas Higginson* of *Rahin-gurrin*, in the County of *Wexford*, Gent. am held and firmly bound unto the Right Honourable *Arthur Earl of Anglesea*, in the Sum of one thousand Pounds Sterl. lawful Money of *Great-Britain*, to be paid to the said

<i>Ballydaboy, &c.</i>	Law: Nangle	is Debtr.	Year Month and Day	Contra	is	Credr.
			1715.			
			April 19th.	Ditto		1 16 6

The Bond is given to the Jury.

Mr. *Serjeant Marshall*.] You will observe, Gentlemen, there are two Clauses in the Bond; the first that he shall account for all Sums received; and the next that he shall account for all Sums he should receive.

Court.] Not at all; he was superfed.

Court.] If you mean to produce other Evidence to the same Thing, I shall stop you; we have been near twelve Hours in Court, and cannot adjourn.

Mr. *Edmond Malone*.] And they said, my Lord, they would not take up eight Hours in ten, if the Trial should hold no longer.

Court.] Let us know your next Witness, and what to be examined to; say what they are.

Mr. *Serj. Tisdall*.] The next is one *John Warren*, produced to the same Purpose of several others.

Court.] Let him stay then. Is he a Man of Figure? What's his Addition?

Mr. *Serjeant Tisdall*.] He is a Gentleman, my Lord.

Court.] Let me tell you, there is no Safety in a Multitude of Witnesses.

Mr. *Serjeant Tisdall*.] A Multitude of People agreeing to the same Fact greatly corroborates it.

23. Mr. JOHN WARREN.

Mr. *Serj. Tisdall*.] Mr. *Warren*, was you ever at *Dunmaine*?

Mr. *Warren*.] I never lived at *Dunmaine*, but I belonged to one Mr. *Chambers*, that lived at ———, and went there several Times about his Business; my Lord's Steward would buy fat Sheep from him---

Arthur Earl of Anglesea, or his certain Attorney, Executors or Administrators, to the which Payment well and truly to be made, I do bind myself, my Executors and Administrators, firmly by these Presents, sealed with my Seal, and dated this twenty-sixth Day of December, Anno Dom. 1715."

"Whereas the above-named *Arthur Earl of Anglesea* did constitute and appoint the above-bound *Thomas Higginson* to be Collector and Receiver of his Rents, Arrears of Rents, Revenues, Duties and Profits of his Lordship's Estate in the County of *Wexford* for some Time past. And whereas the said *Arthur Earl of Anglesea* did on the first Day of May last annul and make void the said Power: Now the Condition of the above-written Obligation is such, that if the said *Thomas Higginson*, his Executors or Administrators, do and shall, on or before the first Day of May next ensuing the Date of these Presents, deliver up to the said *Arthur Earl of Anglesea*, his Heirs or Assigns, a just and true Account of all such Rents, Duties, Arrears of Rents, Fines, Issues, Goods, Chattels, Profits and Perquisites, as he the said *Thomas Higginson* hath at any Time heretofore levied or received for the Use of the said Earl, as his Collector or Receiver, and do and shall then pay, or cause to be paid unto the said *Arthur Earl of Anglesea*, his Heirs or Assigns, all such Sum and Sums of Money, as shall then appear to be and remain due to the said Earl, his Heirs or Assigns, on balancing of such Accompts; and also do and shall at any Time when demanded, well and truly account for, and pay unto him the said *Arthur Earl of Anglesea*, his Heirs or Assigns, any Sum or Sums of Money, that shall or may at any Time or Times hereafter, within the Space of one Year from the Date above-mentioned appear to have been received by him, the said *Thomas Higginson*, for the Use, or on the Account of the said Earl, and not accounted for with him by the said *Thomas Higginson*, on or before the said first Day of May next ensuing (if any such there be) that then the above Obligation shall be void, or else it shall stand in full Force and Virtue."

Sealed and delivered in Presence of us,

Den. Brien, *Tho. Higginson.*
John Wilson, Junior. 715.

Mr. *Serjeant Marshall*.] He had a Right, it appears, to collect all the Arrears that were due for a Year, he had a Year allowed him to gather them in.

Mr. *Recorder*.] The Bond says, if it shall appear within the Space of one Year, that he had received any Sum or Sums of Money; but there is no Power given him to receive any Rents.

Mr. *Le Hunte*.] Were not you Tenant to Part of *Arthur Lord Altham's* Estate?—A. Not at all.

Q. Did not you hold a House from him in *Ros*?

A. I never had a House in *Ros*.

Q. Who came into Possession of Lord *Altham's* Estate upon his Death?

A. I do not know, I was not employed then.

Q. Was you Receiver to Lord *Altham* till his Death?

A. No, till the Year 1717 or 1718.

Q. How far is *Ballydaboy* from *Dunmaine*?—A. I cannot tell.

Q. How near is it to *Peppard's-Castle*?—A. I believe within a Mile.

Q. Is that your Hand-writing?—A. Yes, I saw it before.

Q. Look at it again, was it entered the Time it bears Date?

A. I believe the *Wednesday* before I left home.

Q. How came you to enter it then?

A. There was a Fair to be on the 19th, and that was the Reason.

Q. Were you ever at *Dunmaine*, Sir, while my Lord and Lady *Altham* lived there?—A. I was there several Times whilst they lived there.

Q. Did you see ever a Child there?—A. Indeed I did see a Child there.

Q. What Sort of a Child?—A. They called him *Jemmy*, he was a Boy.

Q. Whose Child was he?—A. I do not know whose Child, but my Lady called him her Child, and came one Evening and asked, How does my Child do? putting out her Hand to him.

Q. Who did you see the Child with?—A. With a Servant.

Q. Can you say whose Child it was?—A. It is impossible for me to know whose Child it was, my Lord called him his Son.

Cross-Examination.

Mr. *Le Hunte*.] How do you get your Livelihood?

A. I have a Livelihood.

Q. Have you any Trade?—A. I have no Trade.

Q. Upon your Oath, are not you a Beggar?

A. I am not; I have something of a Livelihood.

Court.] Unless you can now tell us what your Witness will say, I assure you we won't have the Time of the Court taken up in this manner.

Mr. *Archdale*.] For my part, my Lord, if they bring a hundred such Witnesses, I'll never think it worth my while to listen to them.

Mr. *Daly*.] We'll bring but as few as we possibly can.

Mr. *Recorder*.] We shall bring very good Witnesses, and come to the Point as soon as we can, when we begin our Defence; but these Gentlemen, I perceive, will not give us an Opportunity.

Court.]

Court. J. Unless you have something new to offer, or a Man of greater Figure or Honour to corroborate what these Witnesses have said, we shall not hear him. If you have any Person of undoubted Credit, in the Name of God produce him.

Mr. MacManus. J. We have many more to examine, and those Witnesses of undoubted Credit, and I hope the Court will indulge us so far as to hear their Evidence. We have examined many, it is true, and I beg Leave to say there has been a great Consistency of Truth in their Testimony, and they have sworn very materially; and, my Lord, if we falsify the Traveller in any one Point, we will falsify her in the whole; we have twelve Men of Honour to try her, and I desire we may be permitted to call *Robert Kennight*, he is a very material Person in my Brief.

Court. J. What is it that you produce him to?

Mr. MacManus. J. He is a material Witness upon my Paper; he will prove to your Lordship that Lady *Altham* (which is the first Point before you upon this Perjury) was big with Child. My Lord, they will not let me open his Evidence any further, because he is here.

Court. J. Bring him up.

24. ROBERT KENNIGHT.

Mr. MacManus. J. Did you know the late Lord and Lady *Altham*?

Robert Kennight. J. Yes, I did.

Q. Where did you live when you knew them?—*A.* In *Garryduffe* first.

Q. Did you know them while they lived at *Dunmaine*?—*A.* I did, Sir.

Q. How far from that did you live?

A. In the Bounds of *Dunmaine*, they joined together.

Q. Was my Lady, or was she not with Child at any Time that you knew her at *Dunmaine*?—*A.* In my Opinion she was.

Q. Have you any Reason for that Opinion?—*A.* All the Reason I have for it is, because I seen her big, and like a Woman with Child.

Q. Did you see any Child in the House of *Dunmaine*?—*A.* I did.

Q. Did you know of any Bonfires and Rejoicings upon any, and what particular Occasion?

A. I did, for Joy about the young Child that my Lord and Lady had.

Q. Pray, do you know Mrs. *Heath*?

A. I never knew her, I made no Acquaintance with her.

Q. Do you remember to have seen her at *Dunmaine*?

A. I never did see her, or know her at all.

I shall ask no more Questions.

Court. J. How many Bonfires were there made?—*A.* None but one.

Q. Where was it?

A. At the great House, in the Back-side in the Avenue.

Mr. Solicitor. J. My Lord, we have examined such a prodigious Number of Witnesses to one Point, that, if my Judgment had prevailed, you should have had an End of them long ago; but we shall now call our last Witness for the present, and trouble your Lordship no more, except in the Counter-Proof upon the Reply we should have Occasion to produce fresh Proof. This Witness is a Witness that was examined upon the last Trial in Ejectment in the Exchequer, her Name is *Joan Laffan*.

Court. J. Why did not you call her first?

Mr. Solicitor. J. We look upon her to be a very material one, and hope she will satisfy your Lordship and the Jury of this whole Affair.

Court. J. I was wondering what was become of her all this Time.

25. JOAN LAFFAN.

Mr. Serjeant Tisdall. J. Mrs. *Laffan*, did you know my Lord and Lady *Altham*?—*Joan Laffan.* J. Yes, Sir.

Q. Was you ever a Servant there?—*A.* Yes, Sir.

Q. What was your Service?

A. I was Chamber-Maid when I came there first.

Q. What Time did you come there first?

A. The Year after the Death of the Queen: I was at Colonel *Deane's* at her Death, and came the Year after to Lord *Altham's*.

Q. Pray, how long did you continue in that Employment of Chamber-Maid?—*A.* About a Year and a Half, and then I was employed to nurse Master *Jemmy Annesley*.

Q. How old was he then?

A. Near upon a Year and Half, or thereabouts.

Q. Pray now, whose Child was he?—*A.* My Lord and Lady *Altham's*.

Q. By whom were you employed to nurse him?

A. By my Lord and Lady *Altham*.

Q. Pray, what Time did you go into my Lord's Service?

A. To the best of my Knowledge, it is the Harvest; I lived at Colonel *Deane's* till after King *George* the First came in better than Half a Year, then I left it, and was a little while with my Friends, and then went to Lord and Lady *Altham's*.

Q. Pray, can you tell in what Month you went there?

A. I cannot recollect the Month, but, to the best of my Knowledge, about Harvest.

Q. In what Year was it?—*A.* I cannot exactly tell what Year.

Q. But you say it was the Year after the King came in?

A. The Year after, or thereabouts.

Q. How long after you lived as a Chamber-Maid was this Child put into your Care by my Lady?

A. Near upon a Year and a Half after, or thereabouts.

Q. Who was it put the Child into your Care?—*A.* Lady *Altham*.

Q. Pray, did Mrs. *Heath* know that you took Care of it?

A. She did, Sir.

Q. Where was the Child before he was put into your Care?

A. The Child was at Nurse before; when he came from the Wet-nurse, he was put into my Care.

Q. Pray now, how old was the Child when you were hired?

A. I believe the Child was three or four Months old when I was hired, there or thereabouts.

Q. How old do you say he was?

A. About three Months, or better, I cannot exactly tell that.

Q. How old was the Child when put into your Care?

A. Near upon a Year and Half.

Q. How long after you were hired was he put into your Care? About what Time of the Year?—*A.* About a Year and Half after.

Q. Was you a Year and Half Chamber-Maid before you had the Care of him?—*A.* Yes, I believe I was near upon it.

Q. How long did you attend this Child before my Lady went away?

A. Half a Year.

Q. How long did you attend the Child before my Lord and Lady parted?

A. About two Years old the Child was when they parted; so that I attended him Half a Year before my Lady went away.

Q. Before this Child was put into your Care, where was it?

A. At the Wet-Nurse.

Q. You say, that before this Child was put into your Care, it was put unto the Wet-Nurse?—*A.* Yes.

Q. Was it ever brought up by her to *Dunmaine* House?

A. Yes, it was; sometimes my Lady would go on fine Days and fetch it in the Coach with her, and the Nurse would bring it other Times.

Q. Was Mrs. *Heath* in the Service then?—*A.* She was indeed.

Q. Pray how did my Lady behave to it?

A. My Lady was very fond of it.

Q. Who used to dress the Child?

A. Mrs. *Heath* dressed it; its Day Cloaths were kept in the House, and the Child was dressed by her and my Lady; and the Night Cloaths were kept with the Nurse.

Q. How did Mrs. *Heath* treat this Child? Was she employed in any Sort about it?

A. Sometimes to dress him, and take him in her Arms that Way, very fond. I know that when there were Jellies made, or Jellies left, it was given to the Nurse, and put into her Whey and Broths to drink.

Q. Was you at *Dunmaine* at the Time of the Separation?

A. I was there.

Q. Where was this Child then?—*A.* In the House.

Q. How did my Lady behave to the Child at parting?

A. She desired very hard to take the Child with her, and my Lord would not let her have him.

Q. Pray, was there any thing happened particular to the Child at the Time of the parting?

A. My Lady desired very hard to have the Child; she sent down for Mr. *Taylor* to come up and hand her down Stairs; so, when he came up, I hope, says she, you had not a Hand in this wicked Plot contrived for me. He said, No, he had not. Says she, If you are so good as to prevail on my Lord to let me have the Child, I do not care if I never let my Foot in *Dunmaine* again.

Q. What happened upon that?—*A.* I know that she said so, for I stood at the Stair-head when Mr. *Taylor* handed her down Stairs.

Cross-Examination.

Mr. Spring. J. Where was you hired into the Service of Lord and Lady *Altham*?—*A.* My Lady hired me.

Q. Where?—*A.* In her own House.

Q. Are you sure my Lady hired you?

A. She did indeed, she did not know me, and she sent to a Gentlewoman to get a Character of me, and she said she would give her Word for 1000*l.* for me.

Q. Who was that Gentlewoman?

A. It was Mrs. *Synnot*, she sent her Footman to her.

Q. You say my Lady was at *Dunmaine* at that Time?—*A.* She was.

Q. Upon your Oath, did she continue the whole Month of *August* at Home?—*A.* I cannot tell whether she did or not.

Q. Was she, or was she not at Home the Month of *August*?

A. I cannot tell whether she was at home or not.

Q. Did she lye a Week abroad at any Time in *August*?

A. I cannot recollect.

Q. Was she a Fortnight abroad in *August*?—*A.* I cannot tell.

Q. Was she the whole Month of *August* abroad?

A. I cannot discharge my Memory.

Q. Was she the whole Month of *September*?—*A.* I cannot discharge my Memory when she was at home or abroad.

Q. Was she the Month of *October*?—*A.* I cannot tell.

Q. Was she in *November*?—*A.* I cannot tell.

Q. Or *December*?—*A.* I cannot tell.

Q. Was she the Month of *January*?

A. I thought I did not come here to scold.

Q. Was she absent for three Months together?

A. I cannot tell but she did go away for three Months.

Q. You say that my Lady used to go in a Coach to visit this Child?

A. She did.

Q. Did not you say that the Child was brought every Day to the House by the Nurse?—*A.* Sometimes the Nurse came up with him, and sometimes my Lady went to the Nurse's to see him.

Q. Did not this continue every Day during the whole Time that the Child was at Nurse?

A. Sometimes, I do not say every Day; but sometimes my Lady would go there, and sometimes the Nurse would bring him to the House.

Q. To what Place did you go after you left that Service?

A. I went to *Cheek-Point*.

Q. Do you know Mr. *William Bolton*?—*A.* I do.

Q. Is he an honest Man?—*A.* I believe he is.

Q. Do you know *Maynard Walker*?—*A.* Yes.

Q. Is he an honest Man?—*A.* He has a very indifferent Character, and all the Family; I know they helped to ruin me.

Q. Do you know *William Elms*?—*A.* I do.

Q. What Character has he?—*A.* I see nothing by the Man.

Q. What Character did you give him when you were examined in the Exchequer?—*A.* What Character did he give me?

Q. Did not you swear then that he was an honest Man?

A. I do not say to the contrary now, do I?

Q. Did not you then say, that you could make him blacker than he could you?—*A.* I do not know but I did.

Q. You say, you saw the Child in the Coach with my Lady when she was going away?—*A.* I did, and she kissed the Child in the Carriage, and the Child was taken away from her.

Q. What Time of the Day was that?—*A.* It was after Dinner-time, between that and Evening; towards the Evening.

Q. Repeat that again.—*A.* It was towards the Evening.

Q. Who used to visit at *Dunmaine* when you lived there?

A. I

A. I cannot tell the Company exactly.
 Q. Did Mrs. Giffard visit my Lady?—A. She did sometimes.
 Q. Did my Lady visit her?
 A. My Lady visited her sometimes, I cannot tell exactly how often.
 Q. Did you know Mr. Palliser at that House?—A. I did.
 Q. How long did he use to stay there at a Time?
 A. I cannot tell how long.
 Q. Did he see the Child?—A. He did see it.
 Q. Did he know whose Child it was?
 A. He knew the Child was my Lord and Lady's.
 Q. Had he ever the Child in his Arms?
 A. I cannot swear he had the Child in his Arms.
 Court.] Do you know *Edmond Howlett*?—A. I do.
 Q. Did my Lady go away in a Coach or Chariot?
 A. To the best of my Knowledge it was a four-wheeled Chair.
 Q. Was any Body with her?—A. Yes, Mrs. Heath.
 Q. Was there any Body else with her?
 A. Nobody else that I know of.
 Q. Was the Child in the Chair?—A. I seen the Child was taken to her, and she kissed the Child when it was taken from her.
 Q. Did she desire to have the Child brought to her?
 A. She desired the Child to be handed to her, and then she kissed it.
 Q. How many Horses were there to the Chair?
 A. To the best of my Knowledge there were two.
 Q. Was the Chaise open before or at the Top?
 A. Upon my Word I cannot give my Word for that.
 Q. Was it an open Chair, or a Chariot?
 A. I cannot give my Word for it, what Carriage it was.
 Q. Was it before or after Dinner my Lady went away?
 A. It was after Dinner, Sir.
 Mr. Spring.] Was you ever in the House the Child was nursed in?
 A. I was.
 Q. Was the Wall a Mud or Stone Wall?—A. Stone and Mud, Mortar wall, Stone and Mortar mixed, Stone in the lower Part.
 Q. Do you know *Sarah Weedon*?—A. I did.
 Q. What did you tell Mr. Bolton concerning my Lady's having or not having a Child?—A. I never told him any Thing, for he never talked to me of the Subject at all.

Mr. Solicitor.] My Lord, I told you she should be the last Witness upon the direct Examination; we reserve a Power to reply to any new Points, if necessary.

Court.] You shall, to any new Facts.

Here the Evidence of the Prosecutor was closed.

Court.] How many Witnesses have you, Gentlemen of Counsel for the Traverser? Have you any Objection on either Side to the Jury having some Refreshment?

Counsel.] We have no Objection.

Jury.] My Lord, we chuse to go on, and will not have any Refreshment at all; but desire Mr. Recorder will consider how long we have been in the Box, and that he will shorten the Trial as much as is consistent with the Benefit of his Client.

Mr. Recorder.] My Lord, it is with the utmost Concern that I am to lay any Thing before the Jury at so late an Hour, but as this is a Matter of great Consequence, I am sure they will hear me with Patience, and I shall make it as short as possible in Ease of the Jury.

My Lord, there are two Points that now are in question; for though there are four or five Assignments of Perjury, yet they all end in two; one is, that Lady *Altham* was with Child while the Traverser, Mrs. Heath, lived with her; and the other, that she was brought-to-bed of a Son.

My Lord, it appears from the Evidence of the Prosecutor, that my Lady *Altham* came first into this Kingdom in the Month of *October* 1713, and the Fact is so, and that she never was in this Kingdom before. This will be material when I come to speak to the Evidence, and remark upon the Particulars of it. It appears from the Evidence, that my Lady came to the House of Mr. *Briscoe* in this Town; there she stayed till some Time in *December*, that my Lord *Altham* came to Town and was reconciled to her, and though they have endeavoured to prove that they left *Briscoe's*, and went into Lodgings before they went down to *Dunmaine*, we shall prove that my Lord *Altham* remained at Captain *Briscoe's* with my Lady, and never went to Mrs. *Vice's*, the Place they pretend he removed to, till he went to *Dunmaine* in the County of *Wexford*. We shall prove that they remained there, and went from the House of *Briscoe* to *Dunmaine*.

My Lord, we shall prove, though they swear that they stayed but three or four Days at *Briscoe's* after my Lord came, for so *Alice Betts* and the other Witnesses have sworn, that they stayed at *Briscoe's* during their Continuance in *Dublin*; and that my Lady, when she lodged at Mr. *Briscoe's*, hired Mrs. *Setwright*, the House-keeper, though those Persons could not remember her Name. We shall prove that *Mary Waters* was hired for the Chamber-maid, and *Betty Doyle* for Laundry-maid, and that my Lady sent these Servants down from *Briscoe's* to *Dunmaine* before her, two Days before my Lord and Lady set out; and these People will prove that these Servants set out from thence to *Dunmaine*. We shall prove when they came to *Dunmaine* what Servants were there, for it will be material to the Jury to know who they were, because we shall not give Evidence of roving, straggling People. We shall prove by a concurrent Testimony of all the Servants of the Family, that my Lady never was with Child at *Dunmaine*, or any where else in *Ireland*. We shall prove, that in the Months of *September*, *October* and *November* 1714, when it is sworn she was in this Town sick, and visited by a Physician, that she was then in the County of *Wexford*. We shall prove that one Mrs. *Giffard*, a near Neighbour and Acquaintance of Lady *Altham's*, had Twins, and that my Lady was at the Groaning, and so far from being with Child, that she lamented her not having the Prospect of a Child; and we shall prove that my Lady, at the Time that these Witnesses for the Prosecutor swear that she was at *Dunmaine*, and near lying-in, and lay the Time in *April* or *May* 1715, we shall prove by a Cloud of Witnesses, that she went to the Spring Assizes of *Wexford* that Year, was at the Assizes, and at the Trial of one *Masterfon* and *Walsh* for enlisting Pretender's Men. We shall prove by several Witnesses of undoubted Credit, and by the Person where she lodged, that she was there all the Time of the Assizes, and was there the 25th Day of *April*, and at the Trial of these People, when *Higginson*

swore that she was at home and big with Child; and it will appear to your Lordship, that she was so far from being with Child, that she did not return to her own House till the twenty-second of *April*. We shall then prove; that after that she came to *Dublin*; that she came here in *May* following, which, if what they swear be true, could not be; for they say she lay-in then, and that it was above three Weeks before she got out of her Chamber. We shall prove that she was in *Dublin* the King's Birth-day, when the Fire-works were made on that Occasion, which was on the twenty-eighth of *May*. My Lord, one would imagine that when we shall have given you the concurrent Testimony of all the Servants of the Family, and other undoubted Witnesses touching these Facts, we should have little Occasion for further Proof; but we shall go to Facts that will overturn their Witnesses, and shew that all this is a made, contrived Affair. My Lord, they pretend that this Child was christened, and that Mrs. *Pigot* and Counsellor *Cliff* and Mr. *Colclough* were Godfathers and Godmother; they swear that they were all present at this Christening. These are Circumstances we shall shew to be false; and if we can prove that Mrs. *Pigot* was not in the County of *Wexford* from *November* in the Year 1714, till after the Separation in the Year 1716, all this Contrivance must fall to the Ground. My Lord, we shall prove it incontestably; we shall prove that Mrs. *Pigot* came to *Dublin* from the County of *Wexford* in *November* 1714, that she was in *Dublin* in the Year 1715, that her Husband broke his Leg, and happened to lye ill in the County of *Tipperary*, and that she went to him and continued there, and never returned to the County of *Wexford* from *November* 1714, till some Time in the Year 1717, which was after the Separation; and we shall prove what will fix this, that the great Eclipse was the twenty-second of *April* 1715. Now, they lay that this Christening was in *May* or *June* that Year; for they say Lady *Altham* was brought-to-bed in *May*, so that Mrs. *Pigot* must have been in the County of *Wexford*, if at all at the Christening, in *May* or *June*. Now, my Lord, we'll prove that at the Time of the Eclipse, Mrs. *Pigot* was with her Husband, and was actually in the County of *Tipperary* the twenty-second of *April* 1715, and continued there many Months after. When we have proved this, we shall prove that Mr. *Cliff* was not in the County of *Wexford* in *May* or *June* 1715, the Time of his being sworn to be Godfather to this Child; we shall prove he was in *Dublin* during the Term, and continued sick here after, till the Middle of *June*. We shall prove, that at the Time of Mr. *Colclough's* being said to be Godfather, there was a particular Quarrel between him and my Lord *Altham*; besides that, Mr. *Colclough* was a Papist at that Time, and died one; and then you'll judge whether they would have chosen a Papist Godfather to a Child born to inherit so great an Estate and such Honours. When we have proved this, we apprehend that this concurrent Testimony of all the Servants of the Family of my Lady's having never been with Child, and the Proof of her being at *Wexford* at the Assizes, and after in *Dublin*, and other Circumstances, will convince any reasonable Man that this is all a Fiction. I could open many other Circumstances, but rather chuse to spare the Time, and let the Jury hear the Witnesses.

Mr. Smith.] My Lord, the first Witness we produce is Mrs. *Vice*; you have heard of one *Vice* in *Essex-street*, to whose House Lady *Altham* was supposed to go to lodge the first Time she was in *Dublin*, after my Lord and she were reconciled at Mr. *Briscoe's*: We have the Daughter of that Lady, and she'll give your Lordship a true Account of that Transaction, and the true Periods of Time concerning their lodging there.

The Examination of the Traverser's Witnesses began at a Quarter before Nine o'Clock at Night.

I. MRS. LETITIA VICE.

Mr. Daly.] Mrs. *Vice*, I'd ask you a Question, Madam. Pray, do you remember when the late Lady *Altham* came first into this Kingdom?

Mrs. *Vice*.] I do remember her. Not when she landed; but I remember her being in the Kingdom.

Q. The first Time that you remember her being in the Kingdom, where did she lodge?—A. I heard she lodged at Capt. *Briscoe's*.

Mr. Serj. *Tisdall*.] I am to inform you, you are not to tell what you heard.

Mr. Daly.] Pray, Madam, where did you first see her?

A. I first saw her in my Mother's House in *Essex-street*.

Q. Pray, can you recollect the first Time that she came to lodge at your Mother's?—A. Indeed, Sir, I can't.

Q. Is it from the Country she came, or from *England*?

A. From the Country, I believe.

Q. Pray, Madam, what Time was it?—A. Indeed, Sir, I can't tell.

Q. Do you remember any thing of her living at *Briscoe's*?

A. Yes, I heard she lived there.

Q. Do you remember the Time, Madam, when she lodged there?

A. I only heard she lodged there; I never was to see her there.

Q. Do you know Mrs. *Cole*?—A. No, Sir.

Q. Do you remember whether my Lady came from the Country to your Mother's?—A. I believe from the Country.

Q. What Reason have you to believe so?

A. I have Reason to believe so.

Q. Why? Did you observe what People came with her?

A. I did not, Sir, I was then very young.

Q. Do you remember the Fire-works that were at the Birth-Day of King *George* the First; and were my Lord and Lady at your Mother's House then?—A. I remember them being at my Mother's House one Birth-day of King *George* the First.

Q. How often were they at your Mother's?

A. They were there twice, and I believe once was before the Birth-day; they were there at the Death of the Queen.

Q. Was that the first Time of their being there?

A. I cannot tell whether that was the first Time.

Q. Were they ever there lodging but twice?

A. But twice, to the best of my Knowledge.

Q. Was your Father living then?—A. My Father was dead.

Q. Will you please, Madam, to give a particular Account of the Times they were there?

A. I can't give a particular Account, but that they were there when the Queen died, and one Birth-day of King *George* the First.

Q. What Day of the Week was that Birth-day?

A. It

A. It was on a Saturday.

Q. Why do you remember it to be on a Saturday?

A. I remember the Restauration was on Sunday, and my Lady had a mind to have a Bonfire made before the Door, and my Mother was not willing there should be one, and there was some Dispute on that; and that makes me remember the Day of the Week.

Q. Do you recollect, Madam, whether there were any Fireworks that Birth-day?—A. I believe there was, Sir.

Q. Did you see any body at those Fireworks looking at them?

A. We were pretty near the Custom-house, and I believe I might see some of them there; but was not with my Lady to see them.

Q. But you say the first Time my Lord and Lady lodged at your Mother's, they came from the Country?

A. To the best of my Knowledge they did.

Q. Pray, Madam, when first my Lady came from England, did they come to visit at your House or not?

A. My Lady dined with my Lord there; but I don't believe she came to lodge till after she came from the Country.

Mr. Morton.] There was a Direction of your Lordship's, that the Witnesses should be kept together till called for; but I am to inform your Lordship here are two of the Witnesses walking about the Court.

Mr. Annesley.] I beg, my Lord, I may explain this Matter to your Lordship; I've been with them for these three Hours, and Mr. Hervey did not leave the Place till it was said he was sent for by the Court.

Mr. Daly.] My Lord, the Witness says, she remembers, that when it was said that my Lady came from England, that my Lord and she came to dine with her Mother.

Q. Where did they lodge at that Time?

A. I heard they lodged at Capt. Briscoe's.

Q. Did they lodge at your House then?

A. Not when they came to dine there.

Q. Did my Lady ever lodge there before?—A. No.

Q. You remember those Fireworks that were at the Time they lodged at your Mother's House; how long did they continue in Town after?

A. I can't tell.

Q. Well, Madam, the last Time, which is the second Time that they came to your Mother's, how long did they continue there?

A. I can't be exact to the Time; they were there a good while, but I can't tell how long, Sir.

Q. What Time of the Year was it?

A. I can't recollect the Time of the Year.

Q. What Time of the Year were they there the second Time?

A. They were there the eight and nine-and-twentieth of May; but how long before that I can't tell.

Q. What Reason have you to be exact as to those Days?

A. Why, the first being the Birth-day, Sir, and the Fire-works being at that Time, and my Lady's Desire of having a Bonfire on Sunday Night, which was the Restauration.

Q. How long did they continue in Town after?

A. I can't be exact how long they continued in Town.

Q. Do you remember any thing of Twelfth-Night?

A. I do remember my Lady was there one Twelfth-Night, but what Year I cannot tell; and I remember there was a Twelfth-Cake.

Cross-Examination.

Mr. Serj. Marshall.] You say, you are sure that Lady Altham was at your House at the Death of the late Queen Anne?—A. I am, Sir.

Q. Pray, do you remember the 20th of October following that?

A. No, Sir, I don't.

Q. Do you remember any thing remarkable that happened that Day?

A. I don't.

Mr. Serj. Marshall.] I tell you then, that was the Coronation of King George the First.

A. I ask you now, were there not the Fire-works on that Day in Dublin?—A. I don't know indeed.

Q. Do you remember any thing particular of the 20th of October?

A. I do not, Sir.

Q. Can you take upon you to say, that Lord and Lady Altham were not in Dublin in October 1714?

A. I can't take upon me to say whether they were or not.

Q. Can you, that they were not in November 1714?—A. I can't, Sir.

Q. You mentioned a Twelfth-Day; now I ask you, can you say they were not here on the Twelfth-Day in 1714?

A. I can't say that; but my Lady was one Twelfth-day at my Mother's.

Q. Can you say it was not that Year?

A. I can't say whether it was or not.

Q. Pray, can you say, since the only Reason you give was, that there were Fireworks, that it was not the Fireworks on the Twentieth of October 1714?

A. I say it was not that Day that I remark; it was the Twenty-eighth of May, Saturday, and the Sunday was the Restauration.

Q. Can you say that that was not the twenty-eighth of May 1716?

A. Indeed I can't take it upon me to fix the Year; but believe that it was the Year 1715, and my Reason for it was, that it was Saturday.

Q. I ask you, Madam, can you say that it was not May 1716?

A. I do not believe it was May 1716; I say it was on a Saturday, whatever was the Year it was in; whether it was the Year 1715, or 1716, it was on a Saturday, and that was the Year.

Court.] Saturday was the Day in 1715 by the Almanack.

Mr. Serjeant Marshall.] Do you know one Catharine MacCormack?

A. I do, she was my Mother's Servant.

Q. Was she a Servant in the Family at the Time Lady Altham lodged there?—A. She was.

Q. Do you remember that there was any Disturbance or Quarrel between Lord and Lady Altham, while at your House?

A. I do not remember any Particulars of that Sort at all; I was too young to make Observations of that Kind.

Mr. Harward.] You must have been very young indeed at that Time, Madam!—A. Not so young, perhaps, as you may imagine, Sir.

Mr. Serj. Marshall.] Pray, give me leave to ask you how old you were then?—A. I am now three-and-forty, Sir.

Q. Did you never hear of my Lord's sending for Mrs. Lucas the Midwife?—A. I never did.

Q. Was she a noted Midwife at that Time?—A. I believe so, Sir.

Q. She lived near you, Madam?—A. She did so.

Q. Was my Lady at any Time confined at your House?

A. I do not know.

Q. Did Doctor Jemmat ever visit her?—A. I do not know but he might.

Q. And you do not know but my Lady was here in October, November, December and January 1714?—A. I do not know.

Q. What Cloaths did my Lord and Lady wear when they came to your House first?

A. Indeed, Sir, I cannot tell. You could not tell, I suppose, what Cloaths I have on now at such a Distance of Time.

Q. What Cloaths did they wear generally?

A. I do not know; I know my Lady was in Town in the Queen's Mourning. I have seen her too in Colours, in a yellow and silver Silk, a blue and a white Damask.

Q. What was your Reason for fixing the Birth-day to Saturday?

A. My Reason was, because my Lady would have a Bonfire on Sunday, and my Mother was not willing there should be one, and there was a Dispute about it.

Q. What was the Objection your Mother had to the making it?

A. It was, that as she was a Widow, she thought such a Thing as a Bonfire was not agreeable to her, and that was the Reason.

Q. What Day did the King's Birth-day happen on in the Year 1720?

A. I do not know; but my Lady could not be at our House in the Year 1720, because my Mother had left the House.

Court.] The Witness said that the Birth-day that Lady Altham was at her Mother's House was on a Saturday, and whatever Year that happened on, that was the Year. And that was the Year 1715, by the Almanack.

Mr. Serj. Marshall.] You mentioned a Twelfth-cake, I think?

A. Yes, Sir.

Q. Was that the first or second Time Lord and Lady Altham were at your Mother's?

A. I cannot be particular whether first or second.

Q. Pray, Madam, how long is it since you first recollected that this Birth-day was on a Saturday?

A. Since I was asked whether my Lady was in Town on a Birth-day.

Q. How long is it since you looked into an Almanack about this?

A. I never looked into an Almanack 'till after I had told that it was on a Saturday, and the Restauration on Sunday, but never till then.

Q. Were not you in Town when the last Trial was in the Exchequer?

A. I was, Sir.

Q. Were not you then applied to?—A. I was applied to.

Q. And did you come?—A. I did not come.

Q. How so?

A. Because I could not recollect any particular Passages at that Time.

Mr. Serj. Marshall.] Why then it was not till after the Trial that you were set right.

Mr. Daly.] Who applied to you to appear at the Exchequer?

A. There came a Gentleman from Capt. Annesley to know if I knew any thing of this Affair. I sent word I did not, and if there had not been a particular Question asked me about the Fireworks, I should not have recollected.

Mr. Serj. Marshall.] Who asked that particular Question about the Fireworks?—A. I cannot tell who it was.

Q. From whom were you asked that Question?

A. It was from Mr. Annesley's Family. Mr. MacKercher and Annesley before that came to me to know what I knew of my Lady's lodging at my Mother's; and I told them I knew nothing particular about it.

Q. Who asked you the particular Question about the Fireworks?

A. It was Capt. Annesley's and Lord Anglesea's Friends.

Q. Was this at the Time of the Trial?

A. I do not know when the Trial was.

Q. I tell you then, it began the 11th of November 1743, and lasted for twelve Days; did they ask that Question during that Time?

A. They only applied to me in general, to know if I knew any thing of the Time of my Lady Altham's lodging at my Mother's, and I told them I could not recollect.

Q. Did they at that Time put this particular Question about the Fireworks?—A. They did not.

Q. Did they any Time before the Trial was over?

A. No, they did not. Mr. MacKercher came to me when he came over first, to inquire about my Lady's lodging at my Mother's. I told him I recollected nothing particular about it, and had nothing to say that could serve him.

Q. When was it that that Question was put to you?

A. I cannot remember the Day.

Q. Recollect when that Question was put to you, was it before the Trial at Wexford?—A. It was.

Q. Who was the Person that put the Question to you?

A. I forget by whom, I was sent to by Lord Anglesea's Friends; I do not know whether Mr. Colles did or not, but he was with me.

2. MARY SETWRIGHT.

Mr. Richard Malone.] Were you at any Time, and when, acquainted with Lord and Lady Altham?

Mary Setwright.] I was, Sir.

Q. When were you first acquainted with them?

A. When I was hired to them.

Q. When were you first acquainted?

A. Four Days before I was hired.

Q. When were you hired?

A. About five or six Days before Christmas-day.

Q. In what Year?—A. The Year I cannot tell well.

Q. Where did Lady Altham lodge then?

A. At Captain Briscoe's in Bride-Street.

Q. Do you know how long she had been in Ireland, before you were hired?—A. Not long.

Q. You have said that you were hired at Capt. Briscoe's?—A. Yes, Sir.

Mr. Le Hunt.] How soon did you go from Dublin after you were hired?

A. In four Days.

Mr. Malone.] Pray, after you were hired, did you leave Town, and when?

A. Four Days after.

Q. Where did you go?

A. To Dunmaine, to my Lord's Country-house.

Q. What time did you get there?—A. The Day before Christmas-Eve.

Q. Were there any other Persons that went with you?

A. Two Servants, the Chamber-maid and Laundry-maid.

Q. Who was the Chamber-maid?

A. The Chamber-maid was Mary Waters.

Q. And who was the other Woman?—A. Elizabeth Doyle.

Q. You say that you got to Dunmaine before Christmas?

A. A Day before Christmas-Eve.

Q. Pray, Madam, did my Lord and Lady go there at any time after, and when?

A. They came there the very next Night, Sir.

Q. Now, I would ask you, where did they lodge when you left Town?

A. At Captain Briscoe's.

Q. In what Station were you hired?—A. House-keeper.

Q. How long did you live with my Lady?

A. A Year and a Quarter, or thereabouts.

Q. What time did you leave her?—A. In February.

Q. What Year?

A. Indeed I do not know the Year; but the Eclipse was the Year following.

Q. Do you remember, during the time you lived there, to have seen Mrs. Briscoe or her Daughter there?

A. I did, Sir.

Q. Can you recollect how soon after my Lord and Lady went to Dunmaine, it was that they were there?

A. It was very soon, but I cannot tell how long.

Q. Now, I ask you whether my Lady miscarried, or kept her Room for any, and what Time?

A. Never to my Knowledge.

Q. Did you ever hear it?—A. No, indeed.

Q. Could she have miscarried at Dunmaine during the Time Mrs. Briscoe and her Daughter were there, or kept her Room, without your knowing of it?

Mr. Serj. Marshall.] I must stop Mr. Malone a little, because it is a direct leading Question.

Court.] Was my Lady sick, or confined for any Time while they were in the House?

A. No, not to my Knowledge, my Lord.

Mr. Malone.] You say that you were Housekeeper?—A. Yes.

Q. What Things were under your Care, as House-keeper?

A. I kept the Sugars, the Spices, and Bread, and all those Things, every thing but only Liquor.

Q. Was you at any time, while Mrs. Briscoe and her Daughter were there, called to for any thing under your Care for any Person that was sick?

A. No, not that I know of.

Court.] Did you see my Lady every Day at that time?

A. Every Day in the Week, my Lord, to know her Commands.

Q. Was it possible that she could miscarry, and you not know of it?

Mr. Serj. Marshall.] That, my Lord, must depend upon the Credit of Witnesses, for a Gentlewoman of good Credit has sworn she did.

Jury.] Do you believe that my Lady was with Child at that time?

A. I believe not.

Mr. Malone.] Did Mrs. Briscoe and her Daughter remain at Dunmaine for any and what time after my Lord and Lady got there?

A. Yes.

Q. How long?—A. I cannot exactly tell how long they staid there.

Q. How long might it be?—A. I cannot say particularly.

Q. Pray, do you recollect what time they left Dunmaine, what time of the Year?—A. It was in Summer.

Q. Was it the Summer after my Lord and Lady went to Dunmaine?

A. Yes, it was.

Q. I ask you now, whether my Lord and Lady came from Dunmaine to Dublin at that time, or any time, and when?

A. They went to Dublin in my time.

Q. Was it in the same Year?—A. Yes, Sir.

Q. How soon after Mrs. Briscoe came to Dublin?

A. Indeed I cannot tell.

Q. Was it in the Summer Season of the Year?—A. Yes, it was.

Q. What Time was it that my Lord and Lady returned to Dunmaine next?

A. I cannot exactly tell you what Month it was, but it was in the Summer-time.

Q. Do you know who was Butler in your Time?—A. Thomas Rolph.

Q. Had you any and what Directions in order to prepare any and what Thing for Christmas that Year? What was it?

A. Mine'd Pyes, and those Things that were proper for Christmas-time.

Q. Did you make any Thing particular?—A. I made a Collar of Brawn.

Q. By whose Directions did you make that?

A. By my Lord's and Lady's Directions.

Q. When was it that they returned to Dunmaine?

A. It was in the Summer, it was a great while before Christmas.

Q. Did you at any Time and when see them in this Town?

A. I did after I left them.

Q. When did you leave them?—A. I left them in February.

Q. Upon what Occasion did you see them in this Town, and where, and I would know whether you were called to them for any and what Purpose?

A. They sent the running Footman for me, for to prepare an Entertainment they made for Company.

Q. Where did they lodge then?

A. They lodged at Mrs. Vice's in Dirty-Lane.

Q. What was it they sent to you for?

A. They sent to me to serve the Entertainment, to manage it and see it properly done.

Q. Do you remember at what Time it was?

A. It was Christmas, the Twelfth-day.

Court.] You lived a Year and Quarter and then left them; and saw them in Dublin after; how soon after was it?

A. It was about two Years after I left them that I saw them in Dublin; it was upon a Twelfth-day.

Mr. Malone.] As you were there that Night, do you recollect any of the Persons in Company?

A. Mr. Colclough was one of the Company.

Q. What Colclough?—A. Mr. Casar Colclough.

Q. I think you said that Rolph was Butler at the Time you were in the Country?—A. He was.

Q. When my Lord and Lady returned to Dunmaine, was there any and what thing brought for the Butler?

A. There was Mourning brought down.

Cross-Examination.

Mr. Walsh.] Pray now recollect what was the particular Time you came to live with Lord and Lady Altham.—A. In December.

Q. What Year?—A. I cannot tell you the Year.

Q. You must recollect the Year.

A. It was the Year before the great Eclipse, whatever Year that was.

Q. When did you leave her Service?—A. In February.

Q. When?—A. In February before the great Eclipse.

Court.] When was it that you came to Lady Altham?

A. In December, the Year before the Eclipse.

Q. How long did you live with her?

A. A Year and two Months, to the February next but one following.

Q. Was the great Eclipse after you left her?

A. The Eclipse was the April after I left her.

Jury.] Had you the keeping of any China?—A. I had not.

Q. Do you remember any body that had?

A. My Lady's Woman kept what Cups there were.

Q. Do you remember any particular Sawcers?—A. I do not indeed.

Mr. Walsh.] Recollect now, and tell when you came to live with Lord and Lady Altham.

A. I came two or three Days before Christmas.

Q. In what Year?

A. I cannot tell you more than it was the Year before the Eclipse.

Q. How long was the Eclipse after the Time that you came to live with them?—A. It was the April after I left them.

Q. And when did you leave them?—A. In February.

Q. How long did you go to the Country before them, after you were hired?—A. I went four Days before them.

Q. Did you ever see Mr. Briscoe and his Wife and Daughter at Dunmaine?

A. Yes, I did.

Q. Did they all go there together?—A. She and her Daughter came first.

Q. When did he come?—A. I cannot exactly tell the Time he came.

Q. Was it in Summer or Winter?—A. I think in Summer.

Q. What Time in the Summer?—A. I cannot remember.

Q. Was it in Harvest?—A. I cannot remember the exact Time.

Q. How long did he stay there?

A. Mrs. Briscoe stayed a good while, but I do not know how long he stayed.

Q. Are you sure it was in Summer when he came?

A. I cannot tell exactly when it was.

Q. When was it that Mrs. Briscoe and her Daughter came?

A. Just after the Time that my Lady came.

Q. When did my Lady go down?—A. In December.

Q. And when did they go?

A. As near as I can remember in a Fortnight, or some such Thing.

Q. How long did they stay?

A. As good as two Months, I forget if longer.

Q. Do you know did my Lady miscarry at Dunmaine?

A. She never miscarried, to my Knowledge.

Q. As you were House-keeper, what did you keep the Keys of?

A. I kept the Keys of the Sugar and Spices, and several other Things.

Q. Was you yourself ever sick at Dunmaine?

A. I never was sick myself there.

Q. Did you ever miscarry there?—A. I never did.

Q. Was you ever brought-to-bed there?—A. I had a Child there.

Q. When?—A. The June after I went down.

Q. Were Mrs. Briscoe and her Daughter there when you lay-in?

A. They were.

Q. Might not my Lady have miscarried when you were laid up with your Child?—A. I never heard any Thing of it.

Q. Pray, did you see her every Day?—A. Every Day, but when I lay-in.

Q. You said you saw her every Day, and therefore she could not miscarry unknown to you?—A. I was but a Fortnight in all lying-in.

Q. Is it usual for Women to go out in that Time?—A. I did.

Q. Where was you brought-to-bed?—A. At the Dairy-house.

Q. How far distant was that from Dunmaine House?

A. About a Field from the House.

Q. Was my Lady confined to her Chamber at any Time while you lived with her?—A. She was not that I know of.

Q. Might she not unknown to you?

A. I should have heard of it, if she had.

Q. Can you say, upon your Oath, she did not miscarry?

A. She did not to my Knowledge.

Q. Could she not unknown to you?

A. I cannot say she did to my Knowledge.

Q. Could not she unknown to you, when you were out of the House?

A. I believe not, my Lady came to see me when I was lying-in.

Q. Who kept the Keys when you were lying-in?—A. Mrs. Heath.

Q. Did you come to Town when my Lady came to Town, after she was at Dunmaine?—A. I did not come to Town till I left them.

Q. When did my Lady come to Town, after you went down?

A. I cannot exactly tell how long after.

Q. When was it that she came to Town? Recollect yourself.

A. I cannot tell the particular Time.

Q. Did she come the February following?

A. It

A. It was in the Summer following.
 Q. What time in the Summer?—A. I protest, I forget what Month it was.
 Q. Was it in July?—A. No, it was not.
 Q. Was it in August?—A. To the best of my Knowledge, it was August.
 Q. How long did she stay before she returned?
 A. Two Months, or thereabouts.
 Q. Did she go to Dublin after she returned?
 A. She returned in two Months.
 Q. Did you live with her when she returned again?—A. I did.
 Q. In what time did she return?—A. In about two Months she returned.
 Q. How long did you live with her after?—A. Not long.
 Q. How long?—A. I left her in the February following.
 Q. Now recollect and tell the particular time that she returned to Dunmaine.—A. I cannot tell the Month; she staid about two Months away.
 Q. Was she in Dunmaine when you left her?—A. She was.
 Q. When was that?—A. The February after she returned.
 Q. How came she to discharge you?
 A. Something that my Lord said that I took ill made me leave it.
 Q. What Reason have you to remember that my Lady returned in Two Months?—A. It was Summer-time when she went and when she came back.
 Q. Now I ask you a plain Question, was not Lady Altham in this Town in November and December 1714?—A. Indeed I do not know.
 Q. But you must answer that Question; was she in this Town the Months of November and December, before you left her?
 A. She was in Dublin in the Summer.
 Q. Was she, or was she not, here in November and December?
 A. I cannot recollect.
 Q. Can you say that when she went to Town in Summer that she returned in two Months to Dunmaine?—A. I cannot be positive she did.
 Q. Can you be positive she was in Dunmaine in November and December before the February that you left her? Come, Woman, recollect.
 A. I believe they were, I cannot remember.
 Court.] Was my Lady Altham at Dunmaine the November and December before you left her?—A. Yes, she was, my Lord.
 Mr. Walsh.] Do you know Mr. Nesbit, a Clergyman?—A. No.
 Q. Do not you know Mr. Nesbit of St. Catharine's Parish?
 A. I have seen him.
 Q. Had you any Discourse with him lately about this Matter?
 A. Not lately.
 Q. Had you ever any?—A. I had some.
 Q. What was that Discourse? Had you any in relation to Mr. Annesley's being my Lady's Son or not?
 A. He asked me if I knew of her having a Child, and I told him that I never did, nor never heard she had.
 Q. Did not you tell Mr. Nesbit, that if Mrs. Heath swore that my Lady never had a Child, she was a damn'd Bitch?—A. No, I never did.
 Court.] Is that your Indictment that my Lady never had a Child? Your Indictment is, that she never had a Child while Mrs. Heath lived with her.
 Jury.] I think you said you made some Preparations for Christmas at Dunmaine?—A. I made Brawn in it.
 Q. When did you make it?—A. The Christmas I went down.
 Q. When was it my Lord and Lady came to Dunmaine?
 A. They came the very Day before Christmas-day.
 Q. And how then could you make the Brawn against Christmas?
 A. I made it that Year, but not the Day after I went down.
 Q. Was it the Christmas you went there that you made it?
 A. It was that Christmas.
 Q. Who gave you Orders for making it?—A. My Lord did.
 Q. Where was he when he gave you those Directions?
 A. He was at home at Dunmaine.
 Q. Was my Lady there then?—A. She was.
 Mr. Walsh.] Do you remember any Sawcers with smutty Figures on them?
 A. I did not.
 Q. Did you ever hear that any of them were broke by Lord Altham?
 A. I never did; I never did hear of any such at all.

3. Revd. Mr. WILLIAM HERVEY.

Mr. Edward Malone.] He is an antient Man, my Lord, and cannot stay any longer, which makes us produce him now, though out of time, and we are now going to shew that my Lady Altham was at the Affizes of Wexford in April 1715; we examine him out of time, because he is falling sick.

Mr. Serjeant Tisdall.] My Lord, I must complain to your Lordship of his being in Court this some time, and not having been kept with the other Witnesses.

Mr. Malone.] Call Mr. Thomas Bourk to shew when the Wexford Affizes were. I believe the Gentlemen will admit it for shortness Sake, that they were on the 16th of April 1715.

Court.] Do you admit that, Gentlemen?

Mr. Serjeant Tisdall.] I protest I do not know what to say to it.

Mr. THOMAS BOURK.

Mr. Malone.] What have you got in your Hand?

A. A Record; a Copy of an Estreat.

Q. Where did you get it? From what Office?

A. From Mr. Merryson's Office.

Clerk of the Crown reads the Record, as follows, viz.

Com Wexford
 Ss. Extract fin et Amerciament Imposuit et Recogn fforiffact et Attinctur &c ad General Affiz et General Goal Deliberacon tent apud Wexford in Com Wexford præd. Die Sabbati decimo sexto die Aprilis Anno Regni Domini nr. Georg Dei Gra Magn Britan Franc et Hiberniæ Rex Fidei Defenc &c primo Cor Honobl Johan Forster Ar Capital Justic dict Domini Regis Cur. su de Coi Banc su regni su Hiberniæ et Thom Coote Ar secund Justic dict Domini Regis Cur su de Capital plit su in Hibernie

Justic et Comiss ejusdem Domini Regis ad General Affiz et general Goal Deliberacon nec non ad omni et singul Prodicon Mord Homicid Incend Illicit Assemblacon Felon Rober Extorcon Oppression Cna Contempt Offens Malefact et Caus quæcunq; in Com Wexford præd perpetrat five perpetrand audiend et terminand assign Virtut Commission dict Domini Regis sub magn Sigill su Regni Hiberniæ geren dat apud Dublin decimo sexto die Februar Anno Regni su primo.

Mr. Spring.] We produce a Clergyman of the County of Wexford, a Man of as good Character as any in it, to shew that my Lady Altham was at that Affizes.

Mr. Serjeant Tisdall.] I desire, Sir, you will please to give an Account, whether you were not in Court the whole time that the other Witnesses were examined, or were not informed of what passed here.

Mr. Hervey.] I was called about an Hour and half ago, and told that the Court wanted me; when I found they did not, I went into the Court of Chancery, and staid there 'till I found the first Witnesses coming; afterwards I stood by the Clock, and I believe you will think it is impossible to hear there any thing that passed here; and not one Word was I informed of what was said.

Mr. Malone.] Do you remember the time the Pretender's Men were tried at the Affizes of Wexford?

Mr. Hervey.] I remember when Mr. Walsh and Masterfon were tried for enlisting Men for foreign Service.

Q. Were you at that Affizes?—A. I was there and heard the Trial.

Q. Pray, Sir, can you fix the Year when they were tried?

A. They were tried in Lent Affizes 1715.

Q. Was it Spring Affizes?

A. It was Lent Affizes; but I believe it happened in Easter that Year.

Q. Were you in Court at the Trial of Walsh and Masterfon?

A. I was in Court.

Q. Who were the Judges?

A. My Lord Chief Justice Forster, my particular Patron and Friend; his Brother was my Tutor when I was in the College.

Q. Who was the other Judge?

A. I do not remember any other Judge, but I know he was there.

Q. Was you in Court at the Trial?—A. I was.

Q. Then I ask you, Sir, whether or no you saw my Lord Altham at that time in Town?

A. I did; I saw him at his Lodgings and at the Court-house, and had Discourse with him in both Places, and never saw him before or since.

Q. In what Cloaths was he dressed then?

A. To the best of my Remembrance, he was in Black.

Q. Were there any Ladies in Court at that Affizes?

A. There were several Ladies in Court.

Q. Were they of any Fashion or Rank in the Country there?

A. I saw a Lady of very good Appearance, though of homely Features, and I asked who she was, and I was told—

Mr. Serjeant Marshall.] You are not to say any thing you were told, you must declare nothing but what you know yourself.

Mr. Hervey.] They said it was Lady Altham.

Mr. Malone.] Did you know that Lady you saw to be Lady Altham?

A. I am morally assured it was her.

Q. Did you ever see her after?—A. I never saw her afterwards.

Q. You saw other Ladies there as well as this Lady?—A. I did.

Q. Did you know them?

A. I took notice of none but Mrs. Giffard, for she was my Relation by Marriage; and I had another Reason why I took notice of her, which was, that I have often heard her blamed—

Q. Was Mrs. Giffard in company with that strange Lady?—A. She was.

Q. Do you remember any Quarrel upon the account of beating a Man at the Affizes?

A. Yes, I remember it very well, and have Reason to remember it.

Mr. Serjeant Tisdall.] My Lord, I do not see to what this Examination can tend.

Mr. Malone.] It is in order to fix the time particularly.

Court.] Go on, Sir.

Mr. Hervey.] I took a King's Evidence to Wexford, one Sinclair, he had gone to France with several others, and when he came home, he was afraid I would represent him to the Justice of Peace and have him prosecuted; to avoid which, he said he would come in and make a Discovery if I would get him pardoned. I said I would; and after I had him, I mounted him before my Portmanteau and took him to Wexford. While he was there some Servants of my Lord Altham fell upon him and beat him for being an Informer, and while they were beating him I caught them, and they had almost murdered him. I took them to Colonel Ram's Lodgings, and we went to my Lord Altham to his Lodgings, and shewed him the bloody Condition that this Fellow was in.

Q. How did you know where my Lord lodged?

A. I was informed that my Lord and Lady lodged at Mr. Sweeney's.

Q. Go on, Sir.

A. We went there to shew my Lord Altham the Treatment his Servants had given this Man, and my Lord said he was ashamed of their Behaviour, that they should be punished for it, and said they should come into Court.

Q. And did they come into Court?

A. There came but two into Court, the rest made their Escape.

Q. Were they punished for this Assault?

A. My Lord Chief Justice Forster was very angry, but fined them only 5^l.

Mr. Recorder.] My Lord, thus he ascertains that Lord Altham lodged at Mr. Sweeney's.

Mr. Malone.] You say that you saw Mrs. Giffard in the Court-house, and that she is your Relation?

A. Yes, her Brother and I took two Sisters in Marriage.

Q. Did she sit next to my Lady Altham that Day?

A. I

A. I do not know whether she was next to her, but she was very near her.

Q. Now I ask you, whether that Lady had any Signs of Pregnancy or not upon her?

A. I took particular Notice of her; she was, to the best of my Remembrance, dressed in Black, was a full-chested Woman, and had a fine, slender Waist.

Q. Did she appear to you as a Woman with Child?

A. She might be very young with Child, for aught I know; but there was no visible Appearance of her being with Child.

Mr. Harward.] This Evidence is founded upon a Supposition that the Lady he saw at Wexford was the Lady Altham; he says he was only told it was she, and cannot say it was of his own Knowledge.

Mr. Hervey.] I am pretty certain the Lady I saw was Lady Altham. I am told, Sir, that you are Counsellor Harward, am not I to believe you are? I am told that Gentleman is Counsellor Daly, I am morally assured of it, and I believe it.

Cross-Examination.

Mr. Serj. Marshall.] Pray, Sir, did you see that Lady go into the Court-house, that you were so particular in your Observations about?

Mr. Hervey.] I cannot say I did, but I saw her in Court.

Q. Do you know Mr. Caesar Colclough?—A. Yes, I do very well.

Q. Did not he sit by that Lady a great Part of the Time?

A. I cannot charge my Memory; as I told you before, I took no notice of any but Mrs. Giffard.

Q. I ask you, Sir, whether Mr. Colclough was there or not?

A. He might be there; and I cannot say whether he was or not.

Q. Who were the Persons tried?—A. Jack Walsh, and Mr. Masterfon.

Q. They were tried that Day?—A. They were, Sir.

Q. Are you sure they were tried at that Assizes?

A. They were tried at that Assizes.

Q. You are positive they were tried at that Assizes?—A. I heard them

both tried, and I believe at that Assizes; Walsh was tried first.

Q. Are you positive that they were both tried?

A. Indeed I have no Reason to doubt but they were; they were there, and appeared there at the Bar both of them.

Q. Were they convicted or acquitted?

A. Acquitted: Mr. Walsh made a very good Defence.

Q. Whereabouts were you in the Court?

A. I was very near the Judge.

Q. Did you or did you not see Mr. Colclough there?

A. I cannot say I saw Mr. Colclough.

Q. Did you see Colonel Loftus there?

A. I cannot say I saw Colonel Loftus.

Q. Do you recollect any Gentleman of the Country that you saw there?

A. Why, do you believe that I was not there?

Q. 'Tis no matter what I believe, but can you name any one Gentleman that was there?—A. Lawrence Esmond of Ballynastraw was there.

Q. And you remember that Mrs. Giffard was there very positively?

A. I do, Sir.

Q. Now, I ask you, was not Mr. Masterfon tried the Summer Assizes?

A. Indeed I do not know, I know he was in the Dock then.

Q. Did not you say you were sure he was tried that Assizes?

A. I do not know whether he was tried then or no, but he was in the Dock.

Q. Did you see this Lady any where else but in the Court-house?

A. I saw her no where else but there, neither before nor since.

Q. Did she sit or stand during the Time you saw her?

A. I saw her both sitting and standing.

Q. Whereabouts?—A. Almost opposite the Sheriff's Box.

Q. Did you talk to Mrs. Giffard at that time?

A. I did not speak to either of them.

Q. Did you speak to her at that Assizes?

A. I do not remember I did; but if you please I'll give the Reason why I took notice of her more than another.

Q. Give your Reason.

A. She was a near Neighbour of Lord Altham, and was the most conversant there of any others of the Neighbourhood; and my Lady not bearing the fairest Character in the World, I heard Mrs. Giffard blamed for having such an Intimacy there; and therefore when I was told this Lady, that made a very good Figure by her Dress, was my Lady Altham, I took notice of Mrs. Giffard being in her Company; and whether Mrs. Giffard knew it or not I cannot tell, but I have heard her censured for being in it. And if they had lived within three Miles of me, as they did of her, I would not have had Converse with either of them.

Q. Was not there one Doyle, a Clergyman, tried at that Assizes?

A. I cannot tell whether he was tried or not, I saw him in the Dock; he was one I knew in the College.

Q. How came you to be seated so near the Judge?

A. I was near the Judge for two Reasons; for the sake of the Justices of the Peace and Grand Jury.

Q. Do you know Mr. Henry Bolton?—A. Yes, I do.

Q. Was he at that Assizes?—A. He might, but I do not remember.

Mr. MacManus.] I hope at this late Hour they will produce Witnesses to the Point.

Mr. Solicitor.] I desire, my Lord, to make one Observation; which is, that Mr. Hervey's Testimony will account for every thing that has been said concerning the bad Reputation of this Family.

Mr. Le Hunte.] My Lord, We shall now produce one Edmond Bourk, he was Postillion to my Lord Altham before my Lady came to Dunmaine. He will prove that he rode Postillion when the Chariot came to carry my Lord and Lady into the Country, and that they went from Captain Briscoe's, and not from Mrs. Vice's; he will prove that Mrs. Setwright, Elizabeth Doyle and Mary Waters were Servants in the Family, and that he continued in the Service 'till the Year 1716; that he drove my Lady in a Chariot in 1715 to the Spring Assizes of Wexford; that Mrs. Giffard went in the Chariot with her; that Mrs. Heath rode, and that he was one of

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the Servants mentioned in this Affray, and made his Escape from the Assizes; and he will also prove that my Lady was at a Hurling-Match at a Place called Rathimny Bogg, between Major Sutton and my Lord, at the Time of this pretended Pregnancy.

4. EDMOND BOURK.

Mr. Le Hunte.] Did you know Arthur late Lord Altham?

Edmond Bourk.] I did, Sir.

Q. When did you first know him?—A. At his first coming to Ross.

Q. Did you ever live in his Service?—A. I did.

Q. When did you go to live with him?

A. I cannot exactly tell the Year, but I lived almost six Years and two Months with him.

Q. Where did my Lord live then?—A. At Dunmaine.

Q. Did you live there before my Lady came over?—A. I did.

Q. How long after you lived there did she come to live with him?

A. I cannot tell how long.

Q. What was your Service?

A. I was a Postillion, and came up for my Lady to Dublin.

Q. Where did my Lord and Lady go from Dublin?

A. They went from Dublin to Dunmaine.

Q. From what Place in Dublin did they go to Dunmaine?

A. From Captain Briscoe's in Bride-street.

Q. Are you certain that they went from Captain Briscoe's?

A. By the Virtue of my Oath, they did; we took them up there.

Q. Did you know Mrs. Mary Heath?—A. I did, Sir.

Q. What was she?

A. She waited on my Lady Altham as her Gentlewoman then.

Q. When did my Lord and Lady get to Dunmaine?

A. We got to Dunmaine in December, it was about Christmas-Eve.

Q. Who went along with you besides my Lord and Lady?

A. I cannot tell you; but the Chariot broke by Johnstown, and a great many were in Company, but I cannot tell who they were.

Q. Did Mrs. Setwright go with you?

A. Mrs. Setwright was sent down two Days before, and two Maids with her, Betty Doyle and Mary Waters.

Q. Do you remember any body visiting at Dunmaine for any Time?

A. There was Mrs. Briscoe there.

Q. Was any one along with her?—A. Her Daughter was.

Q. How long might they have staid there?

A. I cannot tell, but I was sent with Miss Briscoe to the lower Part of the County of Wexford.

Q. Do you know one Mr. Boyde?—A. I did.

Q. Where did he live?—A. He lived at Roffelare.

Q. Did not you go to his House?

A. We did call there, and stayed there a Night or two, to the best of my Knowledge.

Q. Do you know a Place called Rathimny Bogg?

A. I do; I was born near it.

Q. Did you know Major Sutton?—A. I knew him very well.

Q. Did you know of any Diversion or Sport at Rathimny-Bogg?

A. I remember a great Hurling there.

Q. What was the Occasion of it?

A. I was told it was between Major Sutton and my Lord Altham.

Q. Do you remember any Person that was at that Hurling?

A. My Lady Altham was there, Sir.

Q. Were you at the Assizes of Wexford at any time after this Hurling?

A. I do not know whether it was after or before.

Q. When was that Assizes?—A. Easter Assizes in the Year 1715.

Q. Did you go from the House of Dunmaine to the Assizes?

A. I did, Sir.

Q. Did any body go along with you?

A. My Lady went in the Chariot and one Mrs. Giffard.

Q. Who rode Postillion?—A. I did.

Q. Who was Coachman?—A. John Weedon.

Q. Do you know of any Quarrel that happened at the Assizes, and on what Occasion?—A. I do very well, I have a Reason to know it, Sir.

Q. Tell your Reasons.

A. Some Gentlemen of the County of Wexford were impeached with this thing of enlisting and harbouring Men for the Pretender at that time, and above all, there was the Parish-Priest that is living yet, one Father Michael Downes, and he was our Parish-Priest; and this Downes being impeached, my Lord's Servants, four or five of us, went to see the Priest, and his Prosecutors were with him at the House of one Hatchell's that kept the Swan; we fell out with the Prosecutors, because that we thought to make it up with them not to prosecute the Priest, my Lord; and upon that, when they would not make it up, a Quarrel happened between us, and please your Lordship, and to be sure we paid the poor People very sorely; but next Morning we were taken Prisoners by Mr. Hervey, Colonel Ram, and Mr. Symes, and kept in Confinement from Morning 'till about eight o'Clock at Night.

Q. Was my Lord Altham at the Assizes?

A. My Lord Altham was there.—A little time after I came home he discharged me, because I made my Escape; but two were put on their Trial.

Q. Who were they?

A. They were Ned MacCormack and Bryan Neale, the Running-foot-man and the Groom.

Q. Where did you go after my Lord discharged you his Service?

A. I believe to Kilkenny, and lived with Alderman Barnes there some little time.

Q. Do you know Mr. Lambert?—A. I do very well.

Q. Did you ever live in his Service?

A. I lived with him after I left Kilkenny.

Q. How long did you live in Kilkenny?

A. I believe I did not live in Kilkenny above two or three Months.

Q. Do you remember any Quarrel between my Lord and Lady Altham in your time?—A. I do not remember any Quarrel.

Q. Did they continue to live together as long as you knew them?

3 T

A. They

Q. They did, they were separated after.
 Q. Where did you live then?---A. I believe with Aaron Lambert.
 Q. Where did he live then?---A. He kept a House in Rosi then.
 Q. How far is Rosi from Dunmaine?---A. Four small Miles from Dunmaine.
 Q. Did you see my Lady after the Separation?---A. I did.
 Q. Where?---A. In Rosi.
 Q. Do you recollect the House that my Lord and Lady lodged in at Wexford at the Affizes?---A. I set her down at one Mr. Sweeny's.
 Q. Pray, whilst Mrs. Briscoe was in the House at Dunmaine, did you hear of any Miscarriage that my Lady had?
 A. I never did of any Miscarriage, or of her being with Child 'till within these three Years.
 Q. Did she appear to you to be a Woman with Child?---A. She never did.
 Q. Do you know Joan Landy?---A. I do.
 Q. Do you know of her nursing a Child?---A. I do.
 Q. Was that after my Lady came to Dunmaine?
 A. She was big with Child at the Time my Lady came.
 Q. Where did she live at that Time?---A. In my Lord's House.
 Q. Was she brought-to-bed there?
 A. No; she went to her Father's House to lye-in.
 Q. How far was that from the House of Dunmaine?
 A. As near as I can guess, an English Mile.
 Q. Did you ever see a Child nursed by Joan Landy in the House while my Lady was there?---A. I never did, by Virtue of my Oath.
 Q. Did you ever see a Child of Lord Altham's with Joan Laffan?
 A. I never did, nor nobody else.
 Mr. Mac Manus.] My Lord, he swears that nobody else saw that she took care of the Child, as well as him.
 Mr. Le Hunte.] Did you ever see any Child of Lord and Lady Altham's in the Care of Joan Laffan?---A. Never did, Sir.
 Q. Did you ever see a Child that was Joan Landy's Child with Joan Landy?---A. Yes, I did, Sir.
 Q. Did you live with my Lady at any Time after the Separation?
 A. I did.
 Q. How long after?---A. As near as I can guess, almost two Years after they parted. I waited on her in the Town of Rosi.
 Q. Did you see any Child there with her that was reputed her Child?
 A. I never did.
 Q. Did you ever see any other Child with her there?
 A. Yes, I used to bring in Children myself to her; she was very fond of them.
 Q. What Lodging was you at there?---A. At one Mrs. Wright's.

Cross-Examination.

Mr. Serj. Tisdall.] How long did you live with my Lord Altham?
 A. To the best of my Knowledge, about six Years with my Lord and Lady.
 Q. Did they live together during the whole Time you lived with them?
 A. They did not, Sir.
 Q. When were you first hired into the Service?---A. I cannot tell.
 Q. When did you leave my Lord?---A. I left him in the Year 1715.
 Q. What Time of that Year?---A. I cannot tell.
 Q. How soon was it after they came from Wexford?
 A. I cannot tell how soon.
 Q. Was it a Fortnight, three Months, or a Year, or how long?
 A. No; it could not be a Year, or a Quarter of a Year.
 Q. What was the Occasion of your leaving the Service?
 A. The Occasion was that I made my Escape from Wexford, and my Lord promised he would not keep them that escaped.
 Q. Recollect how long you were at Dunmaine before you were discharged.---A. I might have been at Home a Fortnight or three Weeks.
 Q. How long before you left my Lord, did he and my Lady come to live together?
 A. My Lady came in December 1713, to the best of my Knowledge.
 Q. Where was you then?---A. In Dunmaine, and they met in Dublin.
 Q. How soon after did you come for her?---A. I was not long in Town.
 Q. How soon after they met, did you come for her to Town?
 A. I cannot tell how long.
 Q. Was you in Town with my Lord that Winter before they met?
 A. I was not.
 Q. Did you live with them again after you left them in the Year 1715?
 A. I did.
 Q. What Time?---A. I cannot tell.
 Q. Were they separated before you came to live with them?
 A. They were; my Lady was at Rosi at that Time.
 Q. When you returned to live with my Lord, was there any Child in the House?---A. Never a Child that I know of.
 Q. How long did you live with him after you returned?
 A. I cannot tell how long.
 Q. Did you live a second Time with them before the Separation?
 A. To the best of my Knowledge, I did.
 Q. Did you return to the Service before my Lord separated from my Lady?---A. I am not sure whether I did or no.
 Q. Was you in the House at the Separation?---A. I was not.

Q. Where was you at that Time?---A. To the best of my Knowledge, in Rosi with Mr. Aaron Lambert.
 Q. Were you in his Service then?---A. I was.
 Q. How long did you live with him?---A. I cannot tell; but my Lady was some Time in Rosi before I came to live with her.
 Q. Did you return to my Lord's Service after you were discharged that Time after the Affizes?---A. Indeed, I cannot tell.
 Q. Cannot you tell whether you lived with him after at Dunmaine?
 A. I am not positive; I cannot tell you, Sir, whether I ever lived with my Lord again at Dunmaine.
 Q. You say, you were turned away after the Affizes?---A. I was.
 Q. Upon your Oath, did you return to live with my Lord again?
 A. Upon my Salvation, I cannot tell whether I returned again to him.
 Q. Recollect how often you have lived with him.
 A. I remember I lived with him once, because he owed me some Wages.
 Q. What Wages?---A. I believe two Years Wages.
 Q. When were those Wages due to you?
 A. They were due after the Affizes.
 Q. Can you answer or not, whether you returned again to the Service?
 A. I cannot answer whether I did or no.
 Q. Do you know Mr. Amias Bush?---A. I do.
 Q. Had you any Conversation with him?
 A. Not as I can remember, Sir.
 Q. Or with any other Person, that my Lord had a Child by his Lady?
 A. By the virtue of my Oath, I never did declare it to Mankind.
 Q. Did you ever declare that you would go and swear for Lord Anglesea, and be made a Man of?
 A. By the virtue of that Oath I have taken, I never did.
 Q. Did any body offer you any Money for swearing in this Cause?
 A. Yes, Mr. Mac Kercher did.
 Q. What did he offer you?---A. He offered me 300l. for swearing.
 When the Witness said this, there was a loud Huzzza in the Court.
 Q. Who was the Agent that offered you 300l?
 A. Have Patience and I will tell you the Man, one Paul Keating, he offered me 300l. in private between me and himself, if I would join his young Lord, as he called him.
 Q. When was this Offer made you?---A. About this Time two Year.
 Q. Why did not you appear and declare this on the former Trial?
 A. I kept off from the last Trial, and from this 'till I was compelled by Law.
 Q. Was you ever in Company with Mr. Mac Kercher?
 A. I was in the Room with Mac Kercher, and he sent for me, and Mr. Bob Snow carried me up Stairs to an upper Room.
 Q. What is it you can say of Mr. Snow?
 A. Nothing of him, but that I was in Mr. Snow's Room along with Mac Kercher.
 Q. When was this?
 A. About this Time two Year, to the best of my Knowledge.
 Q. What was the Conversation that passed between Mr. Mac Kercher and you?
 A. Why then I will tell you that, Gentlemen. I came in the Evening to Mr. Snow's; Mr. Snow was feed'd as an Attorney against me in a Cause between a Man and me---
 Q. Give an Account what passed in Conversation in the Presence of Mr. Snow.---A. Mac Kercher and Snow went up from the Company, they were to sup there.
 Q. Where?
 A. At Mr. Snow's that Night; and I told my Landlord, Mr. Flood, that Mr. Snow was to be there that Evening; and Snow told me that Mac Kercher, and Annesley, and Livingstone were to sup there that Night; and he told me if I would come there at Eight o'Clock, that I could see Mac Kercher. Upon that I did, and we went up Stairs, Mr. Snow, and Mac Kercher and me, and he asked me if I knew this young James Annesley, Esq. Where is he? says I. I hope, my Friend, you will do nothing against his Interest, says Mac Kercher. Indeed I will not, nor appear at all, says I, if I can help it; so there is all I can remember.
 Q. Did there pass any other Conversation between you that Night?
 A. There might, but not to any Purpose.
 Q. When do you say the 300l. was offered to you?
 A. About this Time two Year.
 Q. And who made you the Offer of it?
 A. Paul Keating, and carried me to one Captain Forrester's.
 Q. When this Offer was made, was any body present?
 A. No, he carried me aside to a little Garden at Captain Forrester's Door, and he said that when the Cause was over I would get the railing of my Family.
 Q. What did he offer you this Money for?
 A. He offered it for to join his young Master James Annesley, because he thought that I knew a great deal by living with Lady Altham, only to give my Promise to testify for James Annesley.
 Q. What did he tell you, you were to swear?
 A. The Words were in general
 Clerk of the Crown reads the Eistreat for the Assault on the Prosecutors at Wexford, as follows. to shew that Edmund Mac Cormack and Bryan Neale were taken into Custody, and fined for the said Assault, viz.

fin. Impost. ad præd. General Affiz. sup. seperal Person in Custod. Vice Com. Wexford.
 Edmund Mac Cormack indict. ad præd. Affiz. pr. quodm Assault. & Cul. pro fin. in sum - o o 6
 Bryan Neale indict. ad præd. Affiz. pr. conf. pro fin. in sum - o o 6

Mr. Smith.] My Lord, the next Witness is Mrs. Sweeny. Your Lordship observes that the last Witness gave an Account of my Lady Altham's going from Dunmaine to Wexford Affizes, and that she was drove to Captain Sweeny's at Wexford. He, my Lord, is dead: this Mrs. Sweeny is his Widow; her Husband took the House in March 1714, and she has lived there ever since; she will give account that Lord and Lady Altham, Mrs. Giffard and other Persons came and lodged in the House, and that my Lady did not appear to be with Child.

5. Mrs. SARAH SWEENEY.

Mr. Le Hunte.] Where do you live, Madam?
 Mrs. Sweeny.] I live at Wexford.

Q. What is your Christian Name?---A. Sarah.
 Q. How long have you lived there?
 A. These four or five-and-thirty Years.
 Q. Pray, do you know Mr. John Masterfon?---A. I do.
 Q. Did you know Mr. Walsh?---A. I did.
 Q. Do you remember that they were charged with any Crime at Wexford?---A. I do.
 Q. When?---A. In the Year 1715.
 Q. Did you know the late Lord or Lady Altham?
 A. I did; I knew them both, but my Lord much better than my Lady.
 Q. Was

Q. Was it usual for you to let Lodgings?—A. It was.
 Q. Can you recollect whether they lodged at any Time and when in your House?—A. They lodged with me in the Year 1715, in April.
 Q. Do you know upon what Occasion, or what was a-doing in Wexford at that Time?—A. The Assizes was at that Time.
 Q. Pray, Madam, can you recollect how long they lodged with you, and when they came, whether before or after the Assizes?
 A. They came just at the Assizes, and they staid no longer than the Assizes held, four Nights or five, I cannot tell which.
 Q. Can you tell whether any Gentlewoman came with Lady Altham to the Assizes?—A. Yes, there did come Mrs. Giffard, and Mrs. Mary Roe, and there came Mrs. Heath.
 Q. Was Mrs. Heath a Servant to any of the Ladies, or whom?
 A. She was her Ladyship's Woman.
 Q. Where did she lodge?—A. At my House, Sir.
 Q. Can you be certain that it was in the Spring Assizes 1715, that they were there?—A. I am very sure of it.
 Q. Pray, can you give any Reason for that Certainty?
 A. I can give several Reasons, if there was an Occasion.
 Q. Please to inform the Court and the Jury what your Reasons are.
 A. It was in the Year 1714 that I came to that House I now live in. I came to it in July, just before the Queen died; and in 1714 Mr. Sweeney was ill of a Fever, and was just recovered out of it as her Ladyship came to my House; he was recovered the March before she came.
 Q. When she was there did you frequently see her?
 A. I did see her very often, Sir.
 Q. Where did she generally diet in Wexford?
 A. She dined and supped at my House.
 Q. Did she dine and sup at your Table?—A. I dined with her at the Table, and with my Lord, when he dined there.
 Q. Had she any Signs of Breeding, or being with Child?
 A. I did not perceive any, neither do I believe she was with Child.
 Q. Could she have been with Child then and you not know it?
 A. If she had been with Child I should have heard it.

Cross-Examination.

Mr. Fitzgerald.] You say, I think, that my Lady came to lodge at your House in April 1715?—A. Yes.
 Q. What particular Reason have you for fixing it in April 1715?
 A. I tell you; in July before the Queen died I came to the House, and the April following she came to lodge there.
 Q. Where did you live before?
 A. At Kenny's-Hall, a little out of Wexford.
 Q. How long did you live there?
 A. From the latter end of the Year 1713, till we left it.
 Q. What particular Time did you leave that Hall?
 A. In July 1714, just before the Queen died.
 Q. Was that House, where you received Lord and Lady Altham, repaired when you took it?—A. We repaired it before we came there.
 Q. After you took the Lease, what Time did you take to repair it?
 A. Not very long; I cannot tell how long.
 Q. Did the Repairs take up three Months?
 A. I believe it might take up three Months; but I was sick at that Time, and do not know how long it was.
 Q. What Time was it you took the Lease?
 A. We took the Lease in the Year 1714.
 Q. What Time of that Year?—A. In the Beginning of 1714.
 I have the Lease if you have a mind to see it.
 Q. Do you know a Man called Nicholas Duffe?—A. I do.
 Q. What is he?—A. He was Master of a Vessel for my Husband.
 Q. Did he live with you then?—A. He did not live with us then.
 Q. Was not he Master of the Ship at that Time?
 A. He quit that Employment before I was married to Mr. Sweeney. He went Master before for him.
 Q. Did he live in your House in April 1715?—A. No, he did not.
 Q. Did he live with you when you took the House and you were sick?
 A. He was at Sea in 1714, when I was ill of the Fever, and he came home at that Time in the Year 1714, and was not employed after, for my Husband parted with the Ship.
 Q. You say he was not in April 1715, in your House?
 A. Not to live with me.
 Q. Was not he then Master of your Husband's Ship?
 A. He was not in that Employ, we were building a Ship then.
 Q. Was not he in the Town of Wexford in the Year 1715?
 A. I do not know but he might.
 Q. Do you know Captain Maxwell?—A. I do, very well.
 Q. Do you know his Wife?
 A. I do; I am very well acquainted with her.
 Q. Did they not visit you in April 1715?
 A. I cannot tell in what Year, I do not know but she might be there, and they lived in the House where I lived in before.
 Q. Do you know one David Conolly?—A. I do not know any such Body as Conolly, I know one David Connell.
 Q. Was he a Servant of your's at that Time?
 A. He was not a Servant, but in and out with me.
 Q. How long did he live with you?—A. Really I cannot tell.
 Q. What do you think of that Man, what is his Character?
 A. Why really, I never thought it worth my while to enquire; he did my Business well enough.
 Q. Did you and Mrs. Maxwell visit frequently?
 A. Yes, we did, and I was Godmother to one of her Children.
 Q. What is Mrs. Roe's Name now?—A. Mrs. Crumpton.
 Q. Did you declare to any Person of your Acquaintance in Wexford that you were not sure when Lady Altham was at your House?
 A. I do not know whether I did or no; to be sure at the beginning I

could not recollect it, but after, when I considered about it, I found it out.

Q. Did she never lodge with you but once?—A. Never but once.
 Q. Was she never there at the Water-drinking Season?
 A. She never was.
 Q. And that Time she lodged with you was at the Assizes?
 A. It was at that Time.

Mr. Smith.] This Lady has mentioned that her Sister, who is now Mrs. Crumpton, came to Wexford at that Time in Company with Lady Altham; she was then called Roe, my Lord; we shall now produce her to the same Point.

Court.] Do not you think you have proved it already without producing her?

Mr. Daly.] I would produce Mrs. Giffard and no more to that Fact, I own it.

Court.] Call Mrs. Giffard.

Mr. Smith.] This Mrs. Giffard not only was at Wexford with my Lady at the Assizes, but was a particular Intimate of the Family, and she will prove to your Lordship, that she not only accompanied my Lady to the Assizes, but that she returned from Wexford to Dunmaine with her, and saw my Lady almost every Day while she stayed there, and never saw or heard of a Child; and your Lordship must recollect that one of the Witnesses did mention, that she was censured for her great Intimacy in that Family; and that Joan Laffan said, she and my Lady were very great.

6. Mrs. ANNE GIFFARD.

Mr. Le Hunte.] Mrs. Giffard, are you a married Woman, or a Widow?
 Mrs. Giffard.] A Widow.

Q. The Widow of whom?—A. Of Ravenscroft Giffard.

Q. What is your Christian Name?—A. Anne.

Q. Where did your Husband live?

A. At Ballysop, in the County of Wexford.

Q. Do you know a Place called Dunmaine?—A. I do.

Q. How far is Ballysop from Dunmaine?

A. Not two Miles, a Mile and half or thereabouts.

Q. How long have you lived at Ballysop?

A. We went to live there forty Years ago, and continued to live there till now, only seven Years that I lived at Rojs.

Q. Do you remember the late Lord and Lady Altham?

A. I do remember them very well.

Q. Where did they live when you knew them?

A. They lived sometimes in Dublin, and sometimes at Dunmaine.

Q. Do you remember when my Lady first came to live at Dunmaine?

A. I do.

Q. When was it?—A. In the Year 1713, two or three Days before Christmas-day, as I think; I am not positive to the Day.

Q. Were you intimately acquainted with her?—A. I was indeed.

Q. Did you ever see her with Child whilst you knew her?

A. Upon my Oath, I never knew it, nor never heard it.

Q. Did you ever know of her having a Child at Dunmaine?

A. I never did indeed, Sir.

Q. Do you remember to have travelled with her at any Time to any and what Place?—A. I did to Wexford in a Chariot.

Q. From whence?—A. From Dunmaine.

Q. Did you go with my Lady in the Chariot?

A. I did, and my Lord rode.

Q. What Time of the Year, and what Year was it?

A. I believe it was in the Spring.

Q. Of what Year?

A. The Time when Mr. Masterfon and Walsh were tried.

Q. Where did you lodge in Wexford?—A. At Mrs. Sweeney's.

Q. Who lodged with you there?—A. My Lord and Lady Altham.

Q. You mentioned something of Walsh and Masterfon, what is the Reason that you remember any thing of them?—A. Because my Lady Altham and I were in Court to hear their Trials.

Q. What do you call Court?—A. At the Session-House.

Q. What is the Use of that House?

A. The House where the Judges are.

Q. Were you and she in that House at this Time of the Assizes?

A. We were indeed.

Q. How long did you stay in Wexford that Time?—A. We stayed four Days.

Q. Did my Lady and you travel together from Wexford?

A. I came home with her in the Chariot, and lay there that Night.

Q. Do you remember any Woman-servant to have travelled with you?

A. Mrs. Heath; she rode.

Q. Were any other Persons with you?—A. My Husband went.

Q. And who else?—A. A Sister of mine went.

Q. What was her Name?—A. Mary Roe.

Q. Is that her Name at present?—A. Her Name now is Crumpton.

Q. Where did you go to from Wexford?—A. Back to Dunmaine.

Q. Where did you lie that Night?—A. I lay there.

Q. How long was you acquainted with Lady Altham after your Return to Dunmaine?—A. Whilst she stayed at Dunmaine.

Q. Do you remember any remarkable Eclipse of the Sun?

A. I do, the Eclipse was just after we came from Wexford; the Friday after we came home, I was at a Burying that Day and know it.

Q. What I ask you now is, whether during your Acquaintance with Lady Altham you perceived her to be with Child, or knew her to be with Child?—A. I did not, nor never heard her talk of it.

Q. How often did you visit?—A. Frequently, sometimes twice, sometimes once a Week, or a Fortnight, or so.

Q. Did you go to the same Parish Church?

A. Sometimes; she very often came to White-Church.

Q. Can you recollect after her coming to Dunmaine, that she went to Dublin?—A. I remember she went once or twice to Dublin.

Q. Have

Q. Have you been in the Room with her when she dressed or undressed herself?—A. Yes, I have pretty often.

Q. Did you ever observe any Symptoms of Pregnancy?

A. Upon my Oath, I never did.

Q. I ask you, Madam, whether my Lady was big-bellied at the Assizes?—A. Indeed she was not.

Q. Do you know one Anne Bennet that was formerly your Servant?

A. I never had a Servant of that Name in my Life.

Q. Do you know any Person of the Name of Bennet that lived with you?

A. I do not know any one of the Name of Bennet that lived with me.

Q. Is there any one of the Name of Anne that lived with you, that is now married to the Name of Bennet?

A. They say so; I heard so to-day, but I know nothing of it.

Q. Did you ever tell any Servant of your's of the Name of Anne, that my Lady had been with Child, or had a Child?

A. I never did, I could not say it.

Cross-Examination.

Mr. Harward.] If I do not mistake, you were examined at the Trial in the Exchequer?—A. I believe I was; to be sure I was.

Q. Did not you then swear to all the Company that went with you to Wexford?—A. And so I do now.

Q. Were you not asked at that Trial, to give an Account of all that went with you to that Assizes?—A. Well, I was.

Q. Did you give that Account?

A. I did, of every one that I remembered.

Q. What I ask you now is, did you give an Account that this Mrs. Roe went along with you?—A. No, I did not.

Q. Then you did not give an Account that she went?

A. No, Sir, I did not.

Q. In what Manner was it that she went?—A. She rode.

Q. Did she ride single or double?—A. She rode single.

Q. How did Mrs. Heath ride?—A. Single too.

Q. Pray, Madam, Lord Altham rode, I suppose, too?—A. Yes.

Q. And how did my Lady and you go?

A. It was a Chariot-and-Six that we went in.

Q. By virtue of your Oath, was not you in Mourning for a Brother of your's at that Time?

A. I was not; I was in Mourning, but not for him; he was dead a great while before that.

Q. Was it not to hear this Trial that you and Lady Altham went to Wexford?

A. I do not remember whether it was that or no we went for; but we went there to hear it when we were in Wexford.

Q. So that it was Curiosity that carried my Lady and you into the Court-house to hear these Trials?

A. We went to see Wexford; to be sure it was our Curiosity that carried us into Court when we were there.

Q. Was not that the only Motive that induced you to go there?

A. It was not that that induced us to go.

Q. What induced you to go?—A. We went for our Pleasure.

Q. Was you ever in a Court-house before for your Pleasure?

A. Indeed I was in that same very often before when I was a Girl; but what signifies that?

Q. Upon the Trial in the Exchequer did you not say, that you could not tell whether it was before or after the Queen's Death that this Trial was?—A. Well, I do not know whether I said it or no.

Q. Did you not upon that Trial say so?

A. Indeed I cannot tell whether I said it or no.

Q. Recollect whether you did not upon that Trial say, you did not know whether their Trial was before or after the Queen's Death?

A. Why, Sir, if I went after the Queen's Death, you know that I could have said nothing else; what do you mean by saying that upon that Trial I said I could not tell whether before or after?

Q. Did not you say upon that Trial that you did not know whether it was before or after the Queen's Death?

A. I do not believe I said any such Thing at all.

Q. Did you or did you not say upon that Trial that it was before or after?

A. Upon my Word, I cannot tell that I said any such Thing.

Q. If you cannot tell whether you said that it was before or after the Queen's Death that you went to Wexford, how can you say now that it is either one or the other?—A. I do not remember.

Q. Would you be understood to say that you do not know whether it was before or after the Queen's Death that you went to Wexford?

Court.] Is not that fully said already?

Mr. Harward.] I do not apprehend it so, my Lord.

Q. Which was it, by virtue of your Oath, was it in the Queen's Time, or after her Death, that you went with Lady Altham to the Assizes?

A. I could not tell you now; I do not know, Sir.

Q. Now, Madam, I ask you this, how came it that you could not tell that this Mrs. Roe went with you?

A. I might have remembered it indeed, but I did not at that Time.

Q. Had you at this Time any extraordinary Intimacy or Business with Mrs. Sweeney?—A. She is my Sister.

Q. Oh! I did not know that, Madam. Pray, were you in Mourning then?—A. I believe I was.

Q. For whom?

A. I cannot tell whether for any body; I wore Black sometimes.

Q. Were you in Mourning for any body at that Time?

A. I wore Black, but I cannot tell whether I was in Mourning for any body.

Q. Was my Lady in Mourning?—A. She was.

Q. As to this Trial that you went to see, give us some Account of what passed there.

A. I remember nothing of the Trial, but that I saw the Gentlemen in the Dock.

Q. Did you stay, Madam, till they were acquitted or not?

A. Indeed I cannot tell.

Q. Who sat by you in Court?—A. Lady Altham.

Q. Did not Mr. Colclough sit by her?—A. He did.

Q. Did not he hand her in and out of Court?—A. I believe he did.

Q. Are you sure he did?

A. To the best of my Knowledge, he did.

Q. Did not you swear on the Trial in the Exchequer, that you could not tell whether he did or not?

A. I say, to the best of my Knowledge, he did.

Q. Who went into the Court-house with Lady Altham?

A. He and I and Lord Altham went with her.

Q. Did not you swear that you could not tell whether he did or not?

A. I cannot recollect whether I did or not.

Q. Did you know any of my Lord's Family?

A. I knew Ralph the Butler, and Anthony Dyer, my Lord's Gentleman.

Q. Did you know Bourke?—A. Yes, I did.

Q. Did you know John Weedon?

A. I did, and Mrs. Setwright too, I was often there and knew them.

Q. What was Bourke?—A. The Postillion.

Q. Was Doyle the Clergyman tried at the same Time?

A. He stood on the Side-bar, and was not tried that Time.

Q. Did you know the Judges?—A. I knew one Forster, I believe.

Q. Did Lord and Lady Altham go to Dublin after this?

A. They went to Dublin soon after Wexford Assizes.

Q. Did not they go twice after?

A. I cannot tell indeed, I remember once they did.

Q. Did not you swear on the Trial in the Exchequer that you could not tell whether it was before or after my Lord returned from Dublin that you were at Wexford Assizes?—A. I never did.

Q. Madam, do you know one Mrs. Bushe?

A. Not I, indeed I do not.

Q. Did you ever declare, to your Remembrance, that you did not know but this Assizes was in the Year 1716?

A. I cannot remember whether I did or no.

Q. Did you, or did you not?

A. Not that I know of, indeed I did not: I am sure not to Mrs. Bushe.

7. SARAH WEEDON.

Mr. Smith.] Before she comes it will only be proper to observe to your Lordship, that she has been mentioned by some of the Witnesses as being the Coachman's Wife at the Time of the Birth; and, my Lord, Mrs. Sarah Weedon was the Coachman's Wife, and she will give your Lordship an Account of her Knowledge of the Family at Dunmaine during the Period of Time to which the Birth is sworn to; and I believe, when she is produced and has given her Evidence, that you will think she is not a material Witness for the Prosecutors, as she was upon a former Occasion sworn to be.

Mr. Morgan.] Do you know a Place called Dunmaine?

Sarah Weedon.] Yes, Sir, I do.

Q. Did you know Lady Altham?—A. Yes, Sir.

Q. And Lord Altham?—A. Yes, Sir.

Q. Where was you when my Lady came first to Dunmaine?

A. I was at Dunmaine.

Q. How long did you continue there after she came?

A. I believe very nigh three Years, to the best of my Knowledge.

Q. Did you know one Mrs. Briscoe?

A. I did, Sir.

Q. Did you know her Daughter?—A. I did.

Q. Did you see them at Dunmaine?—A. I did, Sir.

Q. Pray now answer, where was you at the Time that they were there?

A. I was in the House, Sir.

Q. Did you know of any Accident that happened to Lady Altham during the Time they were there?

A. I did not know of any Accident that happened to her.

Q. Any Miscarriage?

A. Upon my Word, I never knew nothing of it.

Q. What Condition in point of Health was my Lady in during the Time that they were there?

A. To the best of my Knowledge, she ailed nothing at all.

Q. Did you ever hear of any and what Accidents happening upon account of Sawcers during the Time they were there?

A. I protest I remember no such Thing.

Q. No China broke?—A. I do not remember any such Thing, Sir.

Q. I ask now, whether you know of any of that Family to be delivered of a Child during the Time you were at Dunmaine?

A. I do.

Q. Who was that?—A. One Hesther, that my Lord called Ponty.

Q. I ask you whether this Hesther was delivered of this Child before or after my Lady came to Dunmaine?—A. Before, Sir.

Q. Do you know of any other Person delivered after she came?

A. Not in the House, Sir.

Q. Do you know of any out of the House?

A. Mrs. Setwright was, and myself out of the House.

Court.] Was Lady Altham with Child while you were at Dunmaine?

A. She was not, my Lord.

Q. Did you see her with Child at any Time whatever?

A. Upon my Word, I did not. My Lord, what I say is Truth, and nothing but the Truth.

Mr. Morgan.] You say that this Hesther was delivered of a Child, can you recollect the Midwife?

A. If I should tell you the Truth, they sent for one Mrs. —, I forget her Name, — Mrs. Shiel in Ross; but to tell you the Truth, before Mrs. Shiel came, I delivered her.

Q. Who was sent for Mrs. Shiel?

A. Really I cannot tell; there was a Fellow in the House, but I cannot tell his Name now.

Q. Now recollect and say, whether any other Persons were brought to-bed at Dunmaine during your Time?—A. There was Juggy Landy.

Q. Now I ask you, did you see this Child of her's?—A. I did.

Q. Did you know it?—A. I did, Sir.

Q. Did you see it at any other Place?

A. I

A. I did, Sir.
 Q. With whom?—A. A great while afterwards, when we were in the County of Carlow, the Child was brought there.
 Q. To what Place?—A. To Carrickduffe.
 Q. Who was it with there?—A. It was in the House.
 Q. With whom do you mean?—A. With Lord Altham.
 Q. Was that the very Child?
 A. I say, Sir, it was the same I saw with Joan Landy at Dunmaine.
 Q. Did you ever see any Child at Dunmaine considered as my Lord Altham's Child by his Lady?
 A. Never in my Life; I would not say it for all the Estate that ever Lord Anglesea had, if it was false.
 Q. Where do you live now?—A. I live in Connaught.
 Q. With whom there?—A. With Colonel Blakeney.
 Q. At what Place does he live?—A. At a Place called Abbart.
 Q. Have you any Children?—A. I have, Sir.
 Q. What are they?—A. Sons.
 Court.] What is it you propose by this Evidence?
 Mr. Morgan.] What I propose by this Evidence is this, that we shall shew a very unfair Attempt made upon this Woman on the Part of the Prosecutors.
 Court.] Mr. Mac Kercher has made an Affidavit, which I wish, for his Sake, he had not.
 Mr. Morgan.] He says, my Lord, in his Affidavit, he served this Woman with a Subpœna; I hope I may ask her that Question.
 Court.] Go on, Sir.
 Mr. Morgan.] Was you served with a Subpœna by him, and when?
 A. I cannot tell the Day of the Month, it came one Day, and I was to appear in Dublin the next Day.
 Q. How far is Colonel Blakeney's House from Dublin?
 A. It is threescore and three Miles off.

Cross-Examination.

Mr. Callaghan.] Did you live as a Servant in the House of Dunmaine?
 A. I did, Sir.
 Q. In what Station were you there?
 A. I was House-keeper before my Lady came there.
 Q. Was you so after?—A. I was not; Mrs. Setwright was.
 Q. In what Capacity did you serve in the House after she went there?
 A. I was in the House after she went there.
 Q. But I ask, did you serve in the House after?
 A. I did after, because I did every thing that was to do.
 Q. How long did you continue to live in the House?
 A. I lived in the House 'till I took a House of my own.
 Q. When was that?
 A. I cannot tell exactly the Time, but it was just at the End of the Avenue, and I was as frequently in the House then, as I was before.
 Q. I ask you how soon after my Lady went to Dunmaine was it that you left the House?—A. I cannot tell exactly the time, Sir.
 Q. Was it a Month?
 A. Oh! a great deal more than one, or two, or three.
 Q. Was it before or after Mrs. Briscoe and her Daughter went there?
 A. I was in the House when they came there.
 Q. I ask you only, whether you were a Servant living in the House at the time they went there?—A. I was.
 Q. Upon your Oath, did not you keep an Alehouse at the Bridge then?
 A. No, not 'till after they went there.
 Q. Did you keep an Ale-house there before Mrs. Briscoe and her Daughter left Dunmaine?—A. No, I did not, to the best of my Knowledge.
 Q. What time did they go to Dunmaine?—A. I cannot tell the Year, nor Month, nor any thing of that, it is too long ago for my Memory.
 Q. How long did they stay there?—A. I cannot tell that again.
 Q. How long after they left it was it that Mrs. Setwright was brought-to-bed?—A. I cannot tell; she was with Child coming to the House; but I cannot tell the time she was brought-to-bed.
 Q. Was it a Month, or six Weeks, or two Months after they left Dunmaine, that she was brought-to-bed?
 A. Mrs. Briscoe's Daughter was a Gossip to the Child, to the best of my Knowledge, and they were there at the same time.
 Q. Was you out of the House at the time Mrs. Setwright was brought-to-bed?—A. I think I was not out of the House then.
 Q. Were you or were you not?—A. I cannot tell that exactly.
 Q. But you are sure you were a Servant when Mrs. Briscoe went away?
 A. No, I did not say that: I say, to the best of my Knowledge I was in the House.
 Q. You remember Mrs. Hesther's being brought-to-bed?
 A. I do, very well.
 Q. Was that before or after my Lady went to Dunmaine?
 A. It was before my Lady went there.
 Q. You mentioned the Midwife's Name?—A. Shiel it was.
 Q. Could that Midwife be sent for any Purpose to Lady Altham?
 A. She could not, because Lady Altham never had a Child; she never had a Child.
 Q. Was not it before Lady Altham went to Dunmaine that Hesther was brought-to-bed?—A. Yes, do not I tell you so?
 Q. I think you say you were at Carrickduffe?—A. I was, Sir.
 Q. Was not you there upon a Day, that was celebrated as a Birth-day of Lord Altham's Son?—A. There never was such a thing in this World.
 Q. Can you take upon you to say there was not?
 A. I am as positive of it as of any thing in the World.
 Q. Had you any Conversation with any body in relation to Lady Altham's having had a Child?—A. No, never since I was born.
 Q. Upon your Oath, did you never say that my Lady had a Child?
 A. Never, in the course of my Life.
 Mr. Recorder.] Now we shall judge whether Mr. Mac Kercher's Information be true or not.
 Court.] He was certainly misinformed.

8. ELEANOR THOMAS, alias FISHER.

Mr. Le Hunte.] The Evidence she will give is this—
 Court.] Do not open it now she is here.
 Mr. Le Hunte.] What is your Name?—Eleanor Thomas.] Eleanor Thomas.
 Q. Is that the Name you go by now?
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A. Eleanor Fisher is; my maiden Name was Thomas.
 Q. Did you know one Mary Waters?—A. I did.
 Q. Did you know the late Lady Altham?—A. I did, Sir.
 Q. Did you ever live in her Service?—A. I did.
 Q. When did you go there?
 A. I cannot tell you the Year, but I was the second Servant she hired after she came to Dunmaine.
 Q. What was the Nature of your Service?—A. I was House-maid.
 Q. How long did you live with my Lady?
 A. I lived a Twelvemonth with her.
 Q. Where did you go when you left the Service?
 A. I went to one Mr. Bunbury's of Ballyfeskin.
 Q. Did you ever hear of one Mrs. Briscoe and her Daughter's being at Dunmaine?
 A. I was in the House at the same time.
 Q. What House?—A. My Lord's in Dunmaine.
 Q. Whilst you were House-maid, do you remember to have seen them there?—A. I did.
 Q. Did you continue there 'till they left it?
 A. I did indeed.
 Q. Do you know of Lady Altham's having a Miscarriage at Dunmaine?
 A. Indeed I never did.
 Q. Did you know Mrs. Pigot?—A. Indeed I did.
 Q. Of what Place?—A. Of Tyntern.
 Q. Did you ever live in her Service?
 A. I lived eight Years Maid and Wife with her.
 Q. When did you go to live with her?
 A. I went to her after I left Dunmaine.
 Q. I thought you said you went to Mrs. Bunbury's?
 A. I was only a Year at Bunbury's.
 Q. How long did you live with Mrs. Pigot?
 A. I was eight Years Maid and Wife with her.
 Q. Did you live any where in her Service but at Tyntern?
 A. No where but at Tyntern.
 Q. Can you recollect the Time she was living there when you was hired?—A. I was a Twelvemonth her Servant at Tyntern before she came from Dublin.
 Q. When did she come from Dublin to Tyntern?
 A. I went to her at Lammis, and the Lady-day Twelvemonth following she came to Tyntern.
 Q. What Year was it?—A. Indeed, Sir, I cannot tell.
 Q. Where did she live for that Year?—A. In Dublin, Sir.
 Q. Who hired you then?—A. Her Steward, James Byrne, hired me.
 Q. Was there any Separation between Lord and Lady Altham, to your Knowledge?
 A. I remember they parted; I was at Tyntern at the same Time.
 Q. Was Mrs. Pigot there at that Time?
 A. I think she was; I cannot tell positively.
 Q. Whilst you were at Dunmaine and Mrs. Briscoe there, did you hear that Lady Altham miscarried of a Child?
 Mr. Walsh.] That is a leading Question; do not answer it, Woman.
 Court.] Did you ever see Lady Altham with Child?
 A. I never saw her with Child, nor never heard of her having a Child.

Cross-Examination.

Mr. Mac Manus.] You say, you lived at Dunmaine?—A. I do, Sir.
 Q. What Year?—A. Indeed, Sir, I cannot tell you the Year.
 Q. Upon your Oath, what Year did you go to live there?
 A. I can tell you the time of Year, but not the Year.
 Q. Can you tell the Year you left Dunmaine?
 A. I served her Ladyship a Year.
 Q. Was it in the Year 1716 or 1717 that you left her Service?
 A. I cannot tell, if you would shoot me for that.
 Court.] Where were you hired?—A. In Dunmaine House.
 Q. Who hired you?—A. My Lady hired me herself.
 Q. During the time that you were there, did you see any Child there?
 A. I never did.
 Q. Did you see Lady Altham frequently?
 A. I did, I was the next Servant to Mrs. Heath, and often saw her.
 Mr. Mac Manus.] Did you see the Furniture of that House?—A. I did.
 Q. Did you see any Sawcers with odd Figures on them?
 A. I never saw the Sawcers.
 Q. Did you never see those bawdy Sawcers in the House?—A. I never did.
 Q. Do not you believe they were there?
 A. I do not know; I never did see them.
 Q. Did you never hear of a Miscarriage occasioned by the breaking of the Sawcers?—A. I never saw or heard of a Miscarriage.
 Q. Did you never hear it among the Servants?
 A. I never did, upon my Word.
 Q. Upon your Oath, did you never hear it?
 A. Upon my Oath, and upon my Life, I never did.
 Q. Could there not be a Miscarriage and you not know of it?
 A. There could not, Sir; for my Lady could not miscarry unknown to me.
 Q. Could she do any Office of Nature unknown to you?
 A. I do not know what you mean.
 Mr. Bradstreet.] The next Witness will shew your Lordship where Mr. Cliffe, who is said to be Godfather to this Child, was from the fifth of May 'till the Middle of June 1715. His Son will appear here to prove that; and will shew some Rules of the Court, where he made Motions during that Time.
 Mr. Walsh.] I believe many a Rule is entered in a Lawyer's Name that he knew nothing of.
 Mr. Bradstreet.] First, we will produce his Son, to shew where he was in the Year 1715. We will shew that first.
 Court.] If this be as you have opened it, it will be the most material Thing that has happened yet; and I believe there will be little in the Thing after, for it cuts off two or three of the most material Witnesses on the other Side.
 The Night being pretty far advanced, Mr. Cliffe had retired to his Lodgings, and the next Witness called was Mrs. Halpen; but she being also out of the way, Mr. Tench was called.

John Trench, Esq.
Mr. Spring.] Pray, Sir, inform the Court and the Jury, whether you had any Knowledge of Mrs. Pigot of Tynern?—Mr. Trench.] I had, Sir.

Q. You did know her?—A. I knew her, Sir.
Q. Was any Friend of your's concerned for her in her Affairs?
A. My Father received her Rents for above thirty Years.

Q. Who was concerned in the Management of her Affairs, and Receipt of her Rents in the Year 1715?—A. My Father was.

Q. Can you give the Court and the Jury an Account where Mrs. Pigot was in the Month of November, 1714, and from thence down to the latter End of the Year 1716?—A. From my own Knowledge I do not know where she was; but from Letters I can tell you.

Q. Have you any Reason to enable you to form a Judgment where Mr. Trench was in—

Court.] Where was Mrs. Pigot in November 1714?

A. Of my own Knowledge I cannot tell where she was.

Mr. Spring.] Are your Father's Accompts, and Papers, and Letters, come to your Hands?—A. I have them, Sir.

Q. Have you any Accompts relating to Mrs. Pigot's Affairs in the Years 1714, 1715, or 1716, in his Hand-writing?—A. I have in the Year 1715.

Court.] It is proper to ask him if he has such; but what then? That won't prove where Mrs. Pigot was.

Mr. Spring.] My Lord, my next Question is, Whether he has any Letters of Mrs. Pigot to his Father?

Court.] That will not do. If she was produced here as a Witness, you might produce her Letters to confront her. We are not now upon the Proof of Similitude of Hands.

Mr. Spring.] Was you at Tynern in the Year 1714?

A. I cannot tell where I was in 1714.

Q. Were you there in the Year 1715?—A. I was there in 1715.

Q. Where were you in May 1715?—A. Indeed, Sir, I cannot tell.

JO. JAMES WALSH.

Mr. Edward Malone.] We produce this Witness, my Lord, to shew that Mrs. Pigot was in another Country, at another Place attending her Husband, who broke his Leg, at the Time they pretend she was God-mother to this Child.

Mr. Edmond Malone.] Are you a married Man?

James Walsh.] Yes, Sir.

Q. In what Family did your Wife live when you married her?

A. In the Family of Mrs. Pigot.

Q. What Mrs. Pigot, Sir?—A. Mrs. Pigot of Tynern.

Q. Did you know Counsellor Pigot?—A. I did, Sir, very well.

Q. I ask you, then, if you recollect at any Time when any, and what Accident or Hurt happened to him?—A. I do, Sir.

Q. Tell it.

A. Mrs. Pigot went to Dublin in 1714, about November or December, I am not sure in what Month, and some time after Christmas Mr. Pigot went to London, and he came back again—

Q. Was it in January 1714-15, that he went to London?

A. I believe thereabout.

Q. Well, go on.

A. He came back I believe about March, or thereabouts, and he went to his Estate in the County of Limerick, and happened to break his Leg or Thigh in the Year 1715.

Q. What Time in the Year 1715?

A. April I believe, or March, or thereabouts.

Q. At what Place did he break his Leg?

A. They tell me, Sir, at Glengoole; I was not with him there.

Q. How do you know he broke his Leg?

A. I know, because Mrs. Pigot went from Dublin to him.

Q. What Time did she go to him?—A. She went about April 1715.

Q. Where was she to go to?—A. Either to the County of Tipperary or County of Kilkenny, I cannot tell which.

Q. How soon after he went to the County of Limerick did she leave Dublin?—A. I cannot tell exactly how soon she left Dublin, but she stayed there till she brought Mr. Pigot home.

Q. To what Place?—A. To her House upon Arran's-Quay.

Q. What Time was that?

A. I cannot exactly tell the Time; I believe it was in the Year 1715.

Q. How long might she have staid away with him?

A. I cannot tell exactly; I believe it was more than a Month; I believe it was two Months, I do not exactly know.

Q. When they came to Dublin, how long did they continue in Dublin without going into the Country again?

A. They staid in Dublin till she buried Mr. Pigot in 1717.

Q. Are you positive that she remained all that Time in Dublin, without going any where to the County of Wexford?

A. Yes, Sir, I can say that safely; and that she went home in the Year 1717, and sent me back to Dublin to make a Monument for Mr. Pigot at the Outside of St. Paul's Church.

Q. How long after their Return to Dublin was it that he died?

A. He died in the Year 1717.

Court.] Are you sure that Mrs. Pigot was not at Tynern in the Year 1715?

A. She was not, upon my Oath.

Q. Nor in the County of Wexford?

A. Indeed she was not, my Lord.

Q. How many Years did you live with her in all?

A. I cannot tell how many Years, but I lived with her from his Death to her Death.

Q. And you are sure she was not in the County of Wexford from the Time she came to Dublin, till she buried him?

A. I am sure she was not.

Cross-Examination.

Mr. Harward.] Pray, Sir, where were you in Christmas 1714?

A. In Dublin, Sir.

Q. Where did you live in Dublin?—A. On Arran's-Quay.

Q. Was you a House-keeper there?

A. I generally kept Mr. Pigot's House when they were in the Country, but that Year I did not.

Q. Did you keep his House in Christmas 1714?—A. I did not, Sir.

Q. Where were you then?—A. On Arran's-Quay.

Q. Where were you in the Beginning of March 1714?

A. I was in Dublin then.

Q. Where in Dublin?—A. In Lodgings of my own.

Q. Where were you May-day 1715?—A. In Dublin, Sir.

Q. Are you sure you were?—A. I was indeed, Sir.

Q. Where in Midsummer 1715?—A. In Dublin.

Q. Now, I ask you upon your Oath, was Mr. Pigot or Mrs. Pigot in their House at Dublin in the Beginning of March 1714?

A. No, they did not come to Dublin till November 1714.

Q. Where was Mrs. Pigot in March 1714?

A. In the County of Wexford.

Court.] Do you mean March 1713-14, or March 1714-15?

A. In March 1714-15 she was in Dublin.

Q. Where was she in March 1713-14?

A. I cannot tell, my Lord, I believe in the County of Wexford.

Mr. Harward.] Where was Mr. Pigot the first of May 1715?

A. I cannot tell you whether in Dublin, or that he was sick where he got his Hurt.

Q. Can you say, upon your Oath, where he was the first of May 1715?

A. Indeed I am not sure whether he was in Dublin, or whether he was where he broke his Limb.

Q. Now, Friend, where was Mrs. Pigot when the great Eclipse was?

A. I believe she was with her Husband where he broke his Leg.

Q. Was you in the County of Tipperary at the Time of the great Eclipse?—A. I was not.

Q. Where was she at that Time?

A. I suppose she was with Mr. Pigot.

Q. Don't be supposing with me; you know you ought to tell nothing but what you know; do you know where she was at the Eclipse?

A. She was, and I take it upon my Oath, she was where Mr. Pigot broke his Thigh.

Q. Where was that?—A. In the County, I believe, of Tipperary.

Q. How do you know that she was not in the County of Wexford?

A. Because I know she was not.

Q. Was not you in Summer 1715 in Dublin?

A. I was, Part of the Summer 1715.

Q. How do you know that she was where her Husband lay ill at the Time of the Eclipse?

A. I know it very well; she was with Mr. Pigot where he broke his Leg.

Q. Did you see her with him?—A. No, I did not.

Q. Why will you swear then she was with him?

A. Why, because I am sure of it.

Q. How are you sure of it?

A. She told me she was going to him, I knew that she went there, and we all knew that she went there.

Q. Have you any other Reasons for being so positive?

A. There are Letters from under her Hand, giving an Account that she was there.

Q. What Letters?—A. To her Agent Captain Trench.

Q. Pray now then, is not that the Reason that you know she was there?

A. It is only one Reason.

Q. Tell another Reason.

A. Why, I am sure she was there, because I know she went there, and all that were along with her told me so.

Q. Do you know of your own Knowledge where she was?—A. No.

Court.] Did you see Mr. Pigot when he came to Dublin?—A. I did.

Q. In what Condition did he then appear to you?

A. He appeared as if he had a Leg broke, and was very bad.

Court, to the Jury.] The Witness says, he saw Mrs. Pigot go down to her Husband, and saw them return together.

Mr. Recorder.] Where he swears that she went to her Husband at a certain Time, that she was going to her Husband, and that he saw her come back with him, with his broken Leg, it is as full Evidence as is necessary.

II. MARY WALSH.

Mr. Lee.] What is your Husband's Name?

Mary Walsh.] James Walsh.

Q. Did you know Mrs. Pigot?—A. I did.

Q. Did you know her in the Year 1715?—A. Yes, I did.

Q. Where was she then?—A. In Dublin then.

Court.] Where did she go from Dublin?

A. She went to where Mr. Pigot broke his Thigh.

Q. Where was that?—A. Beyond Kilkenny, going up to Munster.

Q. Was you with her?—A. I was not.

Q. How do you know she went there?

A. Because she was sent for when he broke his Thigh.

Mr. Lee.] When did Mrs. Pigot come to Town after that?

A. I cannot tell when she came up.

Q. Who came with her?

A. Mrs. Wallace and others, I cannot tell who.

Q. Did you ever see Mr. Pigot after?

A. Sure I was with him when he was buried.

Q. Do you remember when he came to Dublin after he had broke his Leg?

A. Why, I believe he came when she came.

Q. Who came to Town with Counsellor Pigot?

A. I cannot tell you, Sir; I cannot remember that.

12. JOHN CLIFFE, Esq.

Mr. Bradstreet.] My Lord, this is the Evidence that I have already open'd.

Mr. Bradstreet.] What is become of your Father?—Mr. Cliffe.] Dead.

Q. What Profession was he of?—A. A Lawyer at the Bar.

Q. Do you remember where your Father was in May and June 1715?

A. I cannot take upon me to say where he was; he was in this Kingdom, but whether in Country or Town I cannot take upon me to say from my own Memory.

Q. Where was you at that time? — *A.* I believe I was at the College.

Q. Pray, recollect and consider now, where your Father was in those Months?

A. I cannot take upon me to say, from my Memory, where he was in May 1715.

Q. Where do you say you yourself were at that time?

A. I was in the College at that time.

Q. Did your Father attend the Terms regularly at that time, or not?

A. I believe he did; but I cannot take upon me to say that I remember his keeping Terms regularly; I believe he did.

Mr. Bradstreet. It appears to your Lordship that Mr. Cliffe was a Lawyer at the Bar; now, we are to falsify the Testimony of some Witnesses produced on the other Side, who swear he was Godfather to this Child, and therefore I hope we shall be at Liberty to shew some Rules of the Court, to prove that Mr. Cliffe was here in May and June in the Year 1715.

Mr. Serj. Tisdall. I desire to know first, whether you have other Questions to ask the Witnesses.

Mr. Bradstreet. My Lord, I remember when the Testimony of a Person was defeated, by shewing that the Name of a Lawyer was to a certain Bill. He said, that the Lawyer was dead before that time, the Record was produced, and his Name was at the Record in the Cause of *Reynolds and Sandys*. We produce this Witness to shew that those Witnesses, who swore his Father was Godfather to my Lord Altham's Child, swear false; cannot we, in addition to his Testimony, shew the Rules of the several Courts that his Father made Motions in at that time?

Mr. MacManus. My Lord, I only get up to answer Mr. Bradstreet. I do apprehend, that a Bill in Chancery is not Evidence, and the Reason is, because any Man may file a Bill in the Name of another; and therefore, unless you can shew some Proceedings have been had upon it, you cannot produce it in Evidence. The same Rule will hold in a curiory Motion in Court, which may be made by one Person and have another's Name to it.

Mr. Daly. It is never done on the Equity Side, it is always moved in Court publickly.

Court. I think it must appear, who the Counsel is that makes the Motion.

Mr. MacManus. The Attorney is the Person to whom you must give notice, and is answerable for all the Proceedings; the Lawyer's Name may be, and often is mistaken by the Officer of the Court, it not being material what Lawyer moves.

Court. The Question is, Whether attested Copies of the Acts of a Court of Record may not be produced, proved and given in Evidence to falsify a Witness, to shew that a Person sworn at a certain Time to be in one Place, was then at another?

Mr. Daly. The Indenture of a Fine is read against a Man every Day.

Mr. Solicitor. By Act of Parliament?

Mr. Daly. It is not made Evidence by Act of Parliament.

Court. Put the Case distinctly.

Mr. Bradstreet. I say, my Lord, I put it thus: After the Evidence of this Gentleman, his Father appearing to be a Lawyer at the Bar, and after the Evidence that has been given on the other Side of his being Godfather to a Child at *Dunmaine* at such a Time, I offer these Rules of his on Motion, to shew that he was not at *Dunmaine* at that Time, but in these Courts, and I instance the Case of *Reynolds and Sandys* for a Precedent.

Mr. Robins. Are they litigated Motions?

Mr. Bradstreet. They are litigated, and Hearings and open Pleadings.

Mr. Thomas Bourk.

Mr. Bradstreet. What is that in your Hand?

Mr. Thomas Bourk. Rules in the Court of Exchequer in *Easter Term* 1715.

Q. Are they all out of that Court? — *A.* They are, Sir.

Q. Are they true Copies? — *A.* They are.

Mr. Serj. Tisdall. I believe it is an established Rule in Evidence, that the greatest Certainty must be had, that the Nature of the Thing to be proved will admit of. This is Evidence of no sort of Certainty, because it depends upon a Person not on his Oath, and because he incurs no Penalty by falsifying the Name of the Lawyer. He is not upon his Oath not to put the Name of the Lawyer to the Record, and it is no more than a falsifying Evidence; and besides, Records can only be produced as Evidence between the Parties to them.

Mr. MacManus. I apprehend it no sort of Evidence at all.

Mr. Bradstreet. What I apprehend is this, that this is Evidence which is contradictory to the Evidence that they have produced to this Point. Here are Motions that have been litigated, that have not passed of course; but I say, they have been litigated, so that it is to be presumed, that he was litigating these Matters; and if so, it is impossible he could be at *Dunmaine* at that time. And as such, I hope, is good Proof, and especially since he is dead.

Court. I think it may be read to Contradict a Witness; and I know that the Officer is so far from being permitted to do this Thing of falsifying a Name, that he is under a great Penalty for it.

Mr. Bradstreet. The Register is answerable, though committed by the Deputy.

Court. I think it may be read in contradiction to the Witnesses.

Mr. MacManus. Your Lordship is going to establish a Rule that may be of dangerous Consequence.

Court. I am not going to settle a Rule, but I only tell you what I think is and ought to be allowed as Evidence. The Journals of both Houses of Parliament have been produced in Evidence.

Mr. Walsh. I beg leave to consider this —

Court. Read the Notes and Orders.

Mr. Whyte reads, This is the 5th of May 1715.

Powell v. Goodwin Ex. } *Mr. Cliffe* pro *Q.* prays Interest for the 246 *l.* which the Defendant's Testator received since they were paid of Goodwin. } the Mortgage Money.

Mr. Baly. I do not oppose Plaintiff's having a Decree for the Money, but they move for Interest, and I am surprized at their demanding of Interest.

Cur. Take a Decree for the Money reported, and Interest for the Money reported from the Time the Report was confirmed; and take an Injunction forthwith to be put in Possession, and take a Decree for the Rent that fell due the 25th of March last.

Court. He must be personally in Court at that Motion.

Mr. Whyte. The next is the 6th of May, 1715.

Birmingham et al. } *Mr. Cliffe* pro *Q.* moves on the last Notes for putting off the giving of the Judgment of the Court on Affidavit.

Lord Shelburne } The next is the 9th of May, 1715.

Lawless v. Shee } *Mr. Cliffe* pro *Q.* moves on last Order for putting off the Hearing a Week.

The next is the 11th of May, 1715.

Birmingham et al. } *Mr. Cliffe* prays a Day to speak to this Matter.

Lord Shelburne } The next is the 12th of May, 1715.

Archer v. Rogers } *Mr. Cliffe* pro *D.* moves for Time to answer personal Interrogatories as to several Books, in regard the Books are very large, and produces an Affidavit of this Matter.

The next is the 13th of May, 1715.

Watson v. Butler } *Mr. Cliffe* pro *D.* moves for to dissolve the Injunction.

The next is the 14th of May, 1715.

White & Ux. v. Gale et al. } *Mr. Cliffe* pro *Q.* moves on the Notes upon the Hearing.

The next is the 31st of May, 1715.

Thomas White v. David Dunbarr } *Mr. Cliffe* opens the Defendant's Answer.

The next is the 1st of June, 1715.

Archer v. Rogers } *Mr. Cliffe* pro *D.* the Plaintiff never demanded any Custom for Timber these fourteen Years.

The next is the 18th of June, 1715.

Birmingham v. Lord Shelburne } *Mr. Cliffe* pro *Q.* moves on the Order for Liberty to read the Bill and Answer in the Cause of *Stewart* against the Lord Shelburne.

The next is the 23d of June, 1715.

King v. Gore et al. } *Mr. Cliffe* pro *D.* moves on Affidavit for a Commission to examine.

The next is the 25th of June, 1715.

Birmingham et al. v. Lord Shelburne } *Mr. Cliffe* pro *Q.* *Stewart et al.* have a Decree against Lord Shelburne, *Evans et al.* and they have a Decree for the 29,503 and also for the 21,032 Acres, and on the Hearing of this Cause the Bill of *Stewart* and others and the Lord Shelburne's Answer was offered to be read, but the Court has not yet read that Bill and Answer; prays that Bill and Answer may be read, before the Bill is dismissed.

Mr. Bradstreet. How many of your Name were at the Bar in the Year 1715?

Mr. Cliffe. I know of no Person of that Name but my Father.

Q. Did you ever attend the Courts? — *A.* I did not, Sir.

Q. Did you know Mr. Anthony Colclough, Sir? — *A.* Yes.

Q. Of what Religion was he? — *A.* He was reputed a Papist.

Q. Is he alive or dead? — *A.* I have heard that he is dead.

Q. Did not he die a Papist?

A. He was reputed a Papist during his Life.

Cross-Examination.

Mr. MacManus. Did you attend the Terms in the Year 1715 or 1716? — *A.* I did not attend in 1715 or 1716.

Q. Was your Father the only Person of the Name that professed the Law?

A. There might be another, but I never heard of any.

Mr. Walsh. It has not been taken notice of in what Terms these Motions have been made. Here is a Chasm of about a Fortnight between the first and last Motion, and there is so between the two Terms. The first Rule is on the 5th of May, the last the 25th of June, so that it must be in two Terms that they were made.

Court. So it was.

Mr. Walsh. Well, then there was a short Vacation, when he might have been in the Country, and stood Godfather to the Child.

Court. But you will consider, one of the Witnesses said the Christening was four or five Weeks, and another three or four Weeks after the Birth.

13. *Mrs. PENELOPE HALPEN.*

Mr. Lee. What was your Maiden name? — *Mrs. Halpen.* Hunt, Sir.

Q. Whose Daughter are you? — *A.* Daughter to John Hunt of Glan- goole, near Killenaule, in the County of Tipperary.

Q. Where did he live in the Year 1714, 1715, and 1716?

A. He lived there, Sir.

Q. Do you remember the Eclipse of the Sun? — *A.* I do.

Q. Where was you at that time? — *A.* I was at my Father's House then.

Q. Were you acquainted with Counsellor Pigot and his Wife?

A. I was.

Q. What was the Occasion of your being acquainted with them?

A. He broke his Thigh near my Father's House, and came and lay there till he was cured.

Q. When was that? — *A.* In the Year that the Eclipse happened.

Q. Was Mrs. Pigot there?

A. She was there at the Time of the Eclipse.

Q. How long did she stay after the Eclipse? — *A.* I cannot tell indeed.

Q. How long was she there before? — *A.* I cannot tell indeed.

Q. Was

Q. Was she a Fortnight, or a Month, or how long?
 A. I cannot tell how many Days.
 Q. Who came there first, he or she?—A. He came first.
 Q. How long was he there before she came?
 A. He was a few Days before she came.
 Q. Who came with her?—A. Mrs. Wallace.
 Q. In what State of Health was he?
 A. He was in his Bed with that broken Leg.
 Q. How long did he keep his Bed?
 A. I cannot tell how long he kept it; whether a Month or six Weeks I cannot tell.

Court.] How long did his Wife stay with him?
 A. I believe more than a Month.
 Mr. Lee.] Were they visited by any body while they stayed there?
 A. By several.
 Q. Can you recollect any one that visited them?
 A. Mr. Caesar Colclough was there; whether to pay him a Visit or not I cannot tell, but I saw him there.
 Q. Did they leave your Father's House together?
 A. They did, to the best of my Memory and Knowledge.
 Q. Where did they go to from your Father's House?
 A. I cannot tell indeed.
 Court.] Did they come to your Father's before or after the great Eclipse?
 A. Before.
 Q. Was Mrs. Pigot there before the great Eclipse?
 A. She was indeed.

Cross-Examination.

Mr. Serjeant Tisdall.] Can you be positive of the Time that she came to your Father's House?—A. I cannot tell what Time.
 Q. Can you say whether she was there at the Time of this Eclipse?
 A. Yes.
 Q. Are you sure she was?—A. I am sure she was.
 Q. Was any Person with her at that time?
 A. Mrs. Wallace and she were there.
 Q. Have you any particular Reason for being so certain?
 A. Yes, Sir, I was in the Garden when the Eclipse happened, and I called Mrs. Wallace out, to the Garden, to look at the Eclipse with me.
 Q. When was the Eclipse?—A. I cannot tell, Sir.
 Q. How long after the Eclipse did Mrs. Pigot stay?
 A. I cannot tell indeed.
 Q. How long did she come before it?—A. Nor how long before she came.

Mr. Le Hunte.] My Lord, we now produce Mr. Sutton, who will shew your Lordship that Dennis Redmond in the Year 1718 told him, that he carried a Midwife to Dunmaine to deliver one there, who was called my Lady.

14. WILLIAM SUTTON, Esq.

Mr. Le Hunte.] Pray, Sir, do you know Dennis Redmond?
 Mr. Sutton.] I do, Sir.
 Q. When did you first know him?—A. I believe in the Year 1717.
 Q. Was he ever in the Service of you or your Mother?
 A. He lived in the House with us in the Year 1717.
 Q. Had you ever a Sister at that Time?—A. I had.
 Q. Had she any Occasion for a Midwife?—A. She had, Sir.
 Q. Was any body sent for a Midwife?—A. Dennis Redmond was sent.
 Q. Will you give an Account of what you remember of the bringing her by him to your Sister?
 A. I believe it was in February 1717 that I sent him to Ross for Mrs. Shiel; he went out pretty early in the Morning, so as I expected him home before Dinner, but he did not return till an Hour or two in the Night, which made me imagine he had Occasion to go further for her; and when he came home, I went to the Stable to look what Condition the Horse was in. When I came into the Stable, I found him taking care of the Horse, and asked him how he came to stay so late; he told me he could not get her to come away sooner; and upon examining the Horse, I took up the Saddle and Pillion; and found him very warm and wet; upon which, I asked him how that came? He said, he could not tell, unless that unhappy Woman had pissed upon the Pillion, for that she was fond of Drink, and had served him so once before.

Q. Upon what Occasion did he tell you he had been sent for her before?
 A. He told me he had brought her once from Ross to Dunmaine for a young Gentlewoman, as he called her, that was kept by my Lord Altham.
 Q. Go on, Sir.
 A. He named the young Gentlewoman's Name, but I will not take upon me to swear her Name; I do not remember now what he called her.
 Q. Who was it he said he brought the Midwife for?
 A. He said, he brought her for a young Gentlewoman kept by my Lord Altham.
 Q. Did he ever tell you that he fetched one for my Lady Altham?
 A. He never did.
 Q. What is the Character of Redmond, is he to be credited upon his Oath?
 A. Why, of late Years he is not reckoned a Man of Veracity in our Country.
 Q. Is he to be believed upon his Oath?
 A. I should take but very little Notice of his Oath now.

Cross-Examination.

Mr. Mac-Manus.] Why now?
 A. From his general bad Character in the Country.
 Q. How long has he had that general bad Character?
 A. He has not had a good one these several Years.
 Q. Do you know him to have perjured himself?
 A. I did not know him to have perjured himself in a Court of Justice.
 Mr. Edmund Malone.] We now produce Nicholas Croake, and he will shew that my Lady Altham stayed in Dunmaine in the Months of October and November 1714, that she went to Dublin in May following, and stayed in Dublin all the Year 1715.

15. NICHOLAS CROAKE.

Mr. Edmund Malone.] When did you first become acquainted with Lord and Lady Altham?
 Nicholas Croake.] The first time that I knew Lord Altham was in the Year 1711.

Q. And when with my Lady?—A. In the Year 1713.
 Q. Where did you live in the Year 1713?—A. At Ballycarrigmore.
 Q. How near is that to Dunmaine?
 A. I believe very near two small Miles the high Road, but to go a short Road it is much nearer.
 Q. You say in the Year 1713 you first knew my Lady, where was it you first saw her?
 A. In 1713, that was the first time that I saw her at Dunmaine, some time after she came there, in December 1713.
 Q. Do you know Rathimny Bogg in that Country?—A. Very well.
 Q. Do you know any thing particular that happened there?
 A. I do, very well.
 Q. Give an Account of what you know.
 A. In the Year 1714, his Lordship and Major John Sutton made a Hurling-match, to be hurl'd at the Green of Rathimny.
 Q. What time of the Year was that Hurling-match?
 A. It was hurl'd in September 1714, or the Beginning of October 1714; I cannot tell whether in October or the latter End of September.
 Q. Pray, Sir, how long after that, and when did you see Lady Altham at Dunmaine?
 A. I saw her that Day at the Hurling Green in her Chariot.
 Q. Was my Lord there?—A. He was on Horseback.
 Q. Pray, Sir, were you at any time and when at Wexford in the Year 1715?
 A. I was there at the Assizes in 1715, which happened upon Easter Week.

Q. I ask you, Sir, whether there were any and what Persons of Consequence there that you took notice of?
 A. Lord and Lady Altham were there.
 Q. Between the time of the Hurling-match and the time of the Assizes, did you visit them at Dunmaine?
 A. I was very often at Dunmaine in the Year 1714, when they lived there.
 Q. Were you ever there in November 1714?
 A. I was often there between the Hurling-match and Christmas 1714.
 Q. Were you there in November that Year?—A. I cannot tell that.
 Q. Did you see my Lord and Lady often between the Hurling-match and the Assizes?—A. I did, Sir.
 Q. When you saw my Lady at the Assizes, did you observe her to be with Child?
 A. I never did, by the Virtue of my Oath, nor never heard she was 'till this Affair.

Q. After the Assizes, can you recollect any Misfortune that happened in your Family?
 A. When I was at Wexford Assizes, my Father, being ill for several Months before, died; when I came home the 20th of April 1715, he was dead before I came home, and was buried that Friday that the great Eclipse happened, the 22d of April.

Q. Do you remember any Rejoicings at Dunmaine about the Time of the Eclipse, and on what Occasion?
 A. I cannot tell you on what Occasion, but on the 23d of April, being St. George's Day, that my Lord made a Merriment, it was on a Saturday, the Day after my Father's Burying.
 Q. Did my Lord Altham celebrate any Day, and what Day in the Year with Dancing and Merriment?
 A. That Day he did, the 23d of April 1715, and the 23d of April 1714 before.

Q. Did you see Lady Altham at the time you were there?
 A. I saw her there, indeed.
 Q. Was she present at the Diversion?—A. She was.
 Q. In what Condition did she appear, as to being with Child then?
 A. By the Virtue of my Oath, I never saw her appear as to say she was any way big, or with Child.
 Q. How soon after did they go from Dunmaine to Dublin?
 A. They went in May 1715 to Dublin.
 Q. Did you see them at any time after, and when?
 A. I saw them in August 1715.
 Q. Was that the August after the Assizes?
 A. It was in August 1715 that I saw them in Dublin.
 Q. Did you see them at any time that Year besides, and how soon after?
 A. I did see them in October 1715, and in February 1715 I seen them here; and in April 1716, the latter End of that Month I came to Town to my Lord, and staid till he went into the Country in May 1716.
 Q. Where was my Lady then?—A. I saw her at her Lodging.
 Q. Where?—A. At Mrs. Vies's in Essex-street.
 Q. Can you say when my Lord returned to Dunmaine?
 A. He went from Dublin to Dunmaine in May 1716.

Cross-Examination.

Mr. Mac Manus.] You say, you knew my Lord and Lady Altham at Dunmaine?—A. I did, Sir.
 Q. Pray, how often did you see them there?
 A. I cannot tell, but very often.
 Q. I think you said, that my Lady was not with Child when you saw her?

A. I did say so, and I never heard it 'till this Affair.
 Q. Might not she have been with Child and you not know it?
 A. I should have heard it in the House where I was so conversant.
 Q. Might not she have been with Child and you not know it?
 A. I never knew her to be with Child.
 Q. What sort of a Woman was Lady Altham?
 A. She was a clever proper Woman.
 Q. Was she tall?—A. She was tall.
 Q. May not a tall Woman be with Child and you not observe it, if she was young with Child?
 A. If she was, I never saw it nor heard it.
 Q. Did you ever hear that she miscarried?—A. I never did.
 Q. You say you were at the Assizes of Wexford?—A. I was.
 Q. Was you there in Easter Assizes 1716?
 A. In Easter Assizes 1715, I was there.
 Q. Were you there in Easter Assizes 1716, or any other Assizes?

A. I cannot tell but I might be at other Affizes, I do not remember which now.

Q. How came you to know you were there in 1715?

A. I gave you a Reason before, that my Father was ill when I went to the Affizes, and I found him dead when I came home.

Q. Was Mr. Colclough at that Affizes?—A. I believe he may be there.

Q. Would not you have seen him, if he had been there?

A. There may be several there, that I did not see.

Q. Name any Person you did see there.—A. I saw Lady Altham there.

Q. How came you to take more particular notice of her being there than of Mr. Colclough's?

A. Because I was much better acquainted with them than him; and I had very great Reason for it.

Q. Did you see her go into Court?—A. I did not.

Q. Was she in it to your Knowledge?—A. She was, as I was told.

Q. Were you in the Court during the Affizes?

A. I was in it sometimes, and I cannot tell well whether I was or not, but I believe I was.

Q. What coloured Cloaths had she on at Wexford then?—A. I cannot tell.

Q. Where was it you saw her at that Affizes?

A. At her Lodging at Captain Sweeney's, at Wexford.

Q. Where did he live?

A. In the Street as you go down towards the Gaol.

Q. How came you to see her there?

A. Because I came to his Lordship about some Business.

Q. Did you see her whenever you went to see my Lord at any other Time?—A. Perhaps I might, and perhaps not.

Q. Where was my Lord at Wexford when you saw him?

A. I saw him at Captain Sweeney's House.

Q. And where did you see my Lady?

A. She was coming out of the Room when I saw her.

Q. What sort of Cloaths did she wear then?

A. I cannot tell what sort of Cloaths, it is so long since.

Q. Pray, Sir, when did you hear of your Father's Death?

A. Not until I came home, in the Night.

Q. How long was you at home after he was buried?

A. I came home before he was buried, he died on Wednesday, and I came home that Night, and he was buried on Friday the twenty-second of April.

Q. How far do you live from Dunmaine?

A. About two Miles, or thereabouts.

Q. Was you at Dunmaine the twenty-third of April?

A. I was there the twenty-third of April, the Day after my Father was buried.

Mr. Mac Manus.] How many Days did you stay at the Affizes?

A. Two Days, Sir.

Q. Were you there the first Day of the Affizes?

The Witness is directed to go off the Table.

The Examination of the Witnesses for the Traverser ended at three o'Clock in the Morning.

Mr. Solicitor.] I mentioned to your Lordship some time ago, that if these Gentlemen offered any thing new, we would reserve a Liberty of replying, and encountering some Testimony that we expected on the other Side. It relates to the Transaction at Wexford, on which they lay great Weight; in answer to which, for the Satisfaction of the Jury, we shall beg leave to have two or three Witnesses produced.

Court.] Well, be it so. Who do you call?

Mr. Serjeant Tisdall.] We shall now call Mr. John Masterfon, the very Man that was tried at that Affizes.

Mr. Malone, Mr. Daly, &c.] Not one of the Witnesses said that he was tried, but that Walsh was.

Mr. Robins.] This is to shew whether Lady Altham was there or not.

1. Mr. JOHN MASTERFON.

Mr. Serjeant Tisdall.] Was you at the Affizes of Wexford in Spring 1715?—Mr. John Masterfon.] I was, Sir.

Q. Pray, Sir, was you arraigned there?—A. I was.

Q. Can you say whether there was any Lady at the Court-house the Day you were arraigned?

A. There were some Gentlemen there, but I know of no Lady.

Q. Did you take notice of any of them?

A. There were two Aunts of mine, and a Sister of mine, and two Cousin-Germans.

Q. Who were they? Name them.—A. My Aunt Swords, my Aunt Talbot, my Sister Colclough, and my Aunt Talbot's two Daughters.

Court.] Did you know Lady Altham then?—A. I did.

Q. Did you see her in the Court-house that Day?

A. I take it upon me, to the best of my Knowledge, to say, that I did not see her.

Q. Do you know Mrs. Anne Giffard?—A. I did know her formerly, but have not seen her since the last Time I seen her at Wexford.

Q. Did you see her in Court?

A. To the best of my Knowledge, she was not there.

Q. Was she in Wexford at that Affizes?

A. If she was, she was not in Court.

Q. How do you know?—A. Because I did not see her.

Q. And might not she be there for all that?

A. She might be in Disguise, may be.

Q. Would you know her now if you saw her?

A. I do not believe I would, for I live very remote from that Part of the Country, and have not seen her a long time.

Q. Might not she be there and you not see her?

A. Not, except she kept behind Backs.

Mr. Serjeant Tisdall.] Did you know Lady Altham before that Affizes?

A. I have seen her before at Ross at Captain Butler's, my Wife's Father-in-Law's.

Q. Were you acquainted with her Face?—A. I was.

Q. Did you, or did you not see her in the Court at the Affizes?

A. I did not see her, to the best of my Knowledge.

Mr. Daly.] Was Lord Altham there?—A. He was.

Mr. Serjeant Tisdall.] Was Caesar Colclough there?—A. He was.

Q. Whereabouts was he in the Court-house?

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A. I do not remember whereabouts he was.

Court.] This is improper; it is not regular, Mr. Serjeant. It is Evidence to the same Fact, your Evidence now must be only to discredit the Witnesses.

Mr. Serjeant Tisdall.] My Lord, it is a new Fact arisen upon their Testimony.

Q. Did you see Lady Altham there at any other Affizes?—A. I did.

Q. At what other Affizes?

A. I cannot tell which Affizes, but it was after that, and I have seen Mrs. Giffard with her, and it was not the Affizes I was tried.

Q. Are you sure it was not the Affizes 1715?—A. It was not.

Q. Were you tried at that Affizes?

A. I was arraigned, and tried then, and acquitted with Honour.

Q. Was Mr. Walsh tried at the same time?

A. He was not tried by the same Jury, nor the same Day.

Q. Pray, were you both at the same time in Court?—A. We were, Sir.

Mr. Recorder.] I ask you, Sir, were you under so little Concern, as that you reckoned all the Ladies in the Court?

Court.] You establish him as a Witness properly produced, if you cross-examine him.

Mr. John Masterfon.] There were more Women that I do not remember.

Mr. Serjeant Tisdall.] We beg leave to produce Mr. Colclough.

Jury to Mr. Masterfon.] What was the Day you were tried on?

A. I believe it was on Wednesday I was tried, to the best of my Memory, and I believe it was the twentieth of April.

Q. On what Day was Mr. Walsh tried?

A. Mr. Walsh was tried the Day before me.

Q. Did the Court sit the Day after you were tried?

A. I did not mind that, for I was drinking with my Friends and minding other Business, and did not mind that; I believe the Judges discharged the Country.

Q. Were you in Court when Walsh was tried?—A. I was.

Mr. Mac Manus.] Mr. Colclough has met with a very great Misfortune by the Death of a valuable Son, but for the Sake of publick Justice he will appear here.

2. CAESAR COLCLOUGH, Esq.

Mr. Serjeant Tisdall.] Were you at the Spring Affizes of Wexford in the Year 1715?

Mr. Caesar Colclough.] I was, Sir.

Q. Did you see Lady Altham or Mrs. Giffard there?

A. I did not that I know of.

Q. Were you in the Court-house when the Pretender's Men were tried?—A. I was.

Q. Pray, Sir, were Lady Altham and Mrs. Giffard there?

A. To the best of my Knowledge, they were not.

Q. Did you sit by them at those Trials?—A. I did not, Sir.

Q. Pray, Sir, did you hand either of them into Court?—A. I handed neither of them into Court, by the Virtue of my Oath.

Q. Did you attend the whole Trial?

A. I did, and was there before and after.

Q. You were acquainted with Mr. Pigot, I presume?—A. What Pigot?

Q. Counsellor Pigot, that was married to Mrs. Pigot of Tyntern.

A. Yes, he was married to my Relation.

Q. Can you say where he was in Spring 1715?

A. To the best of my Knowledge, he was then in England.

Q. Do you remember his breaking his Leg?—A. I do, Sir; I remember he broke it at Glengoele in the County of Tipperary.

Q. Pray, Sir, what Year was that?

A. In the Year 1716, to the best of my Knowledge.

Q. Did you go to the County of Tipperary to see him?

A. I was in Town here when he broke his Leg, and my Cousin Pigot wrote to me, she had a Jointure upon that Estate, and wrote to me that I should come—

Mr. Daly.] I must object to this Evidence Mr. Colclough is going into; those Letters, Sir, that you received from Mrs. Pigot are not Evidence.

Mr. Serjeant Tisdall.] Do you know Dennis Redmond?—A. I do.

Q. Pray, Sir, what Character does he bear; is he a Man to be credited upon Oath?

A. Upon my Word, I believe he is to be credited upon his Oath; if you will ask me for my Reasons, I will give them to you.

Q. What is his general Character?

A. He has as good a Character as any Man of his Abilities that I know of in the World; I have known him these twenty Years.

Q. Pray, Sir, do you know when Counsellor Pigot died?

A. I believe in the Year 1719, or thereabouts; he was buried in St. Paul's Church, the Time of his Death is on his Tomb there; I believe it was 1718 or 1719, or thereabouts, I am not certain.

Court.] Do you know whether Mrs. Pigot went to her Husband when he broke his Leg?

A. She did; and staid with him 'till he came to Dublin.

Q. Do you remember what Year it was?

A. It was in the Year 1716, as near as I can recollect.

Cross-Examination.

Mr. Recorder.] Can you swear that Lady Altham was not at the Affizes in the Year 1715?

A. I can, as positively as I can swear any thing in the World.

Q. Can you, that she was not at the Affizes?

A. I can, that she was not in the Court.

Q. Can you swear that she was not in the Town?

A. I cannot take upon me to swear that she was not in the Town.

Q. Can you swear that Mr. Pigot did not break his Leg in the Year 1715?—A. I can, to the best of my Memory.

Q. But can you positively swear that he did not break his Leg in the Year 1715?

A. I can swear that it was not in the Spring 1715, because I was at the Wexford Affizes, and my Cousin wrote to me to come to her.

Q. Where was she?—A. She was at Glengoele.

Q. At whose House there?

A. At one Hunt's, it was a thatched House.

Q. Do you remember Penslope Hunt, a Daughter there?

A. I cannot tell, I might see Women there, but did not take such Notice as to remember them.

Q. Do not you believe that Mr. Hunt's Family knew when Mr. Pigot broke his Leg? Was not it broke near them?

A. Upon my Word, Sir, I do not believe they knew better than I; because I was directed by my Cousin to come down, and I did; and I found her there, and Surgeons setting his Leg, and I am sure it was the Year 1716.

Q. Where was Mrs. Pigot in the Year 1715?

A. She was in the Winter 1714, I am positive that she was at Tynern, and she seldom left it till towards May, or thereabouts.

Q. Do you know James Walsh?—A. He did not live with her then.

Q. Did not he live with her in the Year 1715?

A. No, Sir, nor his Wife neither.

Q. Where did they live?

A. They lived in Town, or somewhere else, but not in our Family.

Q. Was not he an Attendant of the Family at that Time?

A. No, Sir, I believe he was then a Door-keeper to the Play-house.

Q. Upon your Oath, do you know that of your own Knowledge?

A. I do know it so far, as I had it from his own Mouth, upon my Oath, that he was a Door-keeper at the Play-house.

Q. How long before that was he in their Service?

A. He had not been in the Service before.

Q. Was not he in the Service at all?

A. He was afterwards, but he was not in the Service at the Time Mr. Pigot broke his Leg at all.

Jury.] Was Lord Altham at the Assizes of Wexford in 1715?

A. I do not recollect any Thing about him at all; I was told he was, but he was a Man taken very little Notice of.

Q. Do you know whether he was in Court or not at the Trial?

A. I do not know whether he was in the Court or not.

Mr. Recorder.] Do you remember where you were at the Time of the Eclipse?

A. I was in the County of Wexford; I was hunting on the Mountain of Forth at the very Instant of the Eclipse.

Q. Did you, or did you not see Lord Altham at Wexford Assizes?

A. I did not see him there, to the best of my Knowledge.

Q. Recollect, and say upon your Oath, whether you did or no?

A. I do not recollect, I cannot say I did not see him or that I did, upon my Oath.

Mr. Serjeant Tisdall.] We shall trouble your Lordship but with two Witnesses more, and them but to two short Points. The first relates to Edmond Bourke; we produce Mr. Bush to give an Account of that Man, and a Character of him too.

3. ARTHUR BUSH, Esq.

Mr. Solicitor.] Do you know Edmond Bourke?

Mr. Bush.] I do, him of Collombkill.

Q. Do you remember that he was a Postillion to any body?—A. I do not.

Q. What is he now?—A. He is a kind of a Farmer now.

Q. Had you any Discourse with him about the Affairs of the Anglesea Family?—A. I had a Discourse with him.

Q. Give an Account what that Discourse was.

A. A little after the Time that Mr. Annesley and Lord Anglesea were at Ross, examining Witnesses, this Bourke came to my House about some Business of a Justice of Peace, and after I had done what he came about, I asked him whether he was at Ross, and what was doing there? He told me there was a great deal of Company, and he said he gave some Evidence there. I then asked him on which Side he was a Witness; he told me, on the Earl's Side. What was it, says I, that you had to say? He swore that he was Servant to Lord Altham, when he lived at Dunmaine, and that there was a Kitchen Maid there that my Lord had got with Child, that she was under the Cook in the Kitchen, and that all the Family disliked her, because she took a great deal upon her for lying with my Lord. That one Day there was a Hare in the Kitchen to be dressed for Dinner, and the Cook took the Skin of the Hare off and threw it at her, and hit her upon the Back, and said, Damn you, for a Whore, if I can do nothing else, I will mark your Bastard. Some Time after, he said, she was brought-to-bed of a Son, and they were all desirous to see if it had that Mark, and they run to see it, and it had the Mark of the Hare's Skin upon the Back of it. I told him, this is a very material Thing, and I thought you were a cunninger Fellow than to be pinned down to swear such a Thing as that. Oh! says he, if they do not like that, I can say that my Son was that Day drowned, and that I was a Madman and did not know what I was doing. He swore further, that there was a Quarrel between my Lord and Lady Altham on Account of Tom Pollifer; and upon that, he said, they parted, and my Lord lived at a Place called Dunmaine, and she in Ross, and he went with a Compliment from my Lord to my Lady, with a How-do-you-do, and said, that he saw my Lord very fond of the Child; and, says he, I spoke to my Lord about it and said, How can you be so very fond of that Bastard? Why, says he, I got him, and I will take Care of him, I will get him to be a Captain of Horse.

Q. What Character has this Bourke?

A. He is of a very bad Character.

Q. Is he to be believed upon his Oath?

A. I will not believe him; nor no one that ever heard talk of him would believe him.

Q. How long have you known him?

A. I have known him these six-and-twenty Years, and I have known him under a bad Character during that Time.

Cross-Examination.

Mr. Recorder.] Had you any Discourse with this Man about a Child of Lady Altham's?

A. No indeed, he told me that she never had a Child.

Mr. Justice BLENNERHASSET.

Gentlemen of the Jury, The Traverser, Mary Heath, is indicted for Perjury, committed by her on her Examination in the Court of Exchequer, in a Cause wherein Campbell Craig, Lessee of James Annesley, was Plaintiff, and the Earl of Anglesea, Defendant. The several Assignments of Perjury in the Indictment are as follow:

First, It is laid in the Indictment, that she swore on that Trial that Lady Altham never had a Child, while she, the Traverser, lived with her.

Secondly, That Lady Altham never had a Child at Dunmaine in the County of Wexford.

The third is, That there never was a Child as a Child of Lord Altham's and Mary his Lady christened or living at Dunmaine House, while she, the Traverser, was there.

The fourth, That she never saw a Child in the Hands or Care of Joan Laffan while she was at Dunmaine.

And the fifth is this, That Lady Altham did not miscarry of a Child at Dunmaine.

The Indictment, Gentlemen, averreth the contrary of all these Facts, sworn by the Traverser, to be true, and that she has been guilty of malicious, wilful and corrupt Perjury. There have been many Witnesses produced by the Prosecutor in Support of this Indictment, and many in Support of the Traverser; and it has been admitted, that there was a Verdict in that Cause tried in the Exchequer, and that Verdict was given on the Side of the Party, who was to gain by having the Traverser's Testimony discredited: And it is also admitted, that those several Facts above-mentioned were sworn by the Traverser on that Trial in Exchequer. It is likewise admitted by both Sides, that the Traverser lived with Lady Altham from the Month of October 1713, the Time of her first coming into this Kingdom, till the Year 1729, when Lady Altham died. All these are admitted, to shorten the Time.

[The first Witness examined by the Prosecutor was Mrs. Henrietta Cole, whose Testimony related to the Miscarriage of Lady Altham.

She swears, that Lady Altham came over in 1713. That Lord and

Lady Altham lived at Dunmaine. That they, and Mrs. Cole, and

her Mother, were at Dinner at Dunmaine. That there were Sawcers

of indecent Images brought to Table, which were broke by my Lord,

whereby my Lady Altham received a Fright, and that Mrs. Heath came

and alarmed her Mother that Night with the Indisposition of Lady

Altham; and that Mrs. Cole was in Bed with her Mother, when Mrs.

Heath desired her Mother to make haste, and rise, for that Lady

Altham was extremely ill. And the Witnesses said, she believed, that

Lady Altham miscarried, for that she saw the Abortion in Lady Altham's

Closet; she first said, that the Abortion was shewed to her by her Mother,

and did not remember any particular Conversation about a Miscarriage,

with Lady Altham; that Lady Altham was confined to her Chamber a

Fortnight, and that she mentioned this Affair to Mr. Mont's Family.

This is the Substance of her direct Testimony. But she is not quite

so consistent when cross-examined.

You observe, Gentlemen, that Mrs. Cole says, that Lord and Lady

Altham went from her Father, to lodge at another Lodging, and that

from thence they went to Dunmaine. In this Point, the Witnesses for

the Traverser stand in Contradiction to her; for they swear, that Lord

and Lady Altham went directly from Mrs. Cole's Father's House to

Dunmaine. Mrs. Setwright, who was hired to be the Housekeeper, is

particular in her Testimony herein, that Lord and Lady Altham went

from Mrs. Bristow's, and not from Vice's, to Dunmaine. Mrs. Cole said,

that Setwright was brought-to-bed in Dunmaine. Setwright and she

agree in this Part of the Evidence.

Mrs. Cole said, she was examined in the Court of Exchequer, and

there declared, that she and her Mother went down to Dunmaine,

from Dublin, in March or April, in the Spring immediately following

Lady Altham's coming over to this Kingdom. But now she corrects

herself, and says, she then mistook the Time, for that it was in Fe-

bruary she and her Mother went to Dunmaine. She says, the Accident

of China Sawcers happened two Months after going to Dunmaine, and

that four Gentlemen and her Mother and she dined with Lord and Lady

Altham that Day, and were present at that Accident: She does not

mention who they are, but conceals their Names. In her Testimony,

she describes the Room. She tells you, Gentlemen, that Lord Altham

emptied the Sawcers very carefully from the Sweetmeats, and threw

them down, one by one. She swears, that Lord Altham knew his Lady

was with Child. She says, that she believes that she swore, that she

was about 13 Years old, at the Time of the former Trial; but now

she says she was born in the Year 1691, so that she must be then about 23

Years old, and differs now 10 Years from the Account she gave of her

Age on her former Examination. She tells you now, that one might

observe the large Eyes and Head of the Abortion. She admits to have

said, on the former Trial, that her Mother told her it was an Abor-

tion; but now she says, that her Mother and she went into the Closet

together. She said on the former Trial, that Lady Altham sat next to

her at Table, but now she says that Lord Altham sat next to her; and

excuses herself from these Mistakes, that they all arose from the Con-

fusion she was in at the Time of her Examination.

She now will not be positive that Lady Altham went to Vice's

before she went to Dunmaine, but is positive she went to other Lodg-

ings. Says, she does not remember the Housemaid at Dunmaine, nor

Bourke the Postillion. She tells you, she paid a Visit to Mr. Boyd's.

She was asked if she knew Anthony Dyer, one of the Servants; She said

she did not. She was asked if she was at Dunmaine on St. George's-day;

she said she believed she was. She was asked if she remembered any

Smock-Race to be at Dunmaine that Day; she said she did not remem-

ber of any Smock-Race. She denies she ever had any Discourse with

Mr. Mark White, that she could swear for Lord Anglesea, if her Lease

was renewed. She said she did not know of any Fire, or Candle, be-

ing in the Room when Mrs. Heath came to alarm her Mother of Lady

Altham's being ill; but the Manner of her knowing Mrs. Heath was,

by her Voice.

The next Witness in behalf of the Prosecutor was Dr. Fennell. He

swore that he was Physician to Lord Altham several Years. He swears,

That Lord Altham came to his Lodging to acquaint him of the Indi-

position of his Lady, and that he went along with my Lord to see her, and

found her very warm, and prescribed for her; but that afterwards he

discovered by her all the Symptoms of Pregnancy, and that she told

him she was gone three Months with Child. She said she was regu-

lar 'till about two Months past, and thereupon he ordered her medi-

Medicine.

"Medicines: He further said, he believed, that Lady Altham was with Child, and that her Complexion was altered, as pregnant Women are. He was asked on the Cross-Examination, whether there was any infallible Rule to know a real from a false Conception. He said, the Colleges of Physicians of *Dublin*, or *London*, or the Royal Society in *London*, could not as yet determine that Point.

"*Hellen Moncrieff* was the next Evidence. She swore, that Doctor *Walker* recommended her as a Nurse to Lady Altham. That she met him in *Stafford-street* the Beginning of *November* or *December* 1714. That she was three times at my Lady's Lodgings, that she appeared as big with Child as any Woman that had been gone six or seven Months, that she laid her Hands on her Belly near her Petticoat; though she was not quite so critical as the Doctor was in his Profession, yet she seemed to know more of Lady Altham's Pregnancy than the Physician knew. When she was cross-examined, she said, she did not observe any Child to move in her Belly.

"Mrs. *Bush* was next examined. She said, she was acquainted with Lady Altham, and saw her at *New Ross* in *February* 1714; and that she seemed then to be with Child; and that she was in Mourning for Queen *Anne*. That she was introduced to her there, and in a Day or two paid her a Visit. She says that she saw her after the latter End of *June*, to the best of her Recollection, without her big Belly. There was nothing certain in her Testimony, and nothing material arose from her Cross-Examination; therefore, Gentlemen, I will not trouble you therewith.

"*Alice Betts* swore, that she wished Lady Altham Joy, and in *November* 1714, and after, had some Conversation with Mrs. *Heath*; and that she used to joke with her about Lady Altham's being with Child. She said, that Lady Altham appeared with Child, and that it was easy to be seen that she was with Child; that it was before or after *Christmas*.

"*Mary Sutton* swore, that she dined at *Dunmaine*, and tasted the Boy in the Box.

"As to *Evan Thomas*, and *Martha Tenant*, their Testimony was not very material. You have it, Gentlemen, in your Notes.

"*Anstace Toole* said, she fitted a Gown on Lady Altham, and that Mrs. *Heath* was present. That she saw the Child at *Ross*, and made a Gown for the Child, and said that she never had any Conversation with Lady Altham about the Child.

"*Anne Bennett* said, she believed in her Heart, Lady Altham was with Child, and that Lady Altham looked very round.

"*Edward Hewlett* was the next Witness, who was examined after *Bennett*. You have seen, Gentlemen, the mean Figure and Appearance he made. He swore he sold Clouts to Mrs. *Heath*, for Lady Altham's Lying-in. That on the Day of Separation of Lord and Lady Altham, her Ladyship kissed the Child in the Coach at parting. He said that this happened about ten or eleven o'Clock in the Morning. But here, Gentlemen, I must take notice, that all the other Witnesses say it was in the Afternoon Lady Altham went from *Dunmaine*, the Day of the Separation; and herein contradict *Hewlett*.

"It is of no Purpose to mention all the Cross-Examinations, therefore I shall not repeat them to you.

"*Newton Rickets* said, that he made a small Chair for a Child, but did not swear, that Lord and Lady Altham called him their Child, but that they behaved to him as such. I shall likewise not trouble you with his Cross-Examination.

"*Elizabeth Dyle* swore, that her Mother fell ill of a Fever, which prevented her nursing the Child. On her Cross-examination she said, that *Madam Cole* desired her to go to *Dunmaine* last Summer to give an Account of what she could say, and that she was not at *Dunmaine* for twelve Years before.

"*James Sinnot* swears, that he saw Lord and Lady Altham at his Father's House, and observed that Lady Altham was with Child, and that the Child was afterwards at *Dunmaine*, and that Lord Altham had ordered the Child to be brought to Table to be shewn to the Witnesses and Mr. *Ivory*, as his Son and Heir. This Piece of Evidence is somewhat extraordinary, that Lord Altham should call his Son and Heir to be shewn to him, and that he never saw the Child but once.

"*James Fitzpatrick* says, that he saw a Child in the Arms of a clean, orderly Woman, and that he took it to be Lord Altham's legitimate Child; and the only Reason he gave for it was, that he believed Lord Altham had that Regard for him that he would not introduce his illegitimate Child to him, and that, to the best of his Memory, he saw the Child once before the Separation. But I must observe to you, Gentlemen, that no Witness of Figure has been produced to satisfy you that Lady Altham miscarried, or was brought-to-bed.

"You have given great Attention, Gentlemen, to the Evidences of both Parties, and you have them on your Memory, therefore in regard it is so late, at this Time I shall not trouble you farther with a Repetition of them."

Gentlemen, I see you are all greatly fatigued; I do not wonder at it, for I think we have sat here without Refreshment for near twenty-two Hours. You have heard the Evidence on both Sides, and seen the Witnesses, so that it will be unnecessary to take up more of your Time. I shall only observe to you, that the Crime the Traverser stands charged with is a Crime of a high Nature; the Consequence of a Conviction is no less than to make her perpetually infamous, never to be believed after in a Court of Justice; and therefore it is that Men of Honour will see, that Evidence is clear and demonstrative, before they will lay such an Imputation by their Verdict on any body: You will, for this Reason, weigh the Testimony on both Sides, and compare the Credit of the Witnesses; and if, on the whole, you shall believe that the Balance goes on behalf of the Crown, you will then find the Traverser guilty; if, on the other Hand, the Testimony in favour of the Traverser outweighs the Crown Evidence, or is equal with Respect to Credit, even in that Case Juries rather incline to Mercy than otherwise; so that, Gentlemen, you'll go together, and I'll wait for you till you please to return with your Verdict.

Lord Chief-Justice MARLAY.

Gentlemen,
My Brother has summed up and observed upon the Evidence, so far as he has gone, as clearly and distinctly as possible.

There have been Twenty-five examined on behalf of the Prosecutor, besides three new ones produced on the Reply, and no less than fifteen on the Part of the Traverser. To repeat every thing they have said would be endless, and almost impossible, considering the Time already taken up in this extraordinary Trial.

I shall only observe to you, that in a criminal Case of this Nature, the Testimony to convict any Person of so great and infamous an Offence, ought to be so full, clear and consistent, that there can be no Room to doubt the Truth of what it is offered to prove.

Whether what you have heard on behalf of the Prosecutor, be such of itself, considered without Regard to what has been given in Evidence for the Traverser, you are the proper Judges.

Though there are many Witnesses for the Crown, there are few material ones; and it has been observed to you already, that the bare Declarations of my Lord or Lady Altham are not Evidence in this Case.

The first Witness produced, Mrs. *Cole*, is a material Witness; my Brother has fully repeated her Testimony; I shall not add to his Observations; she swears to the Miscarriage, and there is no other Witness brought to support her Testimony, though two contradict her.

The eleventh, *Edmond Hewlett*, a Pedlar, is in some measure a material Witness; he swears that the Child was owned by Lady Altham before Mrs. *Heath*, and a Ribband bought for it by my Lady, and put on the Child by the Traverser, and Diaper bought for it for Clouts, before it was born, by the Traverser. You have seen and heard him, and are the best Judges how far he is to be credited.

James Fitzpatrick, the fifteenth, swears, though not so fully, to the same Purpose, the publick owning of the Child; and to this Purpose are those who are produced to prove the Enquiry for a Nurse, and the Child's being carried about by my Lord and Lady Altham.

Eleanor Murphy, the eighteenth, and *Mary Doyle*, the nineteenth Witnesses, are both material, and swear positively, that they were present at the Birth of the Child; and *Dennis Redmond*, the seventeenth, produced, swears almost as fully to the same Purpose, though he does not swear himself an Eye-witness of the Birth.

Joan Laffan, the last produced by the Prosecutor, is a very positive and material Witness, if you credit her; she dry-nursed the Child in the House with my Lord, and she says, with my Lady too, where the Traverser saw him every Day. As to all the others, they are only Evidences as to their Belief and Opinion, merely conjectural.

Doctor *Fennat*, the Person of most Skill, told you, that neither he, nor the College of Physicians here; nor that in *London*, assisted by the Royal Society, can distinguish between a false Conception and a real Pregnancy.

I said the other Witnesses were only to their Belief and Opinion; I must except *Thomas Higginson*, who would have been a material Evidence, if his Memory did not fail him.

Now, Gentlemen, if you believe *Eleanor Murphy*, *Mary Doyle*, *Dennis Redmond*, and *Joan Laffan*, you have sufficient Evidence to convict the Traverser, Mrs. *Heath*; but if you should not think them Persons of Credit, you have not sufficient positive Evidence on which you can ground such a Verdict.

Three of these Witnesses, *Murphy*, *Doyle*, and *Redmond*, swear to my Lady Altham's being delivered of a Son, and swear it very positively.

But if they swear truly, this Child was born at *Dunmaine*, and very near *Easter*, in the latter End of *April*, or Beginning of *May* 1715; and christened at *Dunmaine* by Mr. *Lloyd*, a Clergyman of the Church of *England*, three, or four, or five Weeks after its Birth, and had for God-fathers and Godmother, Mr. *Cliffe*, Mr. *Anthony Colclough*, and Mrs. *Pigot* of *Tyntern*, who were all present.

If there was no Child of my Lady Altham's born at the Place and Time they positively swear to, nor christened there, they are, I mean all these three Witnesses, directly perjured.

Now, if my Lady Altham was at *Wexford* Assizes at that time, she could not be delivered of a Child at *Dunmaine*. If Mr. *Cliffe* and Mrs. *Pigot* were, one in *Dublin*, and the other in the County of *Tipperary*, from the latter End of *April* till six Weeks after *Easter*, they could not possibly stand in Person as Godfathers to a Child of my Lady Altham's, christened at *Dunmaine* in three, or four, or five Weeks after it was born.

Observe, Gentlemen, that it appears by the Almanack, that *Easter* Day in the Year 1715, fell on the 17th of *April*; the great Eclipse of the Sun happened on the 22d of *April*; King *George* the First's Birthday, the 28th of *May*, was on a *Saturday*. On that Birth-day my Lady Altham was in *Dublin*. The Spring Assizes of *Wexford* began on *Easter*-Eve that Year. My Lady Altham is sworn to have been there.

Now, as to my Lady Altham's being or not being at the Spring Assizes of *Wexford* in 1715, if the Matter should stand doubtful; because, tho' three Witnesses of Credit have sworn she was, yet Mr. *Masterison* and Mr. *Cesar Colclough* swear they did not see her there; yet it is impossible that Mrs. *Pigot* and Mr. *Cliffe* could be at a Christening at *Dunmaine*, when they were at many Miles Distance at the time that Christening was, if there were ever any such Thing.

Mr. *Cliffe* is proved by the Records of the Court of Exchequer to have been in *Dublin*.

And Mrs. *Pigot*, by a Witness, (who, if she swears the Truth, cannot be mistaken) to have been at Mr. *Hunt*'s in the County of *Tipperary*.

I must observe to you, that Mr. *Arthur Bush*, the third and last Witness produced by the Prosecutors on their Reply, swears only to discredit *Edmond Bourke* the Postillion, a Witness on behalf of the Traverser.

If you believe the Traverser's Witnesses, particularly Mrs. *Giffard*, *Mary Setwright*, and *Sarah Weedon*, my Lady never was brought-to-bed at *Dunmaine*; and consequently *Joan Laffan*, who swears that she had this Child put into her Hands by my Lord and Lady Altham, and that she dry-nursed it at *Dunmaine*, and all the rest of the positive Witnesses for the Prosecutor, are not in the least to be credited.

You, Gentlemen, are Judges of the Fact; 'tis your Business to weigh the Testimony on both Sides, and, as you find one or other deserve Credit, to find the Prisoner Guilty, or acquit her.

At Half-an-hour after four o'Clock the Jury left the Box, and after twenty Minutes Stay, returned with their Verdict for the Traverser, Not Guilty.

XXVIII. The Trial of WILLIAM CHETWYND, Esq. for the Murder of Mr. THOMAS RICKETTS, before the Right Honourable Robert Willmot, Esq. Lord Mayor of the City of London, the Right Honourable the Lord Chief Justice Lee, the Honourable Mr. Baron Reynolds, Mr. Serjeant Urlin Recorder, and others his Majesty's Justices of Oyer and Terminer for the City of London, and Justices of Gaol Delivery of Newgate, holden at the Old-Bailey for the said City and County of Middlesex, the 12, 13, 14 and 17 of October 1743.

Counsel for the Crown.

Mr. Serjeant Wynne.
Mr. Moreton, afterwards Recorder of London.
Mr. Erskine.
Mr. Purcas.

WILLIAM CHETWYND was indicted at Common Law for the Murder of Thomas Ricketts.

He was likewise indicted on the Statute of Stabbing by the Name of William Chetwynd, of the Parish of St. Ann, Westminster, in the County of Middlesex, Gent. for that he not having God before his Eyes, &c. on the 26th Day of September, in the 17th Year of his Majesty's Reign, with Force and Arms, in the said Parish, and the said County, in and upon Thomas Ricketts, in the Peace of God, and our Lord the King, then and there being, feloniously did make an Assault; and with a certain Knife made of Iron and Steel, of the Value of Six-pence, which he, the said William Chetwynd, then and there had, and held in his left Hand; him, the said Thomas Ricketts, in and upon the right Side of the Belly of him the said Thomas, below the Navel of him the said Thomas, then and there feloniously, and in the Fury of his Mind did strike and stab (he the said Thomas Ricketts then and there not having any Weapon drawn, nor the said Thomas Ricketts then and there having first stricken the said William Chetwynd), and that the said William Chetwynd, with the Knife aforesaid, did then and there give to the said Thomas Ricketts in and upon the right Side of the Belly of him, the said Thomas, below the Navel of him, the said Thomas, one mortal Wound, of the Breadth of half an Inch, and of the Depth of three Inches, of which mortal Wound the said Thomas, at the Parish aforesaid, and County aforesaid, from the said 26th Day of September until the 29th of the said Month of September, did languish, and languishing did live; upon which said 29th Day of September, the aforesaid Thomas Ricketts, in the said Parish, and the said County, of the said mortal Wound did die; and so the Jurors aforesaid do say, that the aforesaid William Chetwynd the aforesaid Thomas Ricketts feloniously, and in the Fury of his Mind, did kill and slay, against the Peace of our Lord the King, his Crown and Dignity.

He was a third Time indicted on the Coroner's Inquisition, for feloniously slaying the said Thomas Ricketts.

Middlesex Jury.

Allen Evans.	Benjamin Ingram.	John Archambo.
Samuel Bowler.	Jacob Lebat.	Benjamin Tickner.
Charles Carleton.	Jonathan Alderton.	John Holmes.
Francis How.	Peter Archambo.	Thomas Hogg.

The Counsel for the Prisoner desired, that as the Prisoner had the Misfortune to be extremely deaf, he might have the Liberty of standing at the Inner Bar; which the Court readily granted.

The Counsel for the Prosecution having opened the several Indictments, and set forth the Circumstances relating to the Fact, they proceeded to examine their Witnesses.

Master WILLIAM HAMILTON sworn.

Counsel. I think you are one of the young Gentlemen who boarded at Mr. Clare's Academy in Soho-Square?—A. Hamilton. Yes, I am.

Q. Was you boarded there last September?—A. Yes.

Q. Was the Prisoner at the Bar at board there then?—A. Yes.

Q. Do you remember one Mr. Thomas Ricketts being there?

A. Yes, I was present when the Prisoner and Mr. Ricketts were together in the Room.

Q. What Time was it?—A. It was on the 26th of September.

Q. Who was in the Room when you went in?

A. There was one Samuel Malcher, Thomas Ricketts, and Mr. Chetwynd; they were the only Persons in the Room.

Q. What was the Conversation turning upon? What were they talking about, when you came into the Room?

A. Mr. Chetwynd had got some Cake, and Mr. Thomas Ricketts desired Mr. Chetwynd to give him a Piece of his Cake; Chetwynd denied it him; I asked him for a Piece, and he likewise denied it me.

Q. What happened then?

A. Hannah Humphreys came into the Room about that Time. Mr. Chetwynd took the Cake, and cut a Piece off, and laid the Piece upon the Bureau, and locked the other up; with that Mr. Ricketts came and took the Piece of Cake off the Bureau; Mr. Chetwynd asked him for it; and Mr. Ricketts laughing, went up to the Maid, and told her, he had taken a Piece of Mr. Chetwynd's Cake; with that, Mr. Chetwynd came up to him, and demanded it of him again.

Q. Did Mr. Ricketts deliver it to him again?—A. No.

Q. Did Mr. Ricketts refuse to deliver it?

A. Mr. Ricketts did not refuse to deliver it.

Q. What Answer did Mr. Ricketts give Mr. Chetwynd, when he asked him for the Cake again?

A. He gave him no Answer, but continued laughing.

Q. You mean he was laughing with you, not laughing at the Prisoner.

Counsel for the Prisoner.

Mr. (afterwards Sir Richard) Lloyd.
Mr. (afterwards Mr. Baron) Legge.
Mr. Hume Campbell.
Mr. Hatfell.
Mr. Stracey, afterwards Recorder of London.

Prisoner's Counsel. That is nice indeed!

Prosecutor's Counsel. What happened next after this?

Hamilton. After Mr. Chetwynd demanded the Cake, and Mr. Ricketts giving him no Answer, he struck him immediately with the Knife, which he had in his Hand.

Q. Was it back-handed?—A. It was back-handed.

Fury. I desire he may speak a little louder; Was Ricketts behind him when he struck him with the Knife?

A. Mr. Ricketts's Side was to Mr. Chetwynd's. He was standing by his Side.

Q. How near were you to them?—A. Not very near.

Q. Where did you stand?—A. I stood a little Way before them.

Q. Where was this Blow given?

A. Just here about upon the Side (pointing to the right Side of the Belly).

Q. Did you see him pull the Knife out?

A. I did not see him pull it out.

Q. How do you know it was a Knife that he struck him with?

A. Because it was the same Knife that he cut the Cake with.

Q. What followed upon that?

A. Mr. Ricketts cried out he was afraid he was stabbed.

Q. Did Mr. Ricketts fall down?

A. No; he laid his Hand upon his Side, and said he was stabbed.

Q. What Sort of a Room is it?—A. It is a pretty large Room.

Q. What Part of the Room did the Scrutoire stand in?

A. It stood in the Corner of the Room by the Window; the Window and the Scrutoire were on the same Side.

Q. What Kind of a Knife was this?

A. It was a Sort of a French Knife.

Q. Was it a Penknife? or what Knife was it?

A. It was a pretty large Knife.

Q. Was it a Clasp Knife?—A. Yes.

Q. Did you see Chetwynd cut the Piece of Cake?—A. No.

Court. Did you see the Deceased take it away?—A. Yes.

Q. Did Chetwynd see him take it away?—A. I cannot tell that.

The Counsel for the Prosecution having done with this Witness, he was examined on behalf of the Prisoner.

Prisoner's Counsel. Mr. Hamilton, if I understand you right, the Deceased and you asked Mr. Chetwynd for a Piece of Cake, and Chetwynd refused it?—Hamilton. Yes.

Q. So he was not willing to give either of you any?—A. No, he was not.

Q. I think you said Mr. Chetwynd took the Knife out of his Pocket?

A. I said he cut a Piece of Cake; I did not say he took the Knife out of his Pocket.

Q. I think it was a Cake that they call a Simnel; was it not?

A. Yes, it was.

Q. I think they are very hard, with a Crust on the Outside, and difficult to be cut?—A. It was pretty hard.

Q. Then that may possibly require more Strength than he had in one Hand, to cut it; he cut it down did not he?

A. I did not see him cut it.

Q. You said he took his Knife and cut it?

A. Yes he did cut it.

Q. Then tell me whether or no (I am sure I will do fairly, God forbid that I should do otherwise) Mr. Chetwynd did not refuse to give any of the Cake to Mr. Ricketts?

A. Yes, he did refuse it.

Q. Who did he cut the Cake for? was it not for himself?

A. I believe it was.

Q. Then he did not cut it for any body else; I think you said, he laughingly told the Maid he had got it?—A. Yes.

Q. And upon that Mr. Chetwynd demanded it from him again, and he laughed, but did not deliver it?

A. He made him no Answer, but did not deliver it.

Q. Did he ask him to give it him again before this unhappy Accident happened?—A. Yes, he did.

Q. Pray tell me whether he did not besides his Laughing, endeavour to keep the Cake from him?—A. I did not observe that.

Q. Please to tell me, whether, as you were School-fellows together, you were not all good Friends?—A. Yes, we were.

Q. Which of the two was biggest?

A. Ricketts was larger than Chetwynd.

Q. I am obliged to the Gentlemen on the other Side, for intimating that Mr. Chetwynd gave Mr. Ricketts a Piece of Cake before; I would ask you whether Mr. Chetwynd did not give Mr. Ricketts a Piece that Morning?

A. I heard he did.

Q. How long was that before this Thing happened?

A. I do not know how long it was. This happened about one o'Clock.
Q. When this unfortunate thing happened, what did Mr. Chetwynd say immediately upon it?—*A.* Really, I do not know.

Q. I think, Sir, you were telling the Court of a French Knife; I own I do not know what they are; but the Question I would ask you, is, Whether most of you young Gentlemen do not carry these Knives in your Pockets?
A. I have heard so; it was a Knife that he always had.

Q. And I suppose many of you had such Knives?
A. I cannot tell, as to that, Sir.

Q. I am obliged to you for the Candour you have used in your Evidence; I have no more Questions to ask you.

Court. Can you recollect, how these young Gentlemen lived together, whether there was any Ill-will between them, or whether they lived in a friendly Manner?

Hamilton. I think they lived as the other Scholars did.

Court. Do you apprehend there was any Malice between them?

Hamilton. I never knew of any Malice between them.

Court. How did the young Gentleman behave after he had given that Wound?—*Hamilton.* I did not see him afterwards.

Master SAMUEL MALCHER sworn.

Court. How old are you?—*Malcher.* I am thirteen next January.

The Court asked *Malcher* what he thought would become of him, if he did not speak the Truth? To which he replied, he should be unhappy everlastingly.

Court. Were you present at this unhappy Affair?—*Malcher.* Yes.

Counsel. Then give us an Account of what you heard, and what you saw.

A. Mr. Ricketts asked Mr. Chetwynd for a Piece of his Cake, and Mr. Chetwynd gave him a Piece; he asked him for another Piece, and he refused it him.

Q. How long was that after he had given him the first Piece?

A. It was about a Quarter of an Hour; and after he had refused it him, he went out of the Room, with the Cake under his Arm, and then came into the Room again.

Q. What Room was it?

A. It was the Room where Mr. Chetwynd lay.

Q. What Room did he go into, when he went out of his own Room, after his refusing him the Cake?

A. He did not go into any Room; he only went out of the Room to the Head of the Stair-case, and then came in again.

Q. Did he open the Bureau then, or was it open before?

A. I cannot justly recollect that.

Q. You say he had the Cake with him?—*A.* Yes.

Q. What did he cut it upon?—*A.* He cut it upon the Bureau.

Q. You say he cut a Piece, what did he do with it?

A. He laid it down upon the Bureau, and Ricketts came and took it—snatched it away.

Q. Did Chetwynd see him take it away?

A. I cannot tell whether he did or no.

Court. How did Chetwynd stand?—*Malcher.* He had his Back to Ricketts.

Court. Where did the Cake lie?

Malcher. The Cake was before Chetwynd, and Ricketts put his Hand beside him, and took it away, and then he went to the Window.

Counsel. Where did he carry it?

Malcher. He went to the second Window with it.

Q. How far was that from the Bureau?—*A.* I believe about a Yard.

Q. What did he do after that?—*A.* Mr. Chetwynd came and stabbed him.

Q. In how long Time was that after he took the Cake?

A. I believe it was a Minute.

Q. Was it so long as a Minute?—*A.* I do not know whether it was quite so long as a Minute, or not, it was but a very little Time.

Q. Did Chetwynd ask for his Cake?—*A.* I was not near enough to hear it; I was at my Box, at the other End of the Room.

Q. Is it a small Room?—*A.* It is not a very large Room.

Q. What happened after that?

A. Mr. Ricketts told the Maid he was stabbed, and then he went down Stairs.

Q. Was Hannah Humphreys in the Room?—*A.* Yes.

Q. What did she say?—*A.* She said, he was stabbed.

Q. What was said or done afterwards?—*A.* Really I do not know.

Q. Had Ricketts any thing in his Hand?—*A.* He had nothing in his Hand that I saw; nor said any thing to provoke him, as I heard.

[Cross-Examination by the Prisoner's Counsel.]

Counsel. You was present at the Beginning of this Transaction, was you not?—*Malcher.* Yes.

Q. Was you present before Mr. Hamilton came up?—*A.* Yes, Sir.

Q. When Mr. Ricketts had the Piece of Cake given him, that was before Mr. Hamilton came up, was it not?

A. Mr. Hamilton did not see him give it him.

Q. They were good Friends before this, were they not?

A. I think so, they used to be so.

Q. When Ricketts asked him for the second Piece of Cake, was not he teasing of him?

A. No, he teased him about the first; and then he went out of the Room, and Ricketts followed him.

Q. You say, Mr. Chetwynd carried the Cake under his Arm out of the Room, and Ricketts followed him; and then Chetwynd came into the Room again, and Ricketts followed him still, did not he?—*A.* Yes.

Q. Then he came to his Bureau, Ricketts following of him still?

A. Yes; and then I saw Mr. Ricketts take the Piece of Cake up, which Mr. Chetwynd had laid upon his Bureau.

Q. Then Mr. Chetwynd turned about to ask for his Cake again?

A. I did not hear him ask for it.

Q. He went after him, did not he?—*A.* Yes.

Q. Was it not for his Cake?—*A.* I cannot tell.

Q. Did Ricketts shove him?—*A.* Not that I saw.

Q. When Ricketts took the Cake from Chetwynd, had Chetwynd his Back towards him?—*A.* Yes.

Q. Did Ricketts reach over his Shoulder, or take it under his Arm?

A. He went under his Arm, and took the Cake.

Q. Did he touch him?—*A.* I cannot tell that.

Q. You say immediately upon that he went to the Window, how far was that from the Bureau?—*A.* About a Yard or two.

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Q. Pray, now, when Chetwynd went to cut the Cake (you were there all the while); did Ricketts offer to assist him in it, did he offer to lend him a Knife?—*A.* Yes, he did, and had it open.

Q. What did Chetwynd say then?

A. Chetwynd said, he had a Knife of his own.

Q. Pray, had Ricketts a Knife in his Hand?

A. Yes, he had a Knife, and offered to lend it Mr. Chetwynd.

Prosecutor's Counsel. I should be glad to know whether he did not put that Knife into his Pocket again?—*Malcher.* I do not know that he did.

Q. Here is a Question misunderstood I believe; did the Knife that you speak of belong to Mr. Chetwynd; or to Mr. Ricketts?

A. The Knife belonged to Mr. Ricketts.

Prisoner's Counsel. That is a fair Answer to the Question.

Court. Ricketts's Knife was opened before Chetwynd's; were both the Knives open at the Time this unhappy Accident happened?

Malcher. Mr. Chetwynd's Knife was not opened when Mr. Ricketts offered him his Knife; but he refused it, and said he had one of his own.

Court. Was Ricketts's Knife open then?—*Malcher.* Yes.

Court. Were they both open when the Accident happened?

Malcher. No, Ricketts's was clasped, and put into his Pocket; on Mr. Chetwynd's refusing it, and before the Cake was cut and put upon the Bureau.

Court. Then you saw him clasp his Knife when Chetwynd refused it, and put it into his Pocket?—*Malcher.* Yes.

Court. And this was before this Wound was given?—*Malcher.* Yes.

Prosecutor's Counsel. Was it before the Cake was cut and laid upon the Bureau?—*Malcher.* Yes, it was.

HANNAH HUMPHREYS sworn.

Counsel. Pray give us an Account what you know of this unhappy Affair.

Humphreys. The young Gentlemen were in the Dining-room, and I was in the next Room; I heard a Noise, upon which I went into the Dining-room and asked them what they did there, and what was the matter they were not in their own Rooms; Mr. Ricketts made Answer, that he wanted a Piece of Cake of Mr. Chetwynd; I said to Mr. Ricketts, Have not you had a Piece? He said No, and smiled. I looked at Mr. Ricketts, and said, I believed he had had some, for he had some Crumbs of Cake upon his Lips; Mr. Ricketts smiled again, and said, he wanted another Piece, or a bigger Piece.

Q. Where was Mr. Chetwynd then?

A. Mr. Chetwynd at that Time was at his own Bureau, cutting his Cake.

Q. How far was Mr. Ricketts off the Bureau?

A. He was as near as I can guess about two Yards from the Bureau; Mr. Ricketts went up to the Bureau to Mr. Chetwynd, and Mr. Chetwynd lifts up his Arms, and says, Don't, Mr. Ricketts; and Mr. Ricketts then took the Cake.

Court. Mention in what Manner he took it.

Humphreys. I think, to the best of my Knowledge, it was over Mr. Chetwynd's Shoulder.

Counsel. Where did you stand at that Time?

Humphreys. I stood at the Corner of the middle Window, and Mr. Ricketts almost faced me, not quite, but was a little sideways of me.

Court. Had Mr. Ricketts the Cake in his Hand?

Humphreys. He had the Cake in his Hand.

Court. How far were you off the Bureau then?

Humphreys. I was then from the Bureau about three Yards, and Mr. Ricketts came up to me, and said, Hannah, I have got some Cake. (I had a Stocking in my Hand which I was darning.) Upon Mr. Ricketts's saying he had got some Cake, Mr. Chetwynd came from his Bureau to my Right-hand, and in a very short time Mr. Ricketts said, Hannah, Mr. Chetwynd has stabbed me. I looked at him.

Prosecutor's Counsel. Did you see Mr. Chetwynd come from the Bureau?

Humphreys. Yes.

Q. Where did Mr. Ricketts stand?—*A.* Mr. Ricketts stood just by me.

Q. Now tell us whether you saw this Stab given?—*A.* I did not see it given.

Q. Did you observe that Mr. Ricketts had any Thing in his Hand?

A. He had nothing in his Hand but a Bit of Cake.

Q. Did you observe that Mr. Ricketts had struck Mr. Chetwynd?

A. No, he had not struck him, and was not seemingly in any Anger.

Q. You say that at this Time Mr. Chetwynd came up and stabbed Mr. Ricketts?

Prisoner's Counsel. No; that is not right.

Court. She said Mr. Ricketts told her so.

Prisoner's Counsel. I do not doubt your Candour, but you are mistaken in the Evidence; repeat it again.

Humphreys. I saw Mr. Ricketts come from the Scrutore, and he said, Mr. Chetwynd has stabbed me. Says I, Mr. Ricketts, you joke. Mr. Ricketts had put his Hand to his Side: I bid him take his Hand away, and then I saw a little Blood; Mr. Chetwynd, said I, you have done very well. Mr. Chetwynd said, Hannah, if I have hurt him, I am sorry for it.

Prosecutor's Counsel. Did you observe who were in the Room?

Humphreys. I saw Mr. Hamilton, Mr. Ricketts, and Mr. Chetwynd.

Court. Did you hear Chetwynd ask Ricketts for his Piece of Cake?

Humphreys. I did not hear him.

Counsel. What became of Mr. Chetwynd after that? where did he go?

Humphreys. He went out of the Room.

Q. How long did he continue in the House?

A. He continued in the House till Tuesday Morning.

Q. That was the next Morning; did he give any Notice of his going away?—*A.* I cannot tell that.

[Counsel for the Prisoner on the Cross-Examination.]

Counsel. Tell us where this Room was, where you heard the Noise before you went to them.—*Humphreys.* It was on the same Floor.

Q. Did you hear any Rustling of Feet, or only their Tongues?

A. It was only their Tongues; it is my customary Way when I hear any Noise among the young Gentlemen to go to them, in order to persuade them to be quiet.

Q. Where was Mr. Chetwynd when you came into the Room?

A. Mr. Chetwynd was at his Bureau, and Mr. Ricketts was standing in the Room, and he said he wanted a Piece of Cake of Mr. Chetwynd.

Q. Was this Mr. Ricketts's Room?

A. No, Mr. Ricketts had a Room up another Pair of Stairs.

Q. Then he was got into Mr. Chetwynd's Room, which was the Occasion of your asking him what he did there?

3 Y

A. Yes,

A. Yes, it was the Room where Mr. Chetwynd lay; he had not a Room to himself.

Q. Was there any Conversation about the Cake, or any asking for Cake before you went into the Room?

A. I do not know, he only said he wanted another Piece of Mr. Chetwynd's Cake.

Q. Was Mr. Chetwynd's Back toward you?—A. Yes.

Q. Then consequently it must be to Mr. Ricketts?

A. Yes—Mr. Chetwynd put out his Arms a little to keep Ricketts from the Cake. It was but a very little Way thus, extending his Arms a little from his Body, and raising them up, and Mr. Chetwynd said, Don't, Mr. Ricketts.

Q. Did you observe Mr. Ricketts then offer to take the Cake, or to touch Mr. Chetwynd?

A. I only observed him to take the Cake.

Q. But did you see him touch him?—A. I did not see him touch him.

Q. That is very odd, because putting out his Arm, and saying Don't, shews as if he had done something.

A. He might touch his Cloaths, when he took away the Cake.

Q. Was not he taller than Mr. Chetwynd?

A. He was a great deal taller than Mr. Chetwynd, he might for his Height reach over Mr. Chetwynd, and take the Cake.

Q. Could he take it over his Shoulder, or over his Head without touching him?

A. Over his Shoulder he might do it without touching him.

Q. Did he take the Cake over his Shoulder or over his Head?

A. I think it was over his Shoulder.

Q. Did not Mr. Ricketts laugh when he had got the Cake?

A. Mr. Ricketts came away laughing, and said, he had got a Bit more Cake.

Q. Was there any Motion or Action between them before this Thing happened?—A. There was not any Motion or Action at all that I saw before this happened.

Q. Did you stand facing the Bureau?

A. The Bureau was behind my Back, and Mr. Ricketts stood facing me, as I stood sideways to the Window, with my Work in my Hand, and Mr. Chetwynd was by my right Hand, we all three in a Manner touched one another.

Q. How could this be done without your seeing it?

A. I did not see it done.

Q. And then the first Thing you heard was, that he was stabbed?

A. That was what Mr. Ricketts said.

Q. And you at that Time did not believe it?

A. No, I did not believe it; for when Mr. Ricketts said he was stabbed, I lifted my Eyes off my Work, and said, Mr. Ricketts, you joke.

Q. Was there any Blow given?—A. I believe there was no Blow; I did not see any; I did not at first believe that there was a Wound.

Q. As you did not believe it, it is plain that Mr. Chetwynd did not believe it; for he said, *If I have hurt Mr. Ricketts, I am sorry for it.* Did he look to have Anger in his Countenance?

A. No; he looked with Concern; and said, Hannah, *if I have hurt Mr. Ricketts, I am sorry for it.*

Mr. BEESTON LONG sworn.

Prosecutor's Counsel. Pray, Mr. Long, inform the Court what Discourse passed between you and the Deceased, after he had received the Wound.

Mr. Long. I came to Town on Monday Night, the 26th of September, and found a Letter from Mr. Clare; wherein he acquainted me, that Mr. Ricketts had met with an untoward Accident, and had received a Wound from a young Gentleman in the House, but that he thought there was then no Danger; this Letter having been wrote in the Morning, I enquired if there had been any subsequent Message from Mr. Clare; I was told there had not: I did not go to Mr. Ricketts that Night, not thinking there was any Occasion for so doing; but in the Morning, I determined to take the Advice of Mr. St. Hill, who being a Gentleman very eminent in his Profession, we always take his Opinion, when any Accident happens to the young Gentlemen under our Care: I wrote a Letter to him, and desired he would meet me at the Academy that Day [that was on Tuesday], which he did; and I found there Mr. Shipton and Mr. Middleton, who had likewise been called in; these three Gentlemen, with Mr. Mac Cullock, the Surgeon of the House, viewed Mr. Ricketts's Wound, and thought him in very great Danger; they continued attending him till Thursday Morning the 29th, when he died.

Q. What Account did Mr. Ricketts give you of the Occasion of this Accident?

A. Mr. Ricketts told me, that on the Monday, about Noon, he was sent to call Mr. Chetwynd to fence, and found him in the Dining-Room, with a Cake, of which he asked him for a Piece, which he gave him; that he then asked Mr. Chetwynd for another Piece, which he refused; and cut a Piece of the Cake, and laid it upon his Bureau, which stood at the End of the Room; Mr. Ricketts, to tease Mr. Chetwynd, for having refused him, (but without any Intention of eating or keeping it) took up the Piece of Cake, carried it to the middle Window, and said to a Maid, who stood there, *Hannah, I have got a Piece of Cake;* and he said that Mr. Chetwynd followed him, and immediately stabbed him in the Belly.

Prisoner's Coun. You said, you came to Town that Monday, did you see Mr. Ricketts that Day?

Mr. Long. I came to Town that Monday Night, and found a Letter from Mr. Clare; I did not see Mr. Ricketts that Day; for I did not apprehend there was so much Danger, as I afterwards found there was.

Q. How many Surgeons had you?

A. There were four Surgeons; three were called in; and there was Mr. Mac Cullock, the Surgeon of the House.

Q. I should be glad to know, whether Mr. Ricketts gave any Account to you of any Passage that happened immediately after the taking of the Cake?

A. He said, that after he had taken the Piece of Cake, he carried it to the middle Window, where the Maid stood; and said, *Hannah, I have got*

a Piece of Cake; and that Mr. Chetwynd came up to him, and stabbed him without speaking a Word.

Q. Without whose speaking a Word.

A. Without Mr. Chetwynd's speaking a Word.

Q. Did you ask him in what Manner he had lived with this young Gentleman the Prisoner, whether they did not live in Friendship?

A. He said, he never had had any Quarrel with him; and I have Reason to think it to be true, because Mr. Ricketts was a Lad of a remarkably good-natured Disposition.

Q. Did you ask him any thing farther?

A. Mr. Ricketts was generally, when I saw him, in such extreme Torment, that I did not care to trouble him with too many Questions.

Q. Did not he tell you he forgave him?

A. He did say that he forgave him.

Prosecutor's Counsel. Call Mr. St. Hill.

Prisoner's Counsel. There is no Occasion for it.

Prosecutor's Counsel. The Jury must have Satisfaction, that the Wound was the Occasion of his Death.

Mr. PETER ST. HILL sworn.

Prosecutor's Counsel. Pray, Sir, give the Court an Account in what Condition you found the Deceased.

Mr. St. Hill. On Tuesday the 27th of last Month I received a Letter from Mess. Drake and Long, desiring me to go to Mr. Clare's Academy in Soho-Square, to see a young Gentleman that they had the Care of, who the Day before had been accidentally wounded: I met there Mr. Shipton, Mr. Middleton, and Mr. Mac Cullock; and by Mr. Mac Cullock's Account of the Wound, who first dressed him, and the Symptoms that attended it, we had too much Reason to fear that it had penetrated into the Cavity of the Belly, and that some of the Viscera were wounded; for his Belly was much swelled, and cross the upper Part of it so very painful, as to deprive him of all Rest, and his Pulse was extremely quick, and contracted. The next Day we met again—he had had a very unquiet Night; his Pulse was extremely quick and low; and though his Belly was not so much swelled, yet his Pain cross the upper Part of it was more severe, and attended with a continual Hickup, and frequent bilious Vomiting.

Q. Pray, Sir, inform us, whether you think that Wound was the Occasion of his Death? what Depth was the Wound of?

A. It is not easy to know the Depth of a Wound after it has penetrated into the Cavity of the Belly: But, upon the whole, I think we have given our Opinion in such a Manner, that Nobody will doubt, but that the Wound was the Occasion of his Death.

Q. Then you do think that Wound to be the Occasion of his Death?

A. I do think it to be the Occasion of his Death.

Q. In what Part was the Wound given?—A. It was on the right Side of the Belly, two Inches obliquely below the Navel.

[A Piece of the Blade of the Knife was produced, which was about three Inches long, and sharp at the Point.]

Counsel to Humphreys. Did you see the Knife in Mr. Chetwynd's Hand?

Humphreys. Yes.

Q. What kind of a Knife was it?

A. It was a Knife with a long Handle.

Q. Was it a long Blade?

A. It was such a Blade as this; this is but a Piece of it.

Q. It is a French Couteau.

Prisoner's Counsel. It is no such thing, it is only a common French Knife.

Mr. PETER MAC CULLOCK sworn.

Counsel. Mr. Mac Cullock, pray, give an Account how you found the Deceased.

Mr. Mac Cullock. I was called at half an Hour after One, on the Monday, to go to Mr. Clare's; when I came there, I asked to see the Knife, and the Knife was produced.

Q. Was it produced broke?

A. Yes, it was produced to me then broke, as it is now. I probed the Wound; but did not find at that Time, that it had penetrated into the Cavity of the Belly; the Deceased's Pulse was extremely low, but I thought that was owing to the Fright: I went the next Day; and then upon searching the Wound, I found it had penetrated into the Cavity of the Belly, and found it to be a very bad Case; upon that Mr. Middleton was sent for; and after that Mr. St. Hill, and Mr. Shipton.

The Counsel for the Prisoner called no Witnesses, admitting that the Fact had been fairly laid before the Court by the Evidence, and acknowledged the Candour of the Gentlemen concerned for the Prosecution, in representing it to the Jury without any Aggravation; but insisted, on his behalf, that however his Hand might have been unhappy, his Heart was innocent; that this Fact therefore could not amount to Murder at Common Law, which the Lord Coke defines to be an unlawful killing another Man with Malice afore-thought, either expressed by the Party, or implied by the Law; that in this Case, there was not the least of that Ingredient, their own Evidence having shewed they were Friends, Friends to the last Hour, Friends to the dying Hour; when the Gentleman said, He forgave him. That it being proved there was a Friendship subsisting, it would be talking against the Sense of Mankind, to say the Law could imply any thing contrary to what is plainly proved. That Deliberation and a Cruelty of Disposition makes the Difference between Manslaughter and Murder. For which Purpose *Holloway's* Case was cited.

If A be passing the Street, and B meeting him, takes the Wall of A, and thereupon A kills him, this is Murder; but if B had jostled A, this jostling had been a Provocation, and would have made it Manslaughter, 1 *Hale's Hist. Pl. Cr.* 455.

If I see another's Child beat, or Wife debauched, it would be Murder in me to kill the Party, not so in the Parent or Husband.

A sudden Challenge and fighting immediately, the Challenge is held to be a sufficient Provocation.

NUMBER I.

Holloway's Case, 4 Charles I.

* *Holloway* was indicted for the Murder of one *Payne*. The Indictment was, that he with Malice forethought tied the said *Payne* to a Horse's Tail, and caused the Horse to drag him on the Ground three Furlongs, whereby the Shoulder of the said

Payne was broke, whereof he instantly died. On Not Guilty pleaded, the Jury found a special Verdict, that the Earl of *Darby* was seized in Fee of *Ojersley Park* in *Middlesex*, and made the said *Holloway* Woodward of the said Park; and that the said *Payne*, with others unknown, entered the said Park, to cut Wood there; and that the said *Payne* climbed up a Tree, and with an Hatchet cut down some Boughs thereof.

The Law makes a Difference between a Person's killing another, when he is doing a lawful Act, and when he is doing an unlawful Act. If the Master designeth moderate Correction to his Servant, and accordingly useth it, and the Servant by some Misfortune dieth thereof, this is not Murder, but *per infortunium*; because the Law alloweth him to use moderate Correction, and therefore the deliberate Purpose thereof is not *ex malitia præcogitata*.

But if the Master design an immoderate or unreasonable Correction, either in respect of the Measure, or Manner, or Instrument thereof, and the Servant die thereof; if it be done hastily, and without Deliberation, this would be Manslaughter; if done with Deliberation and Design, it would be Murder. L. C. J. Hale in his Hist. Pl. Crim. p. 454.

Shall the young Boy at the Bar, who was doing a lawful Act, be said to be guilty of Murder? He was rescuing what was his own; the Witnesses have told you, that after he had given the poor Boy, Ricketts, a Piece of Cake, Ricketts went to him for more; he denied it him; he had a Right to keep his Cake, the other had no Right to take it; and he had a Right to retake it.

There are Cases in the Books which make a Difference between Murder and Manslaughter: If a Man takes * up a Bar of Iron and throws at another, it is Murder; and the Difference in the Crime lies between a Person's taking it up, and having it in his Hand; Chetwynd had the Knife in his Hand, and upon that a Provocation ensues, for he did not take the Knife up; if he had, that might have shewn an Intention to do Mischief. It may be doubted, whether or no, when he had this Knife in his Hand for a lawful Purpose, and in an Instant struck the other, whether he considered he had the Knife in his Hand; for if, in his Passion, he intended to strike with his Hand, and struck with the Knife, not thinking it was in his Hand, it is not a striking with the Knife.

That in respect to the Statute of the first of James I. † it had always been looked upon as a hard Law, and construed therefore constantly very strictly by all the Judges in Favour of the Prisoner. That when the Facts amount only to Manslaughter at Common Law, it has been the Custom of the Courts ‡ to acquit upon this Statute.

That this Act was made for a particular Purpose §: On the Union of the two Kingdoms, there were national Factions and Jealousies, when wicked Persons, to conceal the Malice lurking in their Hearts, would suddenly stab others, and screen themselves from the Law, by having the Act looked upon as the Result of an immediate Quarrel.

thereof; and that Holloway came riding into the Park, and seeing Payne on the Tree commanded him to descend, and he descending from thence, Holloway struck him two Blows upon the Back with his Cudgel; and Payne having a Rope tied about his Middle, and one End of the Rope hanging down, Holloway tied the End of that Rope to his Horse's Tail, and struck Payne two Blows upon his Back; whereupon the Horse running away with him, drew him upon the Ground three Furlongs, and by this means brake his Shoulder, whereof he instantly died; and Holloway took Payne, and threw him into a Bush, behind the Pales of the Park. And whether upon all this Matter found, the said Holloway be guilty of the Murder, they pray the Direction of the Court, &c.

This special Verdict was removed by *Certiorari* into the King's-Bench, and depended three Terms: And the Opinion of all the Judges and Barons was demanded, and they all (except Hutton, who doubted thereof) held clearly, that it was Murder. For when the Boy, who was cutting on the Tree, came down from thence upon his Command, and made no Resistance, and he then struck him two Blows, and tied him to the Horse's Tail, and then struck him again, whereupon the Horse ran away, and he by that means was slain, the Law implies Malice, and it shall be said in Law to be premeditated Malice, he doing it to one who made no Resistance. Whereupon he was adjudged to be hanged, and was hanged accordingly. *Croke, Charles, 131. Palmer, 545. W. Jones, 198. See this Vol. page 63.*

NUMB. II.

At the Sessions in the Old-Bailey, October 10, 1666.

* John Grey being indicted for the Murder of William Golding, the Jury found a special Verdict to this Effect, viz. We find, that the Day, Year, and Place in the Indictment mentioned, John Grey, the Prisoner, was a Blacksmith; and that William Golding, the Person killed, was his Servant; and that Grey, his Master, commanded him to mend certain Stamps, being Part belonging to his Trade, which he neglected to do; and the said Grey, his Master, after coming in, asked him, the said Golding, why he had not done it; and then the said Grey told the said Golding, that if he would not serve him, he should serve in *Bridewell*; to which the said Golding replied, that he had as good serve in *Bridewell*, as serve the said Grey, his Master; whereupon the said Grey, without any other Provocation, struck the said Golding with a Bar of Iron, which the said Grey then had in his Hand, upon which he and Golding were working at the Anvil; and with the said Blow he broke his Skull, of which he died; and if this be Murder, &c. This was held to be Murder by all the Judges of the King's-Bench, with the Concurrence of the Lord Chief-Justice Bridgman. See page 64.

NUMB. III.

† Jac. c. 8. An Act to take away the Benefit of Clergy for some kind of Manslaughter. To the end that Rabbing and killing Men on the sudden, done and committed by many inhumane and wicked Persons, in the Time of their Rage, Drunkenness, hidden Displeasure, or other Passion of Mind, contrary to the Commandment of Almighty God, and the common Peace and Tranquillity of this Realm, may from henceforth be restrained through Fear of due Punishment to be inflicted on such cruel and bloody Malefactors, who heretofore have been thereunto emboldened, by presuming on the Benefit of Clergy,

Be it therefore enacted, &c. That every Person which shall stab or thrust any Person, that hath not then any Weapon drawn, or that hath not then first stricken the Party which shall so stab or thrust, so as the Person so stabbed or thrust, shall thereof die within the Space of six Months then next following, although it cannot be proved that the same was done of Malice forethought, yet the Party so offending, and being thereof convicted, &c. shall suffer Death, as in case of Wilful Murder.

Provided always, That this Act, or any Thing therein contained, shall not extend to any Person or Persons which shall kill any Person or Persons *se defendendo*, or by Misfortune, or in any other Manner than as aforesaid; nor shall extend to any Person or Persons, which in keeping and preserving the Peace, shall chance to commit Manslaughter, so as the said Manslaughter be not committed wittingly, willingly and of Purpose, under Pretext and Colour of keeping the Peace; nor shall extend to any Person or Persons, which in chastising or correcting his Child or Servant, shall besides his or their Intent and Purpose, chance to commit Manslaughter. This Act to continue until the End of the first Session of the next Parliament. 3 Car. c. 4. continued.

‡ At a Meeting of all the Judges, on Saturday, the 28th of April, 1666, at *Serjeants-Inn*, to consider of such Things as might in Point of Law fall out in the Trial of the Lord Morley, who was on Monday to be tried by his Peers for a Murder; they were all of Opinion, that the Statute of 1 Jac. for stabbing a Man not having first struck, nor having any Weapon drawn, was only a Declaration of the Common-Law, and made to prevent the Inconveniences of Juries, who were apt to believe that to be a Provocation to extenuate a Murder, which in Law was not. *Kelyng 54.*

Mr. Lindon, who had been Clerk of the Indictments at *Hicks's-Hall* a great many Years, on being applied to on Mr. Chetwynd's Case, said that if a Man was found guilty of Manslaughter, on an Indictment for Murder at Common-Law, it was the Custom, if he was indicted on the Statute of Stabbing likewise, to find him Not Guilty on that Statute. Yet in December Sessions 1700, John Cowland, Gent. was tried for the Murder of Sir Andrew Slanning, Bart. at the Rose Tavern, in *Drury-lane*, on three Indictments. 1. For Murder, at Common Law. 2. On the Statute of Stabbing.

3. Upon the Coroner's Inquest for the Murder of Sir Andrew, when the Jury ac-

quitted him of the first Indictment for Murder at Common Law, and on the third for Murder on the Coroner's Inquest, but found him guilty on the Statute of Stabbing; and he was executed at *Tyburn*, December 20, 1700, *Old-Bailey Trials*, Vol. I. p. 21.

§ This Statute was enacted in the Time of King James the First, when many Animosities arose between the English and the Scotch, who using Daggers were accustomed to stab many of the English, *ex improviso*, which could not have been done by a flat Sword, the usual Weapon of the English; therefore this Statute was designed to secure defenceless People from Surprise, supposing that whoever struck would be prepared. *Rex v. Keite. Lord Raymond, 139.*

NUMB. IV.

At the Sessions in the Old-Bailey, March 22, 1638.

¶ David Williams was indicted specially upon the Statute 1 Jac. for the Death of Francis Marbury; on which a special Verdict was found, viz. That upon St. David's-day the Prisoner, being a Welshman, had a Leek in his Hat; and that there was, at the same Time, in Waggers, a Jack-a-lent in the Street put up with a Leek; and one Nicholas Redman, a Porter, said, Look at your Countryman; and the Prisoner being therewith enraged, threw an Hammer at Redman, to the Intent feloniously to hit him; but missing him, the Hammer did hit Francis Marbury, whereof he died; and so the said David the said Francis with the said Hammer did stab and thrust the said Francis then not having any Weapon drawn, nor then having first stricken the said David, It was resolved he was not within that Statute, but guilty of Manslaughter at Common Law. *W. Jones, 432. 1 Hale Hist. Pl. Cr. 469.*

This Case, I fear, hath been the Occasion of some Mistake in the Decision of Questions of this Kind: I concur with the Judgment, that it is not within the Statute of Stabbing, for it is not such a Weapon, or Act, that is within that Statute; neither could he be found guilty of Murder, but only Manslaughter, for the Indictment was for no more. But if the Indictment had been for Murder, I do think that the Welshman ought to have been convicted thereof; for the Provocation did not amount to that Degree, as to excite him designedly to destroy the Person that gave it him. Lord Chief-Justice Holt, in *Mauvridge's Case*, Page 64.

NUMB. V.

The Protector and Buckner.

Mich. 1655. In the upper Bench. Stiles, 467.

¶ Buckner was indicted upon the Statute of 1 Jac. made against Stabbing, at the Justice-Hall in the Old-Bailey, for killing of Horwood; and upon the Evidence given for the Protector, the Jury found a special Verdict, which was to this Effect, viz. That Horwood and another Man with him came into the Lodging of Buckner, being in *Drury-lane*; and when they were come into the Lodging, that other Man took down a Sword in the Scabbard which hung there, and stood at the Door of the Chamber with this Sword undrawn in his Hand, and kept the Door to keep Buckner from going out, till they might bring a Bailiff to arrest Buckner for a Debt which he owed Horwood; whereupon, upon some Discourse between Buckner and Horwood, Buckner takes a Dagger out of his Pocket, and stabs Horwood, and kills him; and whether this was within the Statute of Stabbing was doubted by the Jury. Upon which Buckner was committed to *Newgate*, and after the Body and the Cause was removed into this Court by *Habeas Corpus* and *Certiorari*, and argued divers Times at the Bar, and at last on the Bench:

And first Arthur Harris, of *Lincoln's-Inn*, opened the Record, and only put the Question; and then, on the Behalf of the Prisoner it was moved, that he might have a Copy of the Record, and Counsel assigned him, such as desired, which the Court granted; then it was prayed he might be bailed; but that the Court would not grant, but turned him over to the Marshal, and gave a Day for the Protector's Counsel to be heard.

At which Day *Tawfden*, for the Protector, made this Question, Whether Buckner was to have his Clergy in this Case, or were debarred by the Statute or not? And he said, this Question should not have been made by the Jury as they have done upon the special Verdict, but the Court ought to have made it; for the Jury are only to proceed upon Matter of Fact, and not upon Matter of Law; and he argued, that he ought not to have his Clergy, for the Statute of 1 Jac. doth not create the Offence, but leaves it to the Common-Law, and only takes away the Clergy from the Party that commits it; and to prove this, 1. It is not within the Words of the Statute, and 2dly, It is not within the Meaning of the Statute, neither in its Preamble, nor in the Body, or in the Proviso thereof; for Buckner was not first struck, nor had he a Weapon drawn against him, altho' he was kept a Prisoner in his Chamber, which was not a considerable, but a slight Provocation of him to move him to so foul a Fact. And within the Body of the Act, there are no Acts expressed, but having a Weapon drawn against him, or being first struck, and this Enumeration of the Acts excludes all other, as it is in the Statute of Fines, and in the Statute which takes away Clergy. Also the Reason of Law requires to allow the Clergy to one that is first stricken: But here is no such Reason, and the Party might have had his Remedy against Horwood, for coming into his Chamber, and imprisoning of him, by an Action of Trespass; and the having a Weapon drawn, was a Reason for the other to defend himself.

Finch (Heneage) for the Prisoner argued, that the Prisoner was only guilty of Felony at the Common-Law, and is not within the Statute, by which his Clergy should be taken away. For first, the Statute is to be literally interpreted, because it is made

the only Points insisted upon by way of Defence for the Prisoner, were Questions of Law, in which the Jury were to be guided by their Opinion) the Facts proved and admitted, did not clearly, in the first place, amount to Murder at Common-Law; and in the second place, whether there could be the least Doubt in point of Law, but that this Case was within the Statute of 1 James I. c. 8.

Upon the first it was admitted, that to constitute Murder there must be Malice.

But it was argued, that Malice was of two Kinds: either express and in fact, or implied by Law.

That when one Person kills another without Provocation it is Murder *, because the Law presumes and implies Malice from the Act done.

And therefore, where-ever any Person kills another it is Murder, unless some sufficient Provocation appear.

But that it is not every Provocation which extenuates the killing of a Man from Murder to Manslaughter.

A slight or trivial Provocation is the same as none, and is not allowed by Law to be any Justification or Excuse for the Death of another.

And therefore no Words of Reproach or Infamy, whatever provoking Circumstances they may be attended with; no affronting Gestures or deriding Postures, however insolent or malicious, are allowed to be put in the Balance with the Life of a Man, and to extenuate the Offence from Murder to Manslaughter. *Kelyng 130. Croke El. 779.*

For the same Reason, no sudden Quarrel upon a slight Provocation shall justify such an act of Cruelty as one Man's stabbing another, though it is done immediately in the Heat of Passion. As if two Persons, playing at Tables, fall out in their Game, and the one upon the sudden kills another with a Dagger; this was held to be Murder by *Bramley at Chester Affizes*. See this Vol. page 63.

In like manner, no Trespass on Lands or Goods shall be allowed by Law to be any Excuse for one Man's attacking another in such a Manner as apparently endangers his Life, and could not be intended merely as a Chastisement for his Offence; because no violent Acts beyond the

Proportion of the Provocation receive Countenance from the Law. And therefore if a Man beats another that is trespassing upon his Goods or Lands, and does not desist, he will be justified by Law; because what he does is only in Defence of his Property, and no more than a Chastisement to an Offender.

But (says the Lord Chief Justice Holt) if one Man be trespassing upon another, breaking his Hedges, or the like; and the Owner, or his Servant, shall upon Sight thereof, take up an Hedge-Stake, and knock him on the Head, that will be Murder; because it is a violent Act, beyond the Proportion of the Provocation. *Kelyng 132.*

That applying the Rules of Law to the present Case, it was plain, that the violent Act done, bore no Proportion to the Provocation. All the Provocation given was taking up a Piece of Cake, which is not such an Offence, as can justify the Prisoner's attacking the Person, who took it up, with an Instrument, that apparently endangered his Life, or rather carried certain Death along with it.

And lastly, That *Grey's Case* before cited (*Kelyng 64. and 133.*) was much stronger than the present: Where a Master, who was provoked with the Neglect, Disobedience, and Insolence of his Apprentice, and had therefore a Right by Law to chastise him; immediately upon receiving the Provocation, took up a Bar of Iron, at which he was then working, and struck his Apprentice, who afterwards died of the Blow. This was by all the Judges held to be Murder, notwithstanding it was done upon a sudden, and notwithstanding the Provocation, and the Right which *Grey* had as a Master to correct his Servant. For having exceeded Measure herein, what he did was malicious.

Upon the second Indictment it was said, that the Gentlemen who had argued on behalf of the Prisoner, had, in order to raise a Doubt upon this Point, in effect contended that the Statute of 1 J. I. should never be allowed to comprehend any one Case whatsoever, or extend to any one Offender.

For if Persons indicted upon that Statute, were to be acquitted where-ever the Case would have been Manslaughter at Common-Law, the Statute would be entirely frustrated, and have no kind of Effect whatsoever.

made in restraint of the Common-Law, and it was made only to prevent Feuds between the English and the Scottish Nation, which were then apt to break forth, and the Quarrel here was not a drunken and sudden Quarrel, but acted upon Deliberation, and here is an Assault so great used against the Prisoner, that it amounts to the striking of him, 43 E. III. f. 41, 42. E. III. f. 7. and the Imprisonment of him is more than an Assault, and here is found a forcible Entry into his Chamber, and the sending for a Bailiff, and the standing at his Chamber Door with a Sword in the Party's Hand, though not drawn, which is as much in effect as if it had been drawn; and 23 Car. the Clergy was allowed to two Persons that aided and assisted a third Person in stabbing of a fourth Man, and that because the Clergy shall not be taken away by Intentments.

Glyn (Chief Justice). The Statute hath not been so favourably construed as hath been argued, for here is no Stroke, nor Weapon drawn for his present Defence, as the Statute intends; and stabbing with a Tobacco-pipe, and with a Halberd, hath been adjudged to be stabbing within the Statute, and the Statute doth not say being first assaulted, as this Case is, but first stricken, and I conceive not that there are any Words in the Statute that will keep you out of it. *Day was given over to the next Term.*

At which Day the special Verdict was again repeated by Serjeant Maynard, and by him it was argued for the Prisoner, that he was not within the Statute 1 Jac. of stabbing, because first, here was an unlawful Imprisoning of *Buckner* in his own Chamber, and this could not be without an Assault; next this Statute is not to be literally interpreted, for if there be Acts of Terror used against one, although a Weapon be not drawn, yet he is not within the Statute, although he kill another, for the taking up of a Candlestick to strike another hath been adjudged a Weapon drawn; and he cited *Patge and Horwood's Case*; and all the Persons that came into his Chamber were Trespassers, and one of them taking the Sword in his Hand, how could it be known what Mischief might have been done with it? *Cook's Case 14 Caroli*, one may do a lawful Act by unlawful Means, and although *Buckner* did ill, yet is he not within the Statute.

Arthur Harris on the other Side argued, that the Act was stabbing within the Statute, and ousted the Prisoner of his Clergy, and that he is within the Meaning and Words of the Statute. The Statute intended to prevent the killing of Men suddenly, which is the worst of all other killing; for it is, as it were, to destroy not only the Body, but even to kill Body and Soul also, and therefore though the Statute be penal, yet it is not to be favourably interpreted, it being made for the Peace and Quiet of the Nation. The killing is the Matter aimed at in the Statute, and it matters not whether the Party be killed with a Faulchion or a Pistol, as *Williams's Case* was, that killed another, by throwing a Taylor's Goose at him, and he is not within the Saving of the Statute though he was assaulted, and the other stood with the Sword in the Scabbard in his Hand, 36, 37 *Eliz. Hanger and Molin's Case* in the Exchequer Chamber. The Words of the Statute are, "not being first struck;" but an Assault is not a striking, and so he is out of the Letter of the Statute; and here is no Weapon drawn, for the Sword was in the Scabbard, which is no more than a Staff in a Man's Hand, *Stat. 5 E. VI. c. 4.* and it is like a Pistol uncocked; and if the Sword had been drawn it would not have altered the Case, because it was not in *Horwood's* Hand, who was slain, but in another's, and you cannot extend the Statute further.

Glyn (Chief Justice). Will you have it argued any more?—*Finch*. No.

Glyn (Chief Justice). I have considered of the Verdict, and consulted with the Statute, and advised with all the Judges, and they are of my Opinion. This is a good Law, and to be interpreted strictly, yet I hold the Prisoner is not within it, for the Scope of the Statute appears by the Preamble, the Body, and Saving of it, which do all confirm my Opinion. My first Reason is, because I find that the Intent of the Statute is against sudden killing; but here was not a sudden killing, and the Statute takes not away the Clergy from all manner of Manslaughter; and here was a Trespass and an Imprisonment acted against the Prisoner before he killed *Horwood*, and so the Act was not suddenly done. 2dly, The Body of the Act seems to mean, that there ought to be Malice in the Case, and it doth not intend we should stick to the very Words of it; and here the Party slain might have foreseen the Danger, and defended himself. 3dly, The Proviso excepts divers Particulars out of the Law, and the Word killing is only in the Proviso, so that there is Provision made how the Statute shall be interpreted, viz. That it must be sudden killing, which is not so here, for there are Provocations, and Time intervening betwixt them and the stabbing, and the Verdict finds no pre-conceived Malice, and the Statute extends to no other killing by the Proviso. And if one be assaulted by Thieves which have no Sword drawn, and the Party assaulted stabs one of the Thieves, he is not within the Intent of the Statute, although he be within the Words of it; or if one be assaulted in his House, and the Assaulter hath no Weapon drawn, and one of the Assaulters be shot, yet the Party assaulted is not within the Statute. 15 Car. in *Davy and Williams's Case*, it was adjudged by all the Judges, that he that killed another by throwing a Hammer at him was not within the Statute, because there was a preceding Provocation of him. And if two assault a third Person, and one of them strike the third Person, and the third Person kills the other that did not strike him, I do not conceive he is within the Statute, for it is the Assault of both, and shall also be adjudged the striking of both.

Asb (Justice) held he was within the Statute, because it was not unlawful to come to arrest him, and here was no Weapon drawn, and so it was adjourned to another Day.

At which Day *Buckner* was again brought to the Bar, *Asb (Justice)* repeats the Special Verdict, and made the Question, Whether this Fact of *Buckner* be within the Statute of 1 Jac. enacted against stabbing? And he argued that it was, and that *Buckner* could not have his Clergy, because the Statute shall be taken beneficially for the Commonwealth, and not for the Prisoner, who is a particular Person, and the Intent of the Statute is to take away the Clergy for some Felony; neither by the Common-Law, nor by the Law of God is there Clergy given for killing a Man, and it was the *Papists* Power that introduced the Clergy to be given for Manslaughter, and also for Murder, in diminution of the Common-Law, and of Regal Power, yea, and of the

Law of God also; and if a Woman kill one, she shall not have her Clergy, but be hanged; which shews that by the Common-Law the Clergy was not given for Manslaughter. And by the Law of God I find no Difference between Murder and Manslaughter, for it makes no Difference between hot Blood and cold Blood, as we do now distinguish; and every Word in the Statute methinks doth take away the Clergy by way of Argument, even from the Title of the Act to the very End of it; and here is a great Sin to be punished, and great Inconveniences would follow to admit of the Clergy in such Cases as this is, and here was a sudden killing as the Act expresseth, for it was done with a Dagger which was not seen, but suddenly drawn out of a Pocket, and no Weapon was drawn against him; for the Provocations alledged, they cannot amount to the drawing of a Weapon, or such a Provocation as the Statute intends, for all the Acts done by *Horwood* amounted but to a Trespass, and cannot be such a Provocation as should cause *Buckner* to fear his Death, for no Violence was used to his Person by striking, or drawing of a Weapon, or otherwise, and the sending for Bailiffs to arrest him cannot be such a Provocation as the Statute intends, which is to put the Party in fear of his Life, and the Party knew that *Horwood* came with an Intent only to arrest him, and not to kill him, nor did the Party slain do any thing against *Buckner* to provoke him; and there is by Presumption of Law a pre-conceived Malice in *Buckner* to kill *Horwood*, which is seen by his sudden Manner of stabbing him; and *Davy and Williams's Case*, urged on the other Side, is not like to this Case. I grant if one kill a Thief suddenly it is not within the Statute, for such killing was never intended to be prevented by it. The worst Words one Man can give another are not a sufficient Provocation within the Statute, for speaking of Words doth much differ from drawing of a Weapon: Nor is this a killing *se defendendo*, or by Misfortune, but abiding at the Common-Law, and so the Clergy is taken away by the Statute, and those of *Serjeants-Inn* in *Fleet-Street*, amongst whom are *Barkly, Foster, and Rolle*, who have been Judges, are of my Opinion.

Glyn (Chief Justice) held it not within the Statute. He argued long much to the Effect as formerly; but having taken cold, I could not distinctly hear him. Adjourned.

This Case was again argued, *Trin. 1656*, to inform Justice Warburton, who was called to that Bench, after the former Arguments and Opinion of the Court delivered much to the same Manner as formerly, by *Finch* for the Prisoner, and *Baldwyns* for the Protector; and thereupon my Lord Chief Justice *Glyn* and Justice Warburton were of Opinion against Justice *Asb*, and so Judgment was given for the Prisoner, that the Stabbing was not within the Statute, but was only Felony at the Common-Law, and the Prisoner was admitted to his Clergy, and burnt in the Hand accordingly.

* He that doth a cruel Act voluntarily, doth it of Malice pre-conceived, 3. *Inst. 61*. Some have been led into Mistake, by not well considering what the Passion of Malice is; they have construed it to be a Rancour of Mind lodged in the Person killing, for some considerable Time before the Commission of the Fact; which is a Mistake arising from the not well distinguishing between Hatred and Malice. Envy, Hatred, and Malice, are three distinct Passions of the Mind. Lord Chief Justice Holt in *Mosgridge's Case*. See this Vol. page 61.

N U M B. VI.

Watts and Brains. B. R. 1599.

† Appeal of Murder for the Death of her Husband. The Defendant pleaded not guilty; and upon Evidence at the Bar it appeared, that two Days before her Husband's Death, he and the Defendant fighting upon a Quarrel then betwixt them, the Defendant was hurt in that Fray; and the third Day after, the Plaintiff's Husband, passing by the Defendant's Shop, the Defendant pursued him suddenly, and the Husband's Back being towards him, so as he perceived him not, the Defendant struck him upon the Calf of his Leg, whereof he instantly died; the Defendant to excuse himself, affirmed, that he, who was slain, when he came by his Shop, smiled upon him, and wiped his Mouth at him, and therefore, for this mocking of him, he pursued him. And it was much enforced by the Defendant's Counsel, that it was a new Cause of Quarrel; and so the Stroke is not upon any precedent Malice, and therefore it is not Murder: but all the Court severally delivered their Opinions, that if one make a wry or distorted Mouth, or the like Countenance upon another, and the other immediately pursues, and kills him, it is Murder; for it shall be presumed to be Malice precedent, and that such a slight Provocation was not sufficient Ground, or Pretence, for a Quarrel; and so delivered the Law to the Jury, that it was Murder, although what the Defendant pretended had been true; whereupon, the Jury going from the Bar, notwithstanding the Evidence was pregnant against the Defendant, Eight of them agreed to find him not guilty, but the other Four withstood them, and would not find it, but to be Murder; and on the next Day Morning, two of the Four agreed with the Eight, to find him not guilty; and afterwards the other Two consented in this Manner: that they should bring in, and offer their Verdict not guilty; and if the Court disliked thereof, that then they all should change the Verdict, and find him guilty. And upon this Agreement, they came to the Bar, and the Foreman pronounced the Verdict, that the Defendant was not guilty; and the Court much disliking thereof, being contrary to their Direction, examined every one of them by the Poll, whether that was his Verdict; and Ten of the first Part of the Panel, severally affirmed their Verdict, that the Defendant was not guilty; but the two last affirmed how they agreed, and discovered the whole Manner of their Agreement; whereupon, they were sent back again, and returned, and found the Defendant guilty. And, for this Practice, *Harris*, the Foreman, was afterwards fined 100 Marks, and the other Seven, who agreed with him at the first, every of them was fined 40 l. and the other two, who agreed with the Eight, although they affirmed that it was, because they could not endure, or hold out any longer; yet for that they did not discover the Practice, being examined by Poll, but affirmed the Verdict, were fined each of them at 20 l. and all of them imprisoned; but the other two were dismissed, yet blamed, for such a Manner of consenting in abuse of the Court. And afterwards the Defendant was adjudged to be hanged.

Since it was only made in order to exclude such Persons as stabbed others upon the sudden, not upon their Guard, from the Benefit of Clergy; and was intended as a Sort of Correction to the Common-Law, by restraining such Offenders, through Fear of due Punishment, who were emboldened by presuming on the Benefit of Clergy, allowed by the Common-Law.

But if it is to exclude none from their Clergy, who at Common-Law would have been entitled to it, it can never have any Effect, and may as well be repealed.

That whatever the Reasons might be which first gave Rise to this Statute, the Legislature thought it of general publick Benefit, and therefore afterwards continued it by a subsequent Law.

And, if the Statute is to have any Force or Effect at all, there cannot be a Doubt but that it must extend to the present Case.

It is expressly within the Words; Mr. Ricketts was stabbed, having then no Weapon drawn in his Hand, and not having before struck the Person who stabbed him.

It is plainly within the Intention; which is declared in the Preamble to have been in order to punish Stabbing, or killing upon the sudden, committed in Rage, or any other Passion of the Mind, &c.

And the principal Reasons upon which the Determination in *Buckner's* Case is founded, conclude strongly against the Prisoner:

For it is there argued, that *Buckner* was not within the Statute, because it appeared to have been made to prevent sudden killing, the worst of all killings, of a Person not upon his Guard.

And secondly, because in that Case the Party slain might have foreseen the Danger, and defended himself.

But the unfortunate Person killed in this Case, had no Opportunity either of foreseeing the Danger, or of avoiding it, or making any Defence; but was killed on the sudden, before he could apprehend any Danger.

And therefore it was submitted to the Court, whether upon the Facts proved and not denied, the Consequence of Law was not clear that the Prisoner was guilty within both Indictments.

Mr. Baron *Reynolds* and Mr. Recorder *Serjeant Urrin*, (being the only Gentlemen of the long Robe on the Bench, when Mr. *Chetwynd* was tried) taking Notice of the Points of Law that had arisen, the learned Arguments of the Counsel, and the many Cases cited upon this Occasion, were of Opinion, that it would be proper to have the Facts found specially, that they might be put in a way of receiving a more solemn Determination. A Special Verdict was accordingly on all Sides agreed on, and drawn up to the following Purport, viz.

The King against *William Chetwynd*, the same against the same, and the same against the same.

We find that *Thomas Ricketts*, on the 26th of September last, being a Scholar at Mr. *Clare's* Academy, in *Soho-square*, was in a Room in the said Mr. *Clare's* House, in which the said Mr. *Chetwynd* used to lie, (and not Mr. *Ricketts*) in Company with the Prisoner *William Chetwynd*, *William Hamilton*, *Samuel Malcher*, and *Hannah Humphreys*, a Maid-servant in the said Mr. *Clare's* Family; that the said Mr. *Chetwynd*, the Prisoner, having his own Cake in his Hand, which was a hard Cake, called a *Simnel*, and hard to cut, the deceased, *Thomas Ricketts*, asked the said Mr. *Chetwynd* to give him a Piece, upon which the said Mr. *Chetwynd* gave him a Piece; that the said *Thomas Ricketts* afterwards asked him, the said *Chetwynd*, to give him some more of his Cake, which the said *Chetwynd* refused, and thereupon, the said *Chetwynd* went out of the said Room with his Cake under his Arm, and the Deceased followed him out of the said Room; upon which, the said *Chetwynd* returned again into his said Room, and went to his own Bureau, and cut another Piece of the Cake for himself; the said *Ricketts* offered to lend the said *Chetwynd* his Knife to cut the Cake, and at the same Time pulled his Knife, being a clasped Knife, out of his Pocket, and opened it; but the said *Chetwynd*, refusing to make use of the said *Ricketts's* Knife, saying, he had a Knife of his own, the said *Ricketts* put up his Knife again; and immediately after this, the said *Chetwynd* being then at his Bureau, cut off a Piece of the said Cake with his own Knife, being a common Knife, and such as Mr. *Chetwynd* and his School-fellows generally used, and laid the same Piece of Cake upon the Top of his Bureau for himself; that the said *Chetwynd*, standing then with his Back to the rest of the Company, was putting the rest of his Cake into his Bureau, and, whilst he was so doing, the Deceased came up, and put his Hand over the said Mr. *Chetwynd's* Shoulder, whereupon, the said Mr. *Chetwynd* raising his Arms, said to the said Deceased, Don't, Mr. *Ricketts*; the said Mr. *Ricketts* immediately snatched the said Piece of Cake away, against the Consent of the said Mr. *Chetwynd*, which lay upon the Top of the said Bureau, and went up to the said Maid-servant, who was about two or three Yards off, and said, laughing, *Hannah*, I have got a Piece of Mr. *Chetwynd's* Cake, which he shewed to her in his Hand; that thereupon immediately the said Mr. *Chetwynd* followed the Deceased, with his Knife in his Hand, and demanded the said Mr. *Ricketts* to return him his Piece of Cake; the Deceased, Mr. *Ricketts*, returned no Answer to this, but continued laughing, and did not return the Piece of Cake; upon which, the said Mr. *Chetwynd* struck the said Mr. *Ricketts* backhanded, with the said Knife which he had kept in his Hand all along, and with which he had cut the said Cake, (the said *Ricketts* being then only in his Waistcoat, which was at that Time unbuttoned) and gave him a Wound upon the Right Side of the Belly below the Navel, which penetrated into the Cavity of the Belly (the Deceased not having before struck the Prisoner, and not having at that Time any Weapon in his Hand); that immediately after, the Deceased cried out, *Hannah*, *Chetwynd* has stabbed me; and then the said *Hannah* said to the Prisoner, What have you done? Upon which the Prisoner looked on the said *Hannah* with Concern, and said, If I have hurt Mr. *Ricketts*, I am sorry for it. We find that there never had been any Quarrel or Malice between the Deceased and the Prisoner, but that they constantly had lived in Friendship together; and we find likewise, that the Deceased was about the Age of Nineteen*, and Mr. *Chetwynd* about the Age of Fifteen; and that of this Wound the Deceased died, on the 29th of the said September: and whether

upon the whole, the Prisoner is guilty of all, or any of the several Indictments, the Jurors submit to the Judgment of the Court.

Allen Evans, Benjamin Ingram, John Archambo,
Samuel Bowler, Jacob Lebat, Benjamin Tickner,
Charles Carleton, Jonathan Alderton, John Holmes,
Francis How, Peter Archambo, Thomas Hogg.

Soon after this Trial, *Roger Drake*, Esq. and other Friends of Mr. *Ricketts*, laid the following Case before Sir *John Strange*:

The King } THE Defendant was tried the last Sessions at the Old
against } Bailey for the Murder of Mr. *Thomas Ricketts*, and he
Chetwynd. } Jury brought in the following special Verdict:

"That *Thomas Ricketts*, on the 26th of September 1743, being a Scholar at Mr. *Clare's* Academy in *Soho-square*, was in a Room in the said Mr. *Clare's* House in which the said *Chetwynd* used to lie and not Mr. *Ricketts*, in Company with the Prisoner *William Chetwynd*, *William Hamilton*, *Samuel Malcher*, and *Hannah Humphreys* a Maid-servant in the said Mr. *Clare's* Family. That the said Mr. *Chetwynd* the Prisoner having his own Cake in his Hand, which was a hard Cake called a *Simnel*, and hard to cut, the deceased *Thomas Ricketts* asked him for a Piece of it, which the said Mr. *Chetwynd* gave him. That the said *Thomas Ricketts* afterwards asking the said *Chetwynd* to give him some more of his Cake, the said *Chetwynd* refused, and thereupon the said *Chetwynd* went out of the said Room with his Cake under his Arm, and the Deceased followed him out of the said Room; upon which the said *Chetwynd* returned again into his said Room, and went to his own Bureau and cut another Piece of Cake for himself: the said *Ricketts* offered to lend the said *Chetwynd* his Knife to cut the Cake, and at the same time pulled his Knife (being a clasped Knife) out of his Pocket and opened it; but the said *Chetwynd* refusing to make use of Mr. *Ricketts's* Knife, saying, he had one of his own, the said *Ricketts* put up his Knife; and immediately after this the said *Chetwynd* being then at his Bureau, cut off a Piece of the said Cake with his own Knife (being a common Knife, and such a one as the said *Chetwynd* and his School-fellows generally used), and laid the same Piece of Cake upon the Top of his Bureau for himself. That the said *Chetwynd*, standing then with his Back to the Company, was putting the rest of the Cake into his Bureau; and whilst he was so doing, the Deceased came up and put his Hand over the said *Chetwynd's* Shoulder, whereupon the said Mr. *Chetwynd* raising his Arms said to the Deceased, Don't, Mr. *Ricketts*; and the said Mr. *Ricketts* immediately snatched the said Piece of Cake away against the said *Chetwynd's* Consent, which lay upon the Top of the said Bureau, and went to the said Maid-Servant about two or three Yards off and said, laughing, *Hannah*, I have got a Piece of *Chetwynd's* Cake, which he shewed to her in his Hand; that thereupon immediately the Prisoner Mr. *Chetwynd* followed him with his Knife in his Hand, and demanded the said Mr. *Ricketts* to return his Piece of Cake; the deceased Mr. *Ricketts* returned no Answer to this, but continued laughing, and did not return the Piece of Cake, upon which the Prisoner struck him back-handed with the said Knife, which he had kept in his Hand all along, and with which he had cut the said Cake, the said *Ricketts* being then only in his Waistcoat which was then unbuttoned, and gave him a Wound upon the right Side of the Belly below the Navel, which penetrated into the Cavity of the Belly, the Deceased not having before struck the Prisoner, and not having at that time any Weapon in his Hand. That immediately after the Deceased cried out, *Hannah*, *Chetwynd* has stabbed me; and then the said *Hannah* said to the Prisoner, What have you done? Upon which the Prisoner looked on the said *Hannah* with Concern, and said, If I have hurt Mr. *Ricketts* I am sorry for it. We find that there never had been any Quarrel or Malice between the Deceased and the Prisoner, but that they constantly had lived in Friendship together. We find likewise that the Deceased was about the Age of nineteen, and Mr. *Chetwynd* about the Age of fifteen, and that of this Wound the Deceased died upon the twenty-ninth of the same September. And whether upon the whole the Prisoner is guilty of all or any of the several Indictments, the Jury submit to the Court."

Mr. *Chetwynd* is still in *Newgate*; it is apprehended Mr. *Chetwynd* will apply to his Majesty for a Pardon before the special Verdict is argued, or if not he will do so afterwards, in Case the Judges should be of Opinion that the Facts stated in the special Verdict should be Murder. To prevent this, and his escaping the Justice due for his Offence, if the Law declares him to be guilty of Murder, it is proposed to bring in an Appeal of Murder, and to that end your Opinion is desired.

Q. Whether the Offence found by the special Verdict is Murder or Manslaughter?

"I am strongly inclined to think this will be adjudged to be Murder."

The Deceased's Father and eldest Brother are both resident in *Jamaica*. It is apprehended that an Appeal if brought must be brought by the eldest Brother, who is the Heir at Law of the deceased.

Q. Whether such Appeal can be brought by Mr. *Barham* and Messrs. *Drake* and *Long*, for and on his behalf; or must the same be brought by the Heir in Person?

"The Appeal must be commenced by the Heir in Person if he is of full Age, if not by Guardian."

As the Heir is resident in *Jamaica*, and it will be some time before he can be in *England*, and as a Year and a Day from the time of the Death is allowed for bringing such Appeal, so if Mr. *Chetwynd* should in the mean time obtain his Pardon,

Q. Whether he will upon pleading such Pardon be discharged out of Custody without Bail, and if so and he cannot afterwards be apprehended within the Year and Day, how is the Appellant to save the Benefit of his Appeal?

"If there is no Appeal commenced when the Pardon is pleaded, I hardly think the Court will require Bail upon allowing the Pardon; but it will be proper to shew that the Heir is expected, and in order to give time for his appearing it may be proper to enter Caveats,

being offered as to the Age of the Prisoner, the Jury formed their Judgment thereof;

* That Mr. *Ricketts* was about Nineteen Years of Age was admitted: No Evidence being offered as to the Age of the Prisoner.

"and desire to be heard, as a Means to procure some Terms where-
"by the Opportunity of having the Appellee forthcoming may be
"secured: If the Appeal is commenced in time, it will not be any Ob-
"jection that the Appellee is not apprehended within the Year."

Q. Whether an Appeal may be brought immediately, or must the Ap-
"pellant wait the Determination of the special Verdict?

The Appeal must be commenced within the Year and Day, and the
"Appellant is not bound to wait the Determination of the special Ver-
"dict before he commences it. The Court perhaps may give the Appel-
"lee Time to plead upon that Account, but this should be opposed."

Q. Whether the Appellant is obliged to enter into any Recognizance
"with Sureties to prosecute his Appeal with Effect; and suppose, upon
"trying such Appeal, the Jury find the Offence only Manslaughter; is
"the Appellant or his Sureties liable to any Damage, Fine or Punish-
"ment for bringing such Appeal?

The giving Pledges to prosecute is recited in the Writ, and I believe
"there is some Security given to the Sheriff before he serves the Writ;
"though in *Bambridge's Case* it was omitted. But it is out of doubt, if
"the Jury find it to be Manslaughter, that will be a sufficient prosecuting
"it with Effect, and protect the Appellant and his Sureties from any
"Damage, Fine or Imprisonment."

If the Defendant should be found guilty upon the Appeal,
"Q. Whether the King can relieve or respite the Execution of the
"Judgment, or any otherwise interfere therein?

"I apprehend that upon a Conviction of Murder on an Appeal, the
"Crown cannot interfere."

Upon the whole, under the Circumstances of this Case, your Opinion
"is desired."

Q. Whether it is advisable for Mr. Ricketts to appeal in case Mr. Chet-
"wynd should obtain a Pardon; or would such a Proceeding be consid-
"ered as severe or vindictive?

The Youth of the Offender, the Suddenness of the Action unattended
"with any aggravating Circumstances, and the Friendship which the
"Jury find to have subsisted to the Moment of the fatal Accident, make
"me incline to think, that even the Appellant, if he should succeed in
"his Suit, would hardly insist upon the Rigour of the Law; and then
"considering he is now abroad, I think the Gentlemen who have hitherto
"prosecuted and obtained the present Verdict, will be well justified in
"acquiescing under the Pardon, (supposing the King should grant it)
"after they have laid the State of the Case properly before those through
"whose Hands it is to take its Progress."

J. STRANGE.

31st October, 1743.

After the beforementioned special Verdict was found, the Relations of
"the Prisoner, who were Persons of some Figure in the World, had a Meet-
"ing with his Counsel, to consult what was most proper to do in this Af-
"fair, whether to endeavour the bringing on the arguing of the special Ver-
"dict, or immediately to apply to his Majesty for a Pardon.---The Coun-
"sel, considering the Youth of the Prisoner, and the Length of Time he
"might lay in *Newgate*, before the Determination of the special Verdict,
"advised the applying directly to his Majesty for a Pardon.---Whereupon
"the following Petition was delivered to the Lords Justices, (the King be-
"ing then at *Hanover*) viz.

To their Excellencies the Lords Justices in Council,

The humble Petition of William Chetwynd, an Infant of the Age of 15 Years,

Most humbly sheweth,

THAT the Petitioner was tried at the last Sessions of Oyer and Ter-
"miner at the *Old-Bailey*, on three Indictments preferred against him in
"the Name of his Majesty, for the Murder of *Thomas Ricketts* his School-fel-
"low, on the Trial whereof the Jury brought in a special Verdict in the
"Words following, viz.

That *Thomas Ricketts*, on the twenty-sixth Day of September last, being
"a Scholar at Mr. *Clare's* Academy in *Soho-Square*, was in a Room in the
"said Mr. *Clare's* House, in which the said Chetwynd used to lie and not Mr.
"Ricketts, in company with the Prisoner *William Chetwynd*, *William Ham-
"ilton*, *Samuel Malcher*, and *Hannah Humphreys* a Maid-servant in the said
"Mr. *Clare's* Family. That the said Mr. Chetwynd, the Prisoner, having
"his own Cake in his Hand, which was a hard Cake called a *Simnel*, and
"hard to cut; the Deceased, *Thomas Ricketts*, asked him for a Piece of it,
"which the said Chetwynd gave him. That the said *Thomas Ricketts* after-
"wards asking the said Chetwynd to give him some more of his Cake, the said
"Chetwynd refused; and thereupon the said Chetwynd went out of the said
"Room with his Cake under his Arm, and the Deceased followed him out
"of the said Room; upon which the said Chetwynd returned again into the
"said Room, and went to his own Bureau, and cut another Piece of the
"Cake for himself; the said Ricketts offered to lend the said Chetwynd his
"Knife to cut the Cake, and at the same Time pulled his Knife (being a
"claspd Knife) out of his Pocket and opened it; but the said Chetwynd re-
"fusing to make use of Mr. Ricketts's Knife, saying, he had a Knife of his
"own, the said Mr. Ricketts put up his Knife again; and immediately after
"this the said Chetwynd, being then at his Bureau, cut off a Piece of the said
"Cake with his own Knife, being a common Knife, and such a one as the
"said Chetwynd and his School-fellows generally used, and laid the same Piece
"of Cake upon the Top of his Bureau for himself. That the said Chetwynd
"standing there, with his Back to the rest of the Company, was putting the
"rest of his Cake into his Bureau, and whilst he was so doing, the Deceased
"came up and put his Hand over the said Chetwynd's Shoulder; whereupon
"the said Mr. Chetwynd, raising his Arms, said to the Deceased, Don't, Mr.
"Ricketts; and the said Mr. Ricketts immediately snatched the said Piece of
"Cake away, against the said Chetwynd's Consent, which lay upon the
"Top of the said Bureau, and went to the said Maid-servant about two or
"three Yards off, and said, laughing, *Hannah*, I have got a Piece of *Chet-
"wynd's* Cake, which he shewed her in his Hand. That thereupon im-
"mediately the Prisoner, Mr. Chetwynd, followed him with his Knife in
"his Hand, and demanded the said Mr. Ricketts to return him his Piece of
"Cake; the deceased Mr. Ricketts returned no Answer to this, but conti-
"nued laughing, and did not return the Piece of Cake; upon which the

Prisoner struck him back-handed with the said Knife which he had kept
"in his Hand all along (and with which he had cut the said Cake), the said
"Ricketts being then only in his Waistcoat, which was then unbuttoned,
"and gave him a Wound upon the right Side of the Belly, below the Navel,
"which penetrated into the Cavity of the Belly, the Deceased not having
"before struck the Prisoner, and not having at that Time any Weapon in
"his Hand. That immediately after the Deceased cried out, *Hannah*, *Chet-
"wynd* has stabbed me; and then the said *Hannah* said to the Prisoner, What
"have you done? Upon which the said Prisoner looked upon the said *Han-
"nah* with Concern, and said, If I have hurt Mr. Ricketts I am sorry for it.
"We find there never had been any Quarrel or Malice betwixt the De-
"ceased and the Prisoner, but that they constantly had lived in Friendship
"together; we find likewise that the Deceased was about the Age of
"Nineteen, and Mr. Chetwynd about the Age of Fifteen; and that
"of this Wound the Deceased died the 29th of the same September;
"and whether upon the whole, the Prisoner is guilty of all or any of the
"several Indictments, the Jury submit to the Court. That as it is expressly
"found, by this special Verdict, that there never had been any Quarrel or
"Malice between the Deceased and the Prisoner, but that they constantly
"lived in Friendship together; and as the fatal unhappy Wound your Pe-
"titioner gave the Deceased was the Effect of a sudden and instant Provo-
"cation, and for which he has ever since been, and still is, under the deepest
"and most inexpressible Affliction, and as the Prisoner had not the most
"remote Apprehension of murdering the Deceased, and in regard to your
"Petitioner's tender Age,

Your Petitioner most humbly hopes he may, under all the Circumstances of this
"unfortunate Case, be considered as a proper Object of the Royal Mercy,
"which your Petitioner most humbly prays your Excellencies will be graciously
"pleased to extend to him, by granting him the Royal Pardon for the said
"Offence.

And your Petitioner, as in the strictest Gratitude and Duty bound, shall
"ever pray, &c.

When their Lordships were pleased to refer it to the Attorney and Solici-
"tor-General, who made the following Report thereupon:

A Copy of the Report of his Majesty's Attorney and Solicitor-General, on
"Mr. Chetwynd's Petition.

To the King's most excellent Majesty in Council.

May it please your Majesty,

IN humble Obedience to their Excellencies the Lords Justices Commands
"signified to us by Mr. *Stone*, by his Letter of 25th October last, directing
"us to take the annexed Petition of *William Chetwynd*, an Infant of the Age
"of fifteen Years, into Consideration, and report our Opinions what may be
"proper to be done therein; We have taken the same into Consideration,
"after having been attended by the Agent and Counsel of the Pe-
"titioner, and also by the Agent and Counsel for Mr. *Roger Drake*
"and Mr. *Beecham Long*, under whose Care *Thomas Ricketts* the De-
"ceased mentioned in the Petition had been placed by his Father, who now
"lives at *Jamaica*; and which said Mr. *Drake* and Mr. *Long* opposed before
"us the Prayer of the said Petition.

The Petition states, That the Petitioner had been tried at the last Ses-
"sions of Oyer and Terminer at the *Old Bailey*, on three Indictments, for the
"Murder of the said *Thomas Ricketts* his School-fellow, on the Trial where-
"of the Jury brought in a special Verdict, which the Petition sets forth par-
"ticularly; and prays, that as it is expressly found by this special Verdict,
"that there never had been any Quarrel or Malice between the Deceased
"and the Petitioner, but they constantly lived in Friendship together, and
"as the fatal unhappy Wound the Petitioner gave the Deceased was the
"Effect of a sudden and instant Provocation, and for which he hath ever
"since been, and is still under the deepest and most inexpressible Affliction,
"and as he had not the most remote Apprehension of murdering the De-
"ceased, and in regard to his tender Age, the Petitioner most humbly hopes
"he may, under all the Circumstances of his unfortunate Case, be consid-
"ered as a proper Object of the Royal Mercy, which he most humbly
"prays may be extended to him, by granting the Royal Pardon for the said
"Offence.

We have inquired into the Case, and find that the Petitioner was in-
"dicted on three Indictments, whereof Copies are annexed, for the killing
"of the said *Thomas Ricketts*; one of which was on the Coroner's Inquest,
"which had found him guilty of Manslaughter; another at Common Law
"for Murder; and the third on the Statute of Stabbing, of the first Year
"of King *James the First*, Chap. 8th, all which were tried at the last Ses-
"sions of Oyer and Terminer at the *Old Bailey*; and the Jury found a special
"Verdict, which is not yet drawn up in form, but the Minutes thereof signed
"by the Jury are in the following Words, viz.

Middlesex.] The King against *William Chetwynd*, the same against the same,
"and the same against the same.

That *Thomas Ricketts*, on the twenty-sixth of September, being a Scholar
"at Mr. *Clare's* Academy in *Soho-Square*, was in a Room in the said Mr.
"Clare's House, in which the said Chetwynd used to lie, and not Mr.
"Ricketts, in Company with the Prisoner *William Chetwynd*, *William Ham-
"ilton*, *Samuel Malcher*, and *Hannah Humphreys*, a Maid-servant in the said
"Mr. *Clare's* Family.---That the said Mr. Chetwynd the Prisoner having his
"own Cake in his Hand, which was a hard Cake, called a *Simnel*, and hard
"to cut, the Deceased, *Thomas Ricketts*, asked him for a Piece of it, which
"the said Chetwynd gave him; that the said *Thomas Ricketts* afterwards ask-
"ing the said Chetwynd to give him some more of his Cake, the said Chet-
"wynd refused, and thereupon the said Chetwynd went out of the said Room,
"with his Cake under his Arm, and the Deceased followed him out of the
"said Room; upon which the said Chetwynd returned again into his said
"Room, and went to his own Bureau, and cut another Piece of the Cake
"for himself; the said Ricketts offered to lend the said Chetwynd his Knife to
"cut the Cake, and at the same Time pulled his Knife (being a claspd
"Knife) out of his Pocket, and opened it, but the said Chetwynd refusing
"to make use of Mr. Ricketts's Knife, saying, he had a Knife of his own,
"the said Mr. Ricketts put up his Knife again; and immediately after this, the
"said Chetwynd being then at his Bureau, cut off a Piece of the said Cake with his

his Knife, being a common Knife, and such a one as the said Chetwynd and his School-fellows generally used, and laid the same Piece of Cake upon the Top of his Bureau for himself; that the said Chetwynd standing then with his Back to the rest of the Company, was putting the rest of his Cake into his Bureau; and whilst he was so doing, the Deceased came up and put his Hand over the said Chetwynd's Shoulder, whereupon the said Mr. Chetwynd, raising his Arms, said to the Deceased, Don't, Mr. Ricketts; and the said Mr. Ricketts immediately snatched the said Piece of Cake away, against the said Chetwynd's Consent, which lay upon the Top of the said Bureau, and went to the said Maid-servant about two or three Yards off, and said, laughing, Hannah, I have got a Piece of Chetwynd's Cake, which he shewed her in his Hand; that thereupon immediately the Prisoner, Mr. Chetwynd, followed him with his Knife in his Hand, and demanded the said Mr. Ricketts to return him his Piece of Cake; the Deceased Mr. Ricketts returned no Answer to this, but continued laughing, and did not return the Piece of Cake, upon which the Prisoner struck him back-handed with the said Knife, which he had kept in his Hand all along, (and with which he had cut the said Cake) the said Ricketts being then only in his Waistcoat, which was then unbuttoned, and gave him a Wound upon the Right Side of the Belly, below the Navel; which penetrated into the Cavity of the Belly; the Deceased not having before struck the Prisoner, but that they had constantly lived in Friendship together. We find likewise, that the Deceased was about the Age of Nineteen, and Mr. Chetwynd about the Age of Fifteen; and that of this Wound the Deceased died the twenty-ninth of the same September; and whether upon the whole the Prisoner is guilty of all or any of the several Indictments, the Jury submit to the Court:

Allen Evans.
Charles Carleton.
Benjamin Tickner.
Samuel Bowler.
Francis How.
Thomas Hogg.

Peter Archambo.
Benjamin Ingram.
John Holmes.
Jacob Lebat.
Jonathan Alderton.
John Archambo.

As the Minutes of the special Verdict have stated the Case with all its Circumstances so very minutely, no other Evidence was offered on either Side to mitigate or aggravate the Charge. And we beg leave humbly to certify your Majesty, that it lies entirely in your Majesty's Royal Breast, to pardon the Petitioner or not; and if your Majesty shall be graciously pleased to extend your Royal Mercy to him, there can be no Objection thereto in point of Law.

All which is humbly submitted to Your Majesty's great Wisdom.

D. RYDER,
W. MURRAY.

Upon which his Majesty (being then returned from Hanover) was pleased to order his Most Gracious Pardon, for the said William Chetwynd, to be made out. As soon as this came to be known, a Caveat was entered against passing the same at (Lord Gower's) the Lord Privy-Seal's Office; whereupon the Lord Privy-Seal sent to Sir Thomas Abney, Knt. one of the Judges of the Court of Common-Pleas, to assist him at the Hearing the same; Sir Thomas in a very genteel Letter begged to be excused, on account of his former Intimacy with Walter Chetwynd, of Grendon in Warwickshire, Esq. the young Gentleman's late Father; upon which the Lord Privy-Seal sent to the Lord Chief Baron, to desire his Assistance at the Hearing of Counsel (at Whitehall) for and against passing the said Pardon; when after hearing the Arguments, (Serjeant Wynne and Mr. Morton for the Caveat, and Mr. Lloyd and Mr. Legge against it) the Lord Privy-Seal declared he had heard no Reasons sufficient given against allowing the same, and put the Privy-Seal to the said Pardon. After which the Friends and Relations of the Deceased entered a Caveat against passing the same at the Lord Chancellor's; when the Right Honourable the Earl of Hardwick ordered the Counsel on both Sides to attend him at his House in Ormond-street; when after hearing the Arguments on both Sides, his Lordship said, he had no doubt with him about passing the said Pardon, and ordered the Great Seal to be put to it. When the Prisoner came to Westminster-hall in Hilary Term to plead this Pardon, it was strongly opposed by Counsel; but after hearing the Arguments on both Sides, Lord Chief Justice Lee declared, he had heard no sufficient Reasons offered against the Prisoner's taking the Benefit of his Majesty's Pardon; which he did directly by pleading it on his Knees, and was immediately discharged.

* Strange's Reports, Vol. II. p. 1203, 4, 5.

† Slaughterford was acquitted before Holt, at Surrey Assizes; and he took Bail to answer an Appeal; which was afterwards tried at Bar, and the Party convicted and hanged. Strange, Vol. II. p. 1204. Slaughterford's Case was this:

Christopher Slaughterford (Son of a Miller, himself a Maltster of some Substance, near Guildford in Surrey) courted one Jane Young, who thereupon left her Service in order to be married to him; was seen in his Company October 5, 1708, but never heard of afterwards; whereupon he was suspected of murdering her, taken up, and committed to the Marshalsea; and at the Lent Assizes following, was tried at King's Bench, in Surrey, for the said Murder, and acquitted. However, he was ordered to remain in Gaol, many People thinking him guilty. The Father and Friends of the Deceased being poor, a Subscription was set on foot and Money raised, and an Appeal was brought against the said Slaughterford by Henry Young, Brother of the Deceased. He was brought to the Queen's-Bench Bar at Westminster, the second Day of the Term following, and tried before the Lord Chief Justice Holt, on the said Appeal, and convicted on very strong Circumstances, and ordered for Execution on Saturday July 9th. Slaughterford being led to the Gibbet from Guildford (to which Place he was carried from the Marshalsea), the only Request he had to make to the Executioner was, that he might throw himself off: And they were almost the only Words he uttered there; for being tied up, before the Executioner could descend to do the rest of his

Hilary Term, 17 George II.

DOMINUS REX. V. CHETWYND.

A Special Verdict, on an Indictment for Murder, was found at the Old-Bailey, and removed into the King's Bench; but before Argument the Defendant obtained his Majesty's Pardon, which he pleaded upon his Knees; and it was allowed. Then the Counsel for the Prosecutor insisted, that by Vertue of 3 H. VII. c. 1. the Court ought to require Bail for his Appearance to answer an Appeal; there being an Affidavit produced, that the Brother and Heir was beyond Sea, but expected in time; and it was also insisted, that by Vertue of 5 and 6 W. and M. c. 13, the Court should take Security for the Good-behaviour. The Statute 3 H. VII. c. 1. runs: "That if any Person charged as Principal or Accessory, be acquitted at the King's Suit, within the Year and Day, the Justices, before whom he is acquitted, shall not suffer him to go at large; but either remit him again to the Prison, or else let him to bail, after their Discretion, till the Year and Day be past."

Upon this Clause it was argued, that the Case of pleading a Pardon after a special Verdict, was stronger than the Case of an Acquittal by a Jury, which took away all the Presumption of Guilt; and that this was an actual Acquittal, and is called so in the Pardon. The Judgment is Quod eat inde sine Die, and if he is again indicted, he may plead Autre fois acquitte, 11 H. IV. 41. Bro. 26. Coron. 26, 133. Pitt. N. B. 251. G. and the Record being moved into the King's Bench, this Court are the Justices before whom he is acquitted; and it is not discretionary only as to the Point between Bail and Imprisonment, the latter of which the Prosecutor did not insist upon.

But as to this Point, the Court were of Opinion, that the present Case was not such as the Act of Parliament meant; and this being to subject the Prisoner to a second Trial, which before he was not, he not being indictable (Kelynge 23.) till the Time to appeal was elapsed; till this Act gave such a Prosecution; it was therefore to be construed strictly, and confined literally to an Acquittal by Verdict (Kelynge 104.) upon an Arraignment at the King's Suit; and it was material, that no Instance could be shewn of requiring such Bail upon pleading a Pardon; on the contrary, Bowen in Mich. 8 Ann. was discharged without Bail. Acquittal, they said, must be understood in a Course of Law, and not an Interposition of the Crown's Mercy.

The other Point, as to Sureties for the Good-behaviour, depended on the 5 and 6 W. and M. c. 13. which enacts, "That the Justices before whom any Pardon for Felony shall be pleaded, may, at their Discretion, remand or commit the Person pleading it to Prison, till he shall enter into a Recognizance with two Sureties, for his good Behaviour, for any time not exceeding seven Years; and if the Party be an Infant (which was the present Case) then he is not to be bound, but must find Sureties." Upon this Clause, therefore, the Prosecutor insisted upon Sureties for the Good-behaviour, and instanced 2 H. P. C. 394, where it is said, that at Common-Law, without the Aid of 18 Eliz. c. 7. a Party acquitted may be bound to his Good-behaviour, if of ill Fame.

The Counsel for the Prisoner did not much oppose giving Sureties, and said, they had them ready; and Mr. J. Wright and Mr. J. Dennison were inclined to take them; but as there had yet been no Instance since the Act, and this was merely discretionary, the Chief Justice (Sir William Lee) was unwilling to make the Precedent in the Case of an Infant, where some favourable Circumstances were stated in the Verdict. And the Case Hale cites out of Rastal's Entries, was, where (as the Record says) testatum fuit cur per fide dignos, that the Defendant was of ill Fame; and at last the others came in to discharge him without Security.

N. B. I (Sir John Strange) on behalf of the Prosecutor, (the Heir being beyond Sea) desired it might be taken notice of, that we did not waive our Demand; and upon that the Court said, it should be their own Act, upon the Discretion of the Court.

The whole Expence attending this Prosecution, at Consultations, Fees to Counsel at the Trial, at the Attorney General's, at Lord Privy Seal's, at the Lord Chancellor's, and at the King's Bench on pleading his Pardon, and Imprisonment in Newgate from October to February, amounted to above 1300l.

This William Chetwynd, Esq. was the Last Heir-male of the Chetwynds of Grendon in Warwickshire, and Rudgley in Staffordshire. For though (on the Death of his elder Brother, Walter Chetwynd, Esq. who caught a Fever by attending Captain Clark's Trial at the Old Bailey, April 1749, of which he died) he came into a good Estate, as Heir at Law (his Brother Walter's Will being in part set aside on a Trial in B. R.) he enjoyed it but a few Years.

Office, in turning him off the Ladder, he had swung himself off. He seemed to die with a resolute Obstinacy, but delivered the following Paper to the Sheriff.

Guildford, July 9, 1709.

"I being brought here to die, according to the Sentence passed upon me at the Queen's-Bench Bar, for a Crime of which I am wholly innocent, thought myself obliged to let the World know (that they do not reflect on my Friends and Relations whom I have left behind me much troubled for my fatal End), that I know nothing of the Death of Mrs. Jane Young; nor how she came by her Death directly or indirectly; though some have been pleased to cast Reflections on my Aunt. However, I freely forgive all my Enemies, and pray to God to give them a due Sense of their Errors, and in his due time to bring the Truth to light. In the mean time, I beg every one to forbear reflecting on my dear Mother, or any of my Relations, for my unjust and unhappy Fall, since what I have here set down is the Truth and nothing but the Truth, as I expect Salvation at the Hands of Almighty God; but I am heartily sorry that I should be the Cause of persuading her to leave her Dame; which is all that troubles me, as witness my Hand this 9th Day of July."

C. Slaughterford.

XXIX. The Trial of FRANCIS TOWNLEY, Esq. for High-Treason, (in levying War against his Most Sacred Majesty King George the Second) at the Court-House at St. Margaret's-Hill, Southwark, before the Right Honourable the Lord Chief Justice Lee, the Right Honourable the Lord Chief Justice Willes, Mr. Justice Wright, Mr. Justice Dennison, Mr. Justice Foster, Mr. Justice Abney, Mr. Baron Reynolds, and Mr. Baron Clive; with Sir Thomas De Veil, Knt. and Peter Theobalds, Esq. (both Justices of the Peace for the County of Surry, and Gentlemen named in the Special Commission) July 15, 1746*.

THE whole Pannel (108) being first called over in the Prisoner's Presence, after he had made several Challenges, the following Jury-men were sworn†.

1. Daniel Ponton of Lambeth, Starch-maker.
2. John Haywood of Chelsham, Gent.
3. Michael Cuffe of Battersea, Gardener.
4. Francis Bartholomew of Egham, Gent.
5. Robert Wood of Epsom, Baker.
6. William Brooker of Walton upon Thames, Brewer.
7. Edmond Browne of Croydon, Brewer.
8. Thomas Belch of Coulsdon, Gent.
9. Thomas Dawson of St. George in Southwark, Brazier.
10. William Taylor of St. Saviour in Southwark, Brewer.
11. Thomas Lintall of the same, Cloth-worker.
12. James Paine of Seal, Yeoman.

Then the Clerk of the Arraignment (after Silence commanded) read over his Indictment to him, which was as follows:

Surry. Be it remembered, That at a Special Session of Oyer and Terminer, and Gaol-Delivery of our Sovereign Lord the King, of and for the County of Surry, holden at the Borough of Southwark in the said County, on Monday the twenty-third Day of June, in the twentieth Year of the Reign of our said present Sovereign Lord George the Second, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, before Sir William Lee, Knight, Chief Justice of our said present Sovereign Lord the King, appointed to hold Pleas before the King himself, Sir John Willes, Knight, &c. (naming the rest of the Judges and Commissioners present) and others their Fellow-Justices and Commissioners of our said present Sovereign Lord the King, assigned by Letters Patent of our said present Sovereign Lord the King under his Great Seal of Great Britain, made by Virtue of the Statute made in this present Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied or shall levy War against his Majesty, and for the better ascertaining the Qualifications of Jurors in Trials for High-Treason, or Misprision of Treason, in that Part of Great Britain called Scotland*, to the said Justices and Commissioners above-named and others, and to any three or more of them (of whom our said present Sovereign Lord the King willed that any of them the said Sir William Lee, [naming some others of the Judges] and others in the same Letters Patent named and appointed shall be one, to deliver the Gaol of the said County of the Prisoners therein being, or such as shall or may be detained in the same, on or before the first Day of January, in the Year of our Lord One Thousand Seven Hundred and Forty-six, for or on Account of the High-Treason mentioned in the said Statute in levying War against our said present Sovereign Lord the King within this Realm, and to enquire by the Oath of good and lawful Men of the same County of all such High-Treasons in levying War against our said present Sovereign Lord the King within this Realm by the said Prisoners, or any of them, or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be guilty of High-Treason in levying War against our said present Sovereign Lord the King within this Realm, and shall be apprehended and imprisoned for the same on or before the said first Day of January, in the said Year of our Lord One Thousand Seven Hundred and Forty-six, and the same High-Treasons to hear and determine according to the Form of the said Statute, by the Oath of Sir William Richardson of Bermondsey, Knt. Sir Abraham Shard of Kennington, Knt. Sir Thomas Hankey of Clapham, Knt. Sir Peter Thompson of Bermondsey, Knt. Josias Wordsworth of Adcombe, Esq. Percival Lewis of Putney, Esq. Samuel Atkinson of Croydon, Esq. John Copeland of Camberwell, Esq. Charles Haskins of Croydon, Esq. Joseph Creswick of Streatham, Esq. William Clarke of Southwark, Esq. Joseph Willoughby of Croydon, Esq. Thomas Bevois of Bermondsey, Esq. Elias Bird of Rotherhithe, Esq. Thomas Tarrant of Southwark, Esq. Edward Steevens of Southwark, Esq. Henry Robinson of Wandsworth, Esq. John Heathfield of Croydon, Esq. Nathaniel Green of Southwark, Esq. Isaac Eeles of Lambeth, Esq. John Smith of Lambeth, Esq. Hammett Richardson of Bermondsey, Esq. Samuel Nicholson of Croydon, Esq. good and lawful Men of the said County, being then and there sworn and charged to enquire for our said present Sovereign Lord the King, touching and concerning the Premises in the said Letters Patent mentioned, It is presented, that the Bill of Indictment to this Schedule annexed is a true Bill.

The Jurors for our present Sovereign Lord the King upon their Oath present, that Francis Townley, late of the City of Carlisle, in the County of Cumberland, Esq. otherwise called Francis Townley, late of the same Place, Gentleman, John Hamilton, late of the City of Carlisle, in the County of Cumberland, Esq. otherwise called John Hamilton, late of the same Place, Gentleman, Alexander Abernethy, late of the same Place, Gen-

tleman, otherwise called Alexander Abernethy, late of the same Place, Surgeon, and George Abernethy, late of the same Place, Gentleman, &c. being Subjects of our said present most Serene Sovereign Lord George the Second, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, not having the Fear of God in their Hearts, nor having any Regard for the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil, as false Traitors and Rebels against our said present Sovereign Lord the King, their supreme, true, natural, lawful, and undoubted Sovereign Lord, entirely withdrawing that cordial Love, and that true and due Obedience, Fidelity and Allegiance, which every Subject of our said present Sovereign Lord the King should and of Right ought to bear towards our said present Sovereign Lord the King; and also devising, and (as much as in them lay) most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King, and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom, and also to put and bring our said present Sovereign Lord the King to Death and final Destruction, and to raise and exalt the Person pretended to be Prince of Wales during the Life of James the Second, late King of England, and so forth, and since the Decease of the said late King, pretending to be, and taking upon himself the Title and Title of King of England, by the Name of James the Third, to the Crown and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the tenth Day of October, in the nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of Carlisle aforesaid, in the County of Cumberland aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King (to wit) to the Number of three Thousand Persons (whose Names are as yet unknown to the said Jurors), being armed and arrayed in a warlike and hostile Manner (to wit), with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsely and traitorously assemble and join themselves against our said present Sovereign Lord the King, and then and there with Force and Arms did falsely and traitorously, and in a warlike and hostile Manner array and dispose themselves against our said present Sovereign Lord the King, and then and there with Force and Arms, in Pursuance and Execution of such their wicked traitorous Intentions and Purposes aforesaid, did falsely and traitorously prepare, order, wage and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King, and also then and there during the said War with Force and Arms did with the said Traitors and Rebels so assembled, armed and arrayed as aforesaid, falsely and traitorously against the Will of our said present Sovereign Lord the King, enter into and take Possession of the said City of Carlisle, and the Castle thereto belonging within the same City, (the said City and Castle being a City and Castle of our said present Sovereign Lord the King) and the said City and Castle with Force and Arms then and there did falsely and traitorously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of their Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

To this Indictment the Prisoner pleaded, *Not Guilty*.

N. B. This Indictment and Caption were made use of against all the Rebels who were tried in Surry, except *Aneas Macdonald*; save that the Overt-Acts were laid in different Counties of England or Scotland, as the Cases respectively required; and also save that the Overt-Act of taking and possessing the City and Castle of Carlisle was not charged on those who were not concerned in that Part of the Rebellion.

Clerk of Arraignment. Gentlemen, upon this Indictment the Prisoner at the Bar has been arraigned, and thereunto has pleaded, *Not Guilty*, and for his Trial hath put himself upon God and his Country, which Country you are: Your Charge is to enquire, whether he be guilty of the High-Treason whereof he stands indicted, or *Not Guilty*. If you find him *Guilty*, you are to enquire what Goods and Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him *Not Guilty*, you are to enquire whether he fled for it; and if you find he fled for it, you are to enquire of his Goods and Chattels, as if you had found him *Guilty*: If you find him *Not Guilty*, nor that he did fly for it, you are to say so, and no more, and hear your Evidence.

* Though there were no Trials of the Rebel Commoners in 1745, printed in the Collection of *State Trials*; yet we shall insert here a short Account of a few of the Trials of the principal Commoners concerned in the Rebellion in 1745-6, as printed at that Time, (with Additions) to shew they were Persons of no Consequence or Estate concerned in that unnatural Rebellion; being either Men of small Fortunes, or who had run out what they had, or Tracesmen, who took Part in that desperate Undertaking.

† For the several Steps taken relating to the Rebels, previous to their Trials, see Judge Foster's Reports, Page 1, 2, 3.

The Counsel for the King were *Mr. Attorney General*, *Sir John Strange*, *Mr. Solicitor General*, *Sir Richard Lloyd*, and the Honourable *Mr. York*; and for the Prisoner, *Mr. Serjeant Wynne*, and *Mr. Clayton*.

Mr. York, Counsel for the King. May it please your Lordship, and you, Gentlemen of the Jury; This is an Indictment against *Francis Townley*, the Prisoner at the Bar, and sets forth, &c. (as is before mentioned). To this Indictment he hath pleaded Not Guilty; we shall produce our Witnesses to make good the Charge against the Prisoner, which if we do, we doubt not that you will find him guilty of the Indictment.

Mr. Attorney General (Sir Dudley Rider). My Lords, and you, Gentlemen of the Jury, the Prisoner at the Bar, having been deeply engaged in the late unnatural and wicked Rebellion begun in Scotland, and carried into the Heart of this Kingdom, in order to overturn our present happy Constitution in Church and State, hath made it necessary for this Prosecution against him: I do not doubt but in the course of our Evidence we shall make it appear to your Satisfaction, that the Prisoner with two others, whose Names are *Blood* and *Fletcher*, and other their Confederates, did assemble in a warlike Manner, and procured Arms, Ammunition, and other Instruments of War; and composed a Regiment for the Service of the Pretender to these Realms, to wage War against his present most sacred Majesty; and did march through and invade several Parts of this Kingdom, and unlawfully did seize his Majesty's Treasure in many Places for the Service of their villainous Cause, and took away the Horses and other Goods, Merchandize, and Chattels of many of his Majesty's peaceable Subjects. And that during the said March the Prisoner, with other Rebels, in open Defiance of his Majesty's undoubted Right and Title to the Crown of these Realms, frequently caused the Pretender's Son to be proclaimed in a publick and solemn Manner as Regent of these Realms; and himself marched at the Head of a pretended Regiment, which they called the *Manchester Regiment*.

My Lords, I shall not take up the Time of the Court in saying a great deal, for all that the Prisoner is charged with will appear so full and plain from the Evidence we shall produce for the King, that there will not be the least Doubt with the Jury, to find him guilty.

Sir John Strange then spoke to the following Effect: My Lords, and you Gentlemen of the Jury, I am of Counsel in this Case likewise for the Crown: I am very far from aggravating this Case against the Prisoner at the Bar, but I cannot help observing, that the Engagements which the Prisoner had embarked in, would have overturned one of the most glorious and free Constitutions that ever was framed, and I believe I may venture to say, is the only one in the whole World.

If an Attempt to subvert the Government, to destroy the King, and set up a *Papish Pretender*; if marching in an hostile manner, carrying on a bloody and destructive War in this Nation, can move Compassion, or be extenuated, any Rebellion may be palliated over and excused, since scarce any Circumstance can be added in Aggravation of that which hath lately been raised and carried on in this Kingdom.

Every Body knows the Rebellion broke out in Scotland with a small Number of People, and made a very great Progress, 'till at last the Rebels had the Audaciousness, with the Pretender's Son at their Head, to fight his Majesty's Forces at *Preston Pans*, and then the Rebellion burst into England, and the Prisoner at the Bar was with them in Lancashire, particularly at *Preston*, and several other Places, and then they proceeded to *Manchester*, where the Prisoner formed a Regiment, and accepted a Commission to be Colonel of the said Regiment, from the eldest Son of the Pretender, and wore a white Cockade, and a Plaid Sash, as a Mark of his Authority, and the Party he sided with; and then advanced from *Manchester* to *Derby* with his Regiment, where the Rebel Army halted some few Days; but being apprehensive of the Duke of Cumberland's attacking them, it so alarmed them, that they marched back with great Precipitation 'till they came to *Carlisle*, where he acted as Commandant of the City, and gave out Orders to the Garrison, amongst which he ordered the Houses of some of his Majesty's faithful Subjects to be set on fire, but was afterwards obliged by the Duke to surrender to the King's Pleasure; and though Humanity may induce you to have Compassion towards the Prisoner, yet if it is proved he is guilty of the Crimes laid to him, the Justice of this Nation calls aloud for his Punishment.

For no less was to be a Sacrifice than his Majesty and his Royal Family (a Succession of Princes, appointed by Divine Providence to be not only the Preservers of our Rights and Liberties, but to be the Guardians of the Protestant Interest in Europe), to appease the Fury of a Set of unsatisfied People, who have associated in this most wicked and unnatural Rebellion, and who envied us, the faithful Subjects of his Majesty, the Blessings we enjoyed uninterrupted, of our Religious and Civil Rights and Privileges.

These People, in order to divert themselves, and amuse the Ignorant, had on their Standards or Colours, Mottoes that they imagined would be grateful, viz.

LIBERTY and PROPERTY,
CHURCH and KING.

But your Lordship and the Gentlemen of the Jury, as well as the unfortunate Person who stands before you at the Bar, will excuse me if I take upon me to interpret the Meaning of their famous Motto or Inscription on their Colours, which, not to take up too much of the Time of the Court, I shall do in few Words.

The Liberty they designed, was nothing less than Slavery; their intended Property was Plunder, which too many of the good People of this Kingdom hath found; their Church was Popery, and the Meaning of their King, was only to make these free Kingdoms a Province to France. We shall now call our Witnesses, who will give such Proofs against the Prisoner, that I doubt not, Gentlemen of the Jury, you will find him guilty of the Treason he stands charged with.

Mr. Solicitor General (Hon. W. Murray, Esq.) Call *Roger Mac Donald*.

Roger Mac Donald being sworn, said, That he knew *Colonel Townley* the Prisoner, that he saw him at *Derby*, and on the Retreat of the Rebel Army from thence, he marched at the Head of the *Manchester Regiment*, as Colonel of the same.

This Witness also said, that he saw him with a white Cockade in his

Hat, a Brace of Pistols, and was accounted as principal Officer between *Lancaster* and *Preston*, and he appeared at the Head of the Regiment, with Colours flying, and Drums beating, and that he had on a Plaid Sash.

This Witness was then asked, What Number at that Time the Rebel Army might consist of? and he said, to the best of his Knowledge, he believed 5600 Men, but not all armed.

This Witness farther deposed, That the Prisoner at the Bar was always looked upon by both Officers and Soldiers, as Colonel of the Regiment called the *Manchester Regiment*; and that he gave Command to all the Officers under him, who obeyed his Command as their principal Officer. That the Regiment had a Flag with these Words on one Side, viz. *Liberty and Property*; and on the other, *Church and King*. That they had some Artillery with them, and the Prisoner always appeared at the Head of his Regiment.

Cross-Examination.

Prisoner's Counsel (Mr. Serjeant Wynne) Pray have you had no Promise of Pardon?

Witness. I have had no certain Promise of Pardon. I was first examined, at *Inverness*, by the Judge Advocate of Scotland, but he did not assure me of a Pardon.

Prisoner's Counsel. Did not you expect it?

Witness. I cannot say but I did expect to be pardoned, for I was only a Servant. I was brought ashore very poor, and without any thing to subsist on.

King's Counsel. You say you saw the Prisoner, in the Retreat from *Derby*, command his Regiment: Was not he looked upon as Colonel?

Witness. Yes, I saw him on Horseback very often, and he always rode at the Head of the Regiment on a bay Horse.

Sir Richard Lloyd. Call *Samuel Maddox*; who appeared, and was sworn.

Maddox said, The first Time he saw the Prisoner, *Colonel Townley*, was at *Manchester*, about the sixth, seventh, or eighth Day of *December* last, but the Day he could not particularly remember; and said the Prisoner was made Colonel of the *Manchester Regiment* by the Pretender's Son; and one Reason why he was certain he was Colonel of the Regiment, was, that a Guard from the said Regiment was mounted every Day, and Centinels placed at the Prisoner's Quarters; that he, the said *Maddox*, marched out with him in the Station of an Ensign, but never had any Commission, though he carried the Colours as such; that the Prisoner wore a Sword and a Brace of Pistols, with a white Cockade in his Hat; and that the Prisoner gave Command as Colonel of the Regiment, and that he ordered the said *Manchester Regiment* to be drawn up in the Church-Yard in *Manchester*, where the Pretender's Son reviewed them, and that he marched at the Head of the Regiment as Colonel to *Derby*. Their first Day's March from *Manchester* was to *Winslow*, where the Prisoner appeared also at the Head of the Regiment, and had a white Cockade in his Hat, a Plaid Sash, a Brace of Pistols, and a Sword; that their next Day's March was to *Macclesfield*, where he, this Witness, signified, he had an Inclination to leave the Regiment, and return home to his Master at *Manchester*, but was intimidated from so doing, by being threatened, and told, that if he did he would have his Brains knocked out.

This Witness farther deposed, That when they were at *Derby* with the Rebel Army, they beat up for Volunteers for the *Manchester Regiment*, commanded by the Hon. *Colonel Francis Townley*; and the same was done by the particular Order and Direction of the Prisoner.

That when the Rebel Army retreated from *Derby*, *Colonel Townley*, the Prisoner, and some of his Regiment, took out of a House between *Derby* and *Ashborn*, a Sack full of Arms, which were concealed under some old Writings; that the said Arms were taken with them to *Ashborn*, and lodged all Night in the Prisoner's own Room, and disposed of afterwards among his Men; that the Prisoner had two Centinels always at his Door all Night, for fear the Duke of Cumberland was nearer to them than they imagined; that the Prisoner marched as Colonel of the *Manchester Regiment*, in their Retreat from *Derby* to *Carlisle*; sometimes at the Head of the Regiment; that when they came to *Carlisle*, the Prisoner was made by the Pretender's Son; Commandant of *Carlisle*, and had another Commission given him by the Pretender's Son to raise a Regiment of Horse; that so soon as the main Body of the Rebel Army were gone from *Carlisle* for Scotland, he the Prisoner took on him the Command of the whole Rebel Forces left there; and that he gave Orders for the Guns to be mounted, and also ordered a House to be burnt; which was accordingly done, alledging that several of the King's Forces had fired from it, and annoyed the Pretender's Army; and that he particularly directed and caused several *Chevaux de Frize* to be made, and fixed at the Gates and Entrance to the City, to prevent his Majesty's Horse and Dragoons from approaching it; that the Prisoner ordered some of the Rebel Army then in *Carlisle*, to make a Sally out to bring in some Sheep, and that the Prisoner mounted the Walls, with a Pistol in his Hand, to give notice if the King's Forces were near where the Men were to go; that the Prisoner paid the Men of his own Company himself, as all the Captains of Companies did theirs; and that he had heard the Prisoner when in *Carlisle*, in company with other Officers, complain that he was fourscore Pounds out of Pocket in paying his Men; that before the Capitulation, this Witness heard the Prisoner have some Words, and was seemingly in a great Passion with *Colonel Hamilton*, who was Governor of the Castle or Citadel of *Carlisle*, for surrendering the Place, and not making a Defence to the last; and that he heard the Prisoner declare, that it was better to die by the Sword, than to fall into the Hands of these damned Hanoverians.

This Witness being particularly asked by the King's Counsel, if he had at any time seen the Prisoner in *Carlisle* act as an Officer, said, That he had particularly seen him encouraging the Rebel Soldiers to make Sallies out on the King's Forces.

Cross-Examination.

Mr. Serjeant Wynne. *Mr. Maddox*, after the Surrender of the Town and Citadel of *Carlisle*, did not you all expect Mercy?

Maddox. We were all put Prisoners into the Church.

Serjeant Wynne. Did you all expect to be hanged?

Maddox. I cannot say that, for we were in expectation of being at Liberty again soon.

Serjeant Wynne. Pray do not you expect a Pardon, or have you had any Promise of a Reward for what you have done in this Affair?

4 A

Maddox.

Maddox. I cannot say I have ever had any Promise of a Reward.
Serj. Wynne. I find you are a very smart young Man, and I desire to be answered to this Question; Pray, have you had any Promise of a Reward or Pardon, or do you expect any Reward or Pardon, after having given your Evidence against the Prisoner at the Bar, or the other Prisoners that are in Custody?

Maddox. My Brother came to me when I was in New-Prison, and he did advise me to do the best I could for myself, and serve my Country. Soon after one of his Majesty's Messengers took me away; and I have been at his House ever since, only at those Times I went to be examined; Nobody ever told me that I should be pardoned, but my Friends advised me to do what I have done. If I could have a free Pardon, I should be very thankful for it.

Mr. Clayton. (another of the Prisoner's Counsel.) **Mr. Maddox.** Did not his Royal Highness the Duke (when you surrendered Prisoners) promise you Mercy?

Maddox. All the Terms his Royal Highness said we were to expect, were, we should not be put to the Sword, but that we should be left to his Majesty's Pleasure; which two Scots Officers who went to the Duke, and whose Names were *Abernethy* and *Forbes*, told us; and that the People in *Carlisle* were to deliver up all their Arms at the Gate, and the Officers were to go into the Church.

King's Counsel. Call *Austin Coleman*, who appeared and was sworn, and said, He saw the Prisoner at the Bar in *Carlisle*, who was called Colonel *Townley*, and commanded the *Manchester* Regiment, and was made Commandant of the said City by the Pretender's Son; and if any of the Soldiers wanted Arms, they applied to him, and he furnished them with Firelocks, Pistols and Bayonets; and that he often had seen the Prisoner order the Guard to mount, and always acted as their chief Officer, and all the other Officers took their Orders from him as their Superior.

Cross-Examination.

Mr. Serj. Wynne. Pray, Sir, inform me what Time you saw the Gentleman at the Bar at *Carlisle*, was it in the Month of November?

Coleman. I cannot tell what Month it was, I know I saw him at *Carlisle* when it was in Possession of the Rebels, and he had a Commission from the Pretender's Son.

Mr. Serj. Wynne. Did you ever hear him say he had a Commission?

Coleman. No, I never did.

Mr. Serj. Wynne. Then what you say signifies nothing.

King's Counsel. Call Capt. *Carey* of the Foot-Guards, who appeared.

King's Counsel. Pray swear the Captain; which being done, Capt. *Carey* said, That he received Orders by Lord *George Beauclerk*, from his Royal Highness Duke *William*, to take Care of the Governor of *Carlisle*, and had his Royal Highness's Orders to examine all the Rebel Prisoners Papers, amongst whom he applied to the Prisoner at the Bar, who said he had delivered his Commission before to Major *Adams*. He further said, That the Prisoner had some Guineas in his Pockets, and his Watch, which he did not take from him; for his Royal Highness's Orders were, not to take any Money out of the Pockets of any of the Officers, only to seize all publick Money that they had collected; for that what Money they had in their Pockets might be of Service to them in their Confinement. That this Evidence indorced all the Papers that he found on such of the Officers as he searched, and said, the Capitulation was signed by the Duke of *Richmond*, Lieutenant-General in the Army; wherein the Rebels in *Carlisle* were to be at the King's Pleasure.

Counsel for the King. Sir, are you sure that in the Capitulation that was signed by the Duke of *Richmond*, it was mentioned that the Prisoners should be reserved for the King's Pleasure?

Capt. Carey. I cannot take upon me to be certain of that; but I think so.

King's Counsel. Do you know the Duke of *Richmond*'s Hand-writing?

Capt. Carey. No, I never saw his Grace write.

Then a Paper was shewn him, which he said was the Capitulation, and was read, as follows:

"All the Terms his Royal Highness will or can grant to the Rebel Garrison of *Carlisle*, are, That they shall not be put to the Sword, but be reserved for the King's Pleasure.

"If they consent to these Conditions, the Governor and principal Officers are to deliver themselves up immediately, and the Castle, Citadel, and all the Gates of the Town are to be taken Possession of forthwith by the King's Troops. All the small Arms are to be lodged in the Town Guard-Room, and the rest of the Garrison are to retire to the Cathedral,

* As some People may be willing to know what the Rebels called, *The Capitulation on the Surrender of Carlisle*; and as several of those unhappy Persons in their dying Speeches asserted, That their Lives were taken away contrary to the Laws of Nations and of Arms, as appears by the Capitulation granted them at the Surrender of that City; to contradict so false an Assertion, we shall here insert all the Messages, &c. that passed on that Occasion, whereby it will appear, that nothing was granted them but, "that they should not be put to the Sword, but reserved for the King's Pleasure;" which Terms they consented to accept, as appears by Colonel *Hamilton*'s, and the other Officers Answer to the Terms offered by his Royal Highness, viz. On the first Platoon of the Old Battery firing, (December 30, 1745) the Rebels hung out the White Flag; whereupon the Battery ceased, and they called over the Walls, That they had two Hostages ready to be delivered at the English Gate, on the opposite Side of the Town; his Royal Highness the Duke of *Cumberland* then ordered Colonel *Conway* and Lord *Bury* to deliver two Messages marked in Writing, to be signed by Colonel *Conway*; the second Message being designed as an Answer to a Person's Letter, who called himself a *Frenchman*.

In about two Hours they returned, and brought a Paper signed *John Hamilton*; whereupon they were sent back with the Terms signed by the Duke of *Richmond*, by Order of his Royal Highness; and about Four they brought a Paper signed also by the said *John Hamilton*; on which Brigadier *Bligh* took Possession of the City.

Copy of his Royal Highness's Message to the Rebels at *Carlisle*, upon their hanging out a White Flag, Monday Morning, the 30th of December, 1745, sent by Colonel *Conway*.

His Royal Highness will make no Exchange of Hostages with Rebels, and desires they will let him know by me, what they meant by hanging out the White Flag.

To let the *French* Officer know, if there is one in the Town, that there are no *Dutch* Troops here, but enough of the King's to chastise the Rebels, and those who dare to give them any Assistance.

Signed,

Col. *Conway*,
 Aid de Camp to his Royal Highness the Duke.

where a Guard is to be placed over them. No Damage is to be done to the Artillery, Arms, or Ammunition." Head Quarters at *Blackall*, 30 Dec. Half an Hour past Two in the Afternoon.

By his Royal Highness's Command,
 Signed *Richmond*, *Lenox*, and *Aubigny*, Lieutenant-General of his Majesty's Forces.

King's Counsel. Call Captain *Nesbit* of the third Regiment of Foot Guards; who appearing, and being sworn, said, He went by order of his Royal Highness the Duke to visit and examine the Rebel Officers in *Carlisle*; and that the Prisoner was one of them, and went by the Name of Colonel *Townley*, and Commandant of *Carlisle*.

King's Counsel. Swear Captain *Vere*, which was done.

King's Counsel. Sir, will you be pleased to tell my Lords, and the Gentlemen of the Jury, what you know of the Prisoner at the Bar being in the late unnatural Rebellion?

Capt. Vere. I saw the Prisoner on the 20th of November at *Carlisle*, for I was taken Prisoner a little before by the Rebel Army; he was called Colonel *Townley*, Colonel of the *Manchester* Regiment, and Commandant of the Town. On the 25th of December he appeared with a white Cockade; I went up to Colonel *Hamilton*'s Room, where we talked of a Capitulation, and Mr. *Hamilton* was willing to agree to it: We then wrote a Letter to his Royal Highness the Duke, and the Messenger who carried it was made a Prisoner; and Mr. *Hamilton* desired me to go to Captain *Abernethy*, and the Scotch Officers, and they all agreed to what was done, and the next Day they hung out the White Flag.

Sir John Strange. Did not *Townley* appear as the Commanding Officer?

Capt. Vere. Yes, I saw his Commission in the Guard-Room.

Sir John Strange. Did you see it in his own Hands?

Capt. Vere. I cannot say I did.

Mr. Serj. Wynne. Pray, Sir, what are you?

Capt. Vere. I am an Officer, and was sent by his Grace the Duke of *Newcastle* upon the publick Service, and was taken Prisoner before by the Rebel Army.

Mr. Davidson, a Grocer of *Carlisle*, was the next Witness, who being called and sworn, deposed, That he had seen the Prisoner at *Carlisle*, where he acted as Colonel of the *Manchester* Regiment, and Commandant of the City of *Carlisle*; he was present when he ordered a House to be set on Fire at *Carlisle*; and on this Deponent's asking him the Reason for it, he replied, That several of the Elector of *Hanover*'s Men had fired from it, and annoyed his Men.

Here the King's Counsel rested it.

The Counsel for the Prisoner proceeded now to his Defence, and pleaded, That Mr. *Townley* was a Gentleman of a good Family, and that his Education was suitable to his Birth; but by some Misfortunes in his Family was obliged to retire to *France*, which happened in the Year 1728. Being a Man of Spirit, he was soon taken Notice of by the *French* Court, and being recommended to his most Christian Majesty, as a Person capable of a Post in his Army, the King gave him a Commission; in consequence of which he served at the Siege of *Philipshurgh*, under the Marshal Duke of *Berwick*, who lost his Life before the Walls of that Place. He there behaved with such Courage and Conduct as gained him the Respect and Esteem of all the Officers in the Army. He executed all the Orders of his Superiors with the greatest Intrepidity, and exposed himself on every Occasion in such a Manner, as if Life was of no Signification, when Honour and the Service of his Master stood in Competition with it. He was likewise in several other Sieges and Engagements, where his Behaviour was always such as became a Man of Honour; and as he received the Pay of his most Christian Majesty, he thought it his Duty to serve him with all the Fidelity he was capable of. Thus he continued in that Service from the Year 1728, till a few Years since that he came into *England*, where he privately resided till about the Time of the breaking out of the Rebellion. And the *French* King imagining he might be of Service in promoting his Views, in the Invasion which he had meditated against these Kingdoms, sent him a Colonel's Commission, to enable him to raise Forces, and to assist his Ally, the Pretender, in his Expedition to *Scotland*. Thus it appears, that he has been sixteen Years in the Service of *France*; that he has had the *French* King's Commission during all that Time; and consequently was as much in the Service of *France* as any Officer in the *French* Army; and therefore they were humbly of Opinion, that Col. *Townley* had as just a Right to the *Cartel*, as any *French* Officer that has been taken by the *English*, during the Progress of the War between the two Kingdoms.

John Hamilton's Answer to his Royal Highness the Duke's Message to the Rebels in Carlisle, December 30, 1745.

In Answer to the short Note sent by his Royal Highness Prince *William*, Duke of *Cumberland*; the Governor, in Name of himself, and all the Officers and Soldiers, Gunners and others, belonging to the Garrison, desires to know what Terms his Royal Highness will be pleased to give them, upon the Surrender of the City and Castle of *Carlisle*; and which known, his Royal Highness shall be duly acquainted with the Governor and Garrison's last or ultimate Resolution, the White Flag being hung out on Purpose to obtain a Cessation of Arms for concluding such a Capitulation. This to be given to his Royal Highness's Aid de Camp.

Signed,

John Hamilton.

His Royal Highness's Declaration to the Rebels, sent by the Colonels *Conway* and Lord *Bury*, Aid de Camps to his Royal Highness, after receiving *John Hamilton*'s Letter, December 30, 1745.

All the Terms his Royal Highness will or can grant to the Rebel Garrison of *Carlisle*, are, that they shall not be put to the Sword, but be reserved for the King's Pleasure. If they consent to these Conditions, the Governor and principal Officers are to deliver themselves up immediately, and the Castle, Citadel, and all the Gates of the Town, are to be taken Possession of forthwith by the King's Troops. All the small Arms are to be lodged in the Town Guard-Room, and the rest of the Garrison are to retire to the Cathedral, where a Guard is to be placed over them. No Damage is to be done to the Artillery, Arms, or Ammunition. Head Quarters at *Blackall*, 30 December, Half an Hour past Two in the Afternoon.

By his Royal Highness's Command,

Signed *Richmond*, *Lenox*, and *Aubigny*, Lieutenant-General of his Majesty's Forces.

The Rebels Answer to the Terms offered them by his Royal Highness, December 30, 1745. The Governor of *Carlisle*, and all the Officers composing the Garrison, agree to the Terms of Capitulation given in by his Grace the Duke of *Richmond*, *Lenox*, and *Aubigny*, Lieutenant-General of his Majesty's Forces, recommending themselves to his Royal Highness's Clemency, and that his Royal Highness will be pleased to interpose for them with his Majesty; and that the Officers Cloaths and Baggage may be safe, with a competent Time to be allowed the Citizens of *Carlisle* to remove their Beds, Bedcloaths, and other Household Furniture impressed from them for the Use of the Garrison in the Castle. The 30th of December, at Three in the Afternoon. We

We must acknowledge that the King's Counsel have opened the Nature of the Indictment with all the Candour that could be expected, and have not exaggerated the Charge against the Prisoner beyond the Bounds of Humanity and Good-nature; and we humbly hope they will be of Opinion with us, that tho' the Prisoner at the Bar should unhappily be found acting in this unnatural Rebellion, yet as he acted under a Commission from the French King, he has a Right to the Cartel for settling the Exchange of Prisoners that may be taken on either Side, in the War now carried on between the two Kingdoms.

The Evidence we have to produce in Behalf of the Prisoner, are only three. The first is Capt. *Carpentier*, who will prove, we hope, to your Lordships Satisfaction, that Col. *Townley* was many Years in the French Service, under a Commission from the French King; and since his being taken at *Carlisle* has been constantly supplied from France; the other two, who are *John Hayward* and *Thomas Dickinson*, we shall bring to invalidate the Evidence of *Maddox*, by shewing the Badness of his Character, and that he is such a Man whose Testimony is not to be credited.

And the Prisoner's Counsel farther observed, that the Indictment was insufficient, for that they had not mentioned the Day in the Indictment when the Treason was done, and that the glorious Statute of the 7th of King *William III.* which was justly esteemed the Bulwark of English Liberty, directed, that nothing shall be given in Evidence but what is inserted in the Indictment; and that the Time not being mentioned in the Indictment when the Treason was acted, is sufficient to quash it, because it might be so long past as to entitle the Prisoner to the Benefit of the Limitation enacted in the said King's Reign; and that Act says, That no Person shall be convicted, or suffer for High or Petit Treason, unless a Prosecution is begun against the Person who committed such Treason, in three Years after the Commission of such Treason.

Counsel. Pray call Mr. *Carpentier*; who appeared, and was sworn.

King's Counsel. Pray, what would you ask this Gentleman to?

Prisoner's Counsel. To prove that the Prisoner had a Commission from the French King, and that he was at the Siege of *Philippsburg*.

Court. That will be against you; for no Man that is a liege Subject of his Majesty can justify taking up Arms, and acting in the Service of a Prince that is actually in War against his Majesty.

On which *Carpentier* was set aside, without being examined.

Mr. Serj. *Wynne*. Pray call *John Hayward*; who appeared, and was sworn.

Mr. Serj. *Wynne*. Pray Sir, do you know *Samuel Maddox*, and how long have you known him?

John Hayward. Yes, Sir, about two Years.

Mr. Serj. *Wynne*. Pray, what Character doth he bear?

John Hayward. He bears such a very bad Character, that I would not believe him upon his Oath.

Cross-Examined.

Sir *John Strange*. I hope you believe that every Person that joined with the Rebels are bad Men?---*Hayward*. Yes, Sir.

Sir *R. Lloyd*. What Business are you of?---*Hayward*. I am a Glover and Leather-seller at *Manchester*. [After being examined, he went out of Court, but was recalled.]

Solicitor Gen. Mr. *Hayward*, Pray, did you see the Prisoner at the Bar in *Manchester*?

Hayward. No, I never saw the Prisoner before.

Counsellor *Clayton*. Pray call *Thomas Dickinson*; who appeared, and was sworn.

Sir, do you know *Samuel Maddox*?

Dickinson. Yes, Sir; he was bound Apprentice to an Apothecary at *Manchester*.

Counf. *Clayton*. Pray, what Character does he bear?

Dickinson. A very bad one.

Counf. *Clayton*. Would you believe him upon his Oath?

Dickinson. No, I would not, especially upon Life and Death.

Sir *John Strange*. For what Reason do you take upon you to swear he is not to be believed upon his Oath?

Dickinson. I do not know particularly; but I have heard he was a very bad Apprentice, and that he had wronged his Master.

Sir *John Strange*. Do you know his Master?

Dickinson. Yes; his Master is in London now.

Sir *John Strange*. So, for no other Reason, than because you have heard he was not a good Prentice, you take upon you to swear he is not to be believed on his Oath. I suppose you have other bad Prentices in *Manchester*?

Dickinson. Yes, there are.

Mr. Att. Gen. *Dickinson*, Did you ever see the Prisoner at *Manchester* at the Time the Rebel Army was there?---*Dickinson*. Yes.

Mr. Att. Gen. What was he doing there?

Dickinson. He was Colonel of the *Manchester* Regiment.

Mr. Att. Gen. What, in the Pretender's Service?

Dickinson. Yes, in the Rebel Army.

The Evidence for the Prisoner being all gone through, Mr. Solicitor General replied to what had been objected by the Prisoner's Counsel to the Indictment.

Mr. Solicitor General stood up, and made a Reply to the Prisoner's Counsel, wherein he observed, "The first Overt-Act of High-Treason charged against the Prisoner, is compassing and imagining the Death of the King; the next is, adhering to the King's Enemies, and levying of War against his Majesty's Person and Government; and this is founded on the Statute of the 25th of *Edward the Third*. And levying of War by one or more Persons, is Treason. That this War has been levied, and that Acts of Hostilities have been committed by the Prisoner, I do not doubt but that it has been sufficiently proved to you, Gentlemen of the Jury; there is no Occasion to prove explicitly all that is laid in the Indictment; but that War has been levied against his Majesty, has been sufficiently proved and admitted by the learned Counsel for the Prisoner; it has been proved, likewise, that the Prisoner, with a tumultuous Number of Rebels and Traitors, did assemble in several Parts of his Majesty's Dominions, and levied a cruel and destructive War. The Counsel on the other

Side would insinuate, that the Crime was committed before the Day laid in the Indictment, therefore the Day of the Commission in the Indictment should be inserted. But admitting it was so, this Indictment is good; for in the Case of Sir *Harry Gray*, it was the Opinion of all the Judges, that Sir *Harry* was guilty, notwithstanding that the Fact was committed twelve Years before the Indictment; and it is recent in the Memory of many Gentlemen of the Law, that this was the Case of *Chandler*, *Laver*, and *Bradshaw*; and so it was allowed in constructive Treason, in the Case of *Damery* and others; in the Reign of the late Queen *Anne*, for pulling down of Meeting-houses, and many Cases of the like Nature in Sir *Matthew Hale's* Pleas of the Crown; for which several Reasons, and what has been mentioned before, I humbly conceive your Lordships will over-rule this Exception, as having no Weight." (Upon which the said Motion was over-ruled by the Court.) Then my Lord Chief Justice *Lee* summed up the Evidence very impartially to the Jury.

After which the Jury consulted together in Court, but not agreeing in their Verdict, withdrew about ten Minutes, and when they returned into Court, were called over by the Clerk of the Arraignment, and answered to their Names.

Clerk of the Arraignment. Gentlemen of the Jury, are you agreed on your Verdict?---Jury. Yes.

Clerk of the Arraignment. Who shall say for you?---Jury. Our Foreman.

Clerk of the Arraignment. *Francis Townley*, hold up your Hand. (Which he did.) How say you? Is *Francis Townley* guilty of the High Treason whereof he stands indicted, or not guilty?---Foreman. Guilty.

Clerk of the Arraignment. What Goods and Chattels, Lands and Tenements, had he at the Time of the said High Treason committed, and at any Time since, to your Knowledge?---None.

Clerk of the Arraignment. Hearken to your Verdict, as the Court has recorded it; You say that *Francis Townley* is guilty of the High-Treason whereof he stands indicted, and you say he had no Goods, nor Chattels, Lands or Tenements, at the Time of the said High-Treason committed, or at any Time since to your Knowledge, and so you say all?---Jury. Yes.

Then Mr. *Jones*, Keeper of the County Gaol of *Surry*, was ordered to take Care of the Prisoner.

Mr. *TOWNLEY's* Case, July 15, 1746.

HIS Counsel moved that before any Juryman should be brought to the Book, the whole Pannel might be called over once in the Prisoner's Hearing, that he might take notice who did and who did not appear; which they said would be a considerable Help to him in taking his Challenges. This was done by Order of the Court, and the Attorney-General did not oppose it.

Every Juryman as he came to the Book was asked, whether he was a Freeholder or no. Those who answered that they had no Freehold in the County, were examined upon a *Voire dire* to that Matter; and on their answering that they had no Freehold, were set aside. Those who answered that they had both Freehold and Copyhold were asked, whether both put together did amount to 10l. a-Year; and if they did, that was admitted to be a good Qualification, though the Freehold alone was under 10l.

The Court grounded this Rule on the Bill of Rights, 1 W. M. St. 2. c. 2. 4. 5. W. M. c. 24. S. 15. and the 4th and 5th W. M. compared.

The Prisoner's Counsel offered to call a Witness to shew that he was at the Time of the Rebellion in the Service and Pay of the French King, and so intitled, as they insisted, to the Benefit of the Cartel for Exchange of Prisoners: But the Court declared that such Proof is not to be admitted. It is no Defence in a Court of Law, nor is it so much as an Excuse, that he had entered into the Service of an open Enemy. See the Case of *Aneas Macdonald*.

They then insisted on what they (very improperly) called the Capitulation at the Surrender of *Carlisle*. In this likewise the Court over-ruled them. It is no Sort of Defence in a Court of Law. But to prevent Misconstructions, Colonel *Carey* was examined touching the Terms upon which the Surrender was made. And he swore, that the Duke expressly reserved the Rebels in *Carlisle* to be dealt with as His Majesty should please.

The Court then observed, that the Prisoners had received the whole Benefit of the Terms offered by the Duke, in that they were not immediately put to the Sword, [See Lord *Winton's* Trial 6. St. Tri.] but were reserved for his Majesty's Pleasure; which now appears to be, that they shall have a fair Trial, and Liberty to make their Defence according to Law.

They then insisted that the Overt-Acts are charged in the Indictment to be committed on the 10th of *October*, and that all the Evidence is of Overt-Acts subsequent to that Time; and said, that however the Resolutions with regard to this Point may have been before the 7th W. III. yet now, by that Act, no Evidence is to be given but of Overt-Acts laid in the Indictment; and consequently the Overt-Acts must be proved in such Manner as they are laid: That in this Case especially the King's Counsel are not at Liberty to vary in their Proofs from the Day laid, since they have confined themselves in the Indictment to one Day, and have not charged (as they said in most of the Precedents it is charged) that the Defendant did commit the Treason charged on him on the Day laid, and at divers Days and Times, as well before as after.

To this Mr. *Murray*, the Solicitor General, answered, That the 7th W. III. makes no Alteration with regard to this Point, so as to make either Time or Place more material than they were before the Act. The Act indeed saith, That no Evidence shall be given of any Overt-Acts not laid in the Indictment: But what is or is not Evidence of such Overt-Acts, is left upon just the same Foot in this respect as it was before the Act; what was Evidence at Common Law is in this respect Evidence still; and as to the charging the Overt-Acts at divers Days and Times as well before as after the Day particularly mentioned, he said, that the greatest Part of the Precedents he had seen of Indictments for levying War, which is the present Case, do charge the Overt-Acts on one Day only.

Sir *Richard Lloyd* offered to speak on the same Side; but the Court told

him, he need not give himself the Trouble of speaking to the Point, on which there could be no Doubt, and over-ruled the Objection.

The following Warrant was soon after sent to the Sheriff, viz.

SURREY.

A T a Special Session of Oyer and Terminer and Goal Delivery of our present Sovereign Lord the King of and for the County of Surrey holden at the Borough of Southwark in the said County on Monday the Twenty-third Day of June in the Twentieth Year of the Reign of our said present Sovereign Lord GEORGE the second by the Grace of God of Great-Britain France and Ireland King Defender of the Faith and so forth before Sir William Lee Knt. Chief Justice of our said present Sovereign Lord the King appointed to hold Pleas before the King himself Sir John Willis Knt. Chief Justice of the Court of Common Pleas Sir Martin Wright Knt. one of the Justices appointed to hold Pleas before the King himself Sir James Reynolds Knt. one of the Barons of the Court of Exchequer Sir Thomas Abney Knt. one of the Justices of the said Court of Common Pleas Sir Thomas Burnett Knt. one other of the Justices of the said Court of Common Pleas Charles Clarke Esq. one of the Barons of the said Court of Exchequer Edward Clive Esq. one of the Barons of the Court of Exchequer Sir Thomas De Veil Knt. and Peter Theshalds Esq. and from thence continued by several Mesne Adjournments until Tuesday the Twenty-second Day of July then next following and then held before the said Sir William Lee Sir James Reynolds Sir Thomas Abney Sir Michael Foster one of the Justices appointed to hold Pleas before the King himself and the said Edward Clive and Sir Thomas De Veil and others their Fellow Justices and Commissioners of our present Sovereign Lord the King assigned by Letters Patent of our said present Sovereign Lord the King under his Great Seal of Great-Britain made by Vertue of the Statute made in this present Parliament intituled *An Act for the more easy and speedy Trial of such Persons as have levied or shall levy War against his Majesty and for the better ascertaining the Qualification of Jurors in Trials for High Treason Misdemeanor of Treason in that Part of Great-Britain called Scotland to the said Justices and Commissioners above-named and others and to any three or more of them (of whom our said present Sovereign Lord the King willed that any of them the said Sir William Lee Sir John Willis Sir Martin Wright Sir James Reynolds Sir Thomas Abney Sir Thomas Burnett Charles Clark Sir Michael Foster Edward Clive and Sir Thomas De Veil and others in the said Letters Patent named and appointed should be one) to deliver the Gaol of the said County of the Prisoners therein being or such as shall or may be detained in the same on or before the first Day of January in the Year of our Lord One thousand Seven hundred and Forty-six for or on Account of the High-Treason mentioned in the said Statute in levying War against our said present Sovereign Lord the King within this Realm and to enquire by the Oath of good and lawful Men of the same County of all such High Treasons in levying War against our said present Sovereign Lord the King within this Realm by the said Prisoners or any of them or by any other Person or Persons who are now in actual Custody for or on Account of the same or who are or shall be guilty of High Treason in levying War against our said present Sovereign Lord the King within this Realm and shall be apprehended and imprisoned for the same on or before the first Day of January in the Year of our Lord One thousand Seven hundred and Forty-six and the same High Treasons to hear and determine according to the Form of the said Statute.*

Alexander Abernethy, James Gadd otherwise Gad, Thomas Furnivall, Christopher Taylor, Andrew Blood otherwise Blyde, are attainted on their own Confession of High Treason in levying War against our Sovereign Lord the King within this Realm.

Francis Townley, George Fletcher, William Brettaugh otherwise Bratter otherwise Bratter, Thomas Chadwick otherwise Chaddock, Thomas Deacon, James Dawson, John Berwick, John Saunderson, Thomas Syddall, Charles Deacon, James Willding otherwise Whelding, David Morgan, are attainted on Verdict of High Treason of levying War against our Sovereign Lord the King within this Realm.

Let the several Prisoners above-named return to the Gaol of the County of Surrey from whence they came and from thence they must be drawn

to the Place of Execution and when they come there they must be severally hanged by the Neck but not till they be dead for they must be cut down alive then their Bowels must be taken out and burnt before their Faces then their Heads must be severed from their Bodies and their Bodies severally divided into four Quarters and these must be at the King's Disposal.

John Hunter is acquitted by Verdict of High-Treason in levying War against our Sovereign Lord the King within this Realm and must be discharged.

Let Execution be done on Wednesday the Thirtieth Day of July Instant.

W. Lee,
M. Wright,
Ja. Reynolds,
T. Abney,
M. Foster,
E. Clive.

Of the above Seventeen, Abernethy, Gadd, Furnivall, Taylor, Brettaugh, Saunderson, Charles Deacon, and Willding were reprieved, and the other Nine executed July 30.

The Prisoner Townley was executed according to his Sentence on Kennington-Common, on Wednesday the 30th of July 1746.

After he had hung six Minutes, he was cut down, and having Life in him, as he lay upon the Block to be quartered, the Executioner gave him several Blows on his Breast, which not having the Effect designed, he immediately cut his Throat; after which he took his Head off; then ripped him open, and took out his Bowels and Heart, and threw them into a Fire, which consumed them; then he slashed his four Quarters; and put them with the Head into a Coffin, and they were carried to the New Jail in Southwark, where they were deposited till Saturday Aug. 2. when his Head was put on Temple-Bar, and his Body and Limbs suffered to be buried.

This unfortunate Person was about 38 Years of Age, born near Wigan in Lancashire, of a very good Family. His Uncle Mr. Townley, of Townley-Hall, in Lancashire, was tried in Southwark, before Judge Powis, for being in the Rebellion in 1715; and tho' acquitted by his Jury, yet not thought innocent by the Publick; for many of his Men who were tried at other Places, for going into the Rebellion with him, were convicted and executed.

In 1727, he went over to France, and entered himself a Volunteer in the French King's Service; and in 1728 obtained a Commission from the King of France, and continued abroad about 15 Years. He was at the Siege of Philipburg, when the Duke of Berwick's Head was shot off, and was near the Duke at that Time. He was also in the French Army, when the Germans made such a sudden Attack upon that Quarter of the Army where Marshal Broglis commanded, as obliged the Marshal in a terrible Fright to run away without his Breeches. He was likewise in several other Actions and Sieges, and, as was said by his Friends, he always behaved well and with Honour.

The Reason of his leaving the French Service, about five Years since, and coming to England, was to live some Time in his own Country with his Friends; and when the Rebel Army came into England, he went and met them between Lancaster and Preston; and came with them to Manchester, where the Pretender's Son gave him a Commission to raise a Regiment of Foot, which was immediately done; and the young Pretender, on leaving him at Carlisle, gave him another Commission to raise a Regiment of Horse.

His Behaviour from the first of his being taken Prisoner at Carlisle, to the Time of his Trial, was of a Piece; he frequently saying that he could not be hurt, for that he had a Commission from the King of France, and so must be exchanged upon the Cartel; but when he was convicted, he seemed a little more serious, and often said, he expected no Mercy.

He was much more reserved than many of his Fellow-Sufferers; and would not talk a great deal to any body but his particular Friends and Brother-Prisoners.

The Morning of his Execution, and even at the fatal Place, he shewed no manner of Signs of Dread, but said he hoped he should be happy in the next World.

XXX. The Trial of GEORGE FLETCHER, for High Treason, at the Court-house, St. Margaret's-bill, Southwark, on Wednesday, July 16, 1746.

THIS Day the Court, according to Adjournment, met at Ten in the Morning, where there were present, the Lord Chief Justice Lee, Mr. Justice Wright, and Mr. Baron Reynolds.

And also the other Officers, that attended the Court the preceding Day, took their Seats; and Proclamation being made by the Cryer, he proceeded to call the Jury, and ordered the Keeper of the County Gaol to set George Fletcher to the Bar; which being done accordingly, the following Gentlemen (after the Prisoner had made ten Challenges) were sworn in for the Jury.

The Names of the Jury.

- 1 Daniel Penton of Lambeth, Starch-maker.
- 2 Michael Cusse of Battersea, Gardener.
- 3 Michael Constable of Dorking, Yeoman.
- 4 William Brooker of Walton upon Thames, Brewer.
- 5 Edmund Brown of Croydon, Brewer.
- 6 Thomas Belch of Coulsdon, Gent.
- 7 Christopher Stokes of Bermondsey, Fellmonger.
- 8 William Taylor of St. Saviour, Brewer.
- 9 Thomas Lintall, of Ditto, Cloth-worker.
- 10 Francis Simmonds of Puttenham, Yeoman.
- 11 James Paine of Seal, Yeoman.
- 12 Richard Sparkes of Wonerth, Yeoman.

The Lord Balmerino, who had neither Counsel nor Witness at his Trial, insisted on the same Point. And the House out of their extreme Tenderness in case of Life (after my Lord Chancellor had delivered his Opinion clearly that the Time is not material, provided the Treason be committed before the Bill found) put the Question to the Judges. Lord Chief Justice Lee delivered the unanimous Opinion of the Judges, that the Day is not material, provided the Treason be proved to have been committed before the finding of the Bill. Foster's Report of some Proceedings on the Commission for the Trial of the Rebels, p. 9.

And they being all sworn, took their Seats in the Jury-box; and Proclamation was again made for Silence, whilst the Indictment was reading to the Prisoner.

Note, The Indictment was the same as that of Townley's (convicted the Day before), the Treason being laid to be committed the same Time, at the same Place, and in the same Manner.

After the King's Counsel had opened the Charge, the following Evidence was called against the Prisoner.

Ormsby Mac Cormack, being sworn,

King's Counsel. Mr. Mac Cormack, pray look upon the Prisoner, and then tell the Court, and the Gentlemen of the Jury, what you know of him; and speak out loud, that you may be heard.

Mac Cormack. The first time that I saw him, was before the Rebels marched from Manchester to Derby.

King's Counsel. What Appearance did the Prisoner make at Manchester? Did you look upon him to be an Officer?

Mac Cormack. He had a white Cockade in his Hat, and marched as Captain in the Manchester Regiment. I saw the Flag that belonged to the

Regiment flying, and the Motto was, *Liberty and Property, Church and King.*

King's Counsel. Did he march with all the Rebel Army? Were there any Pipes playing?

Mac Cormack. There were Pipes playing before the *Highland Rebels*; but none in the *Manchester Regiment*.—I saw him also at *Derby*.

Prisoner's Counsel. Pray, Friend, how came you to know him so particularly?—*Mac Cormack.* They called him *Capt. Dawson*.

[Here the Counsel for the Prisoner interrupted the Witness, because there is one Dawson now in Custody, who was an Officer in the said Regiment, and the Prisoner's Name is Fletcher.]

King's Counsel. Look at the Prisoner again.

(Looking earnestly at him.)

Mac Cormack. Though I may mistake his Name, I am sure he is the Person that I saw at *Derby*, tho' I cannot positively say he gave any Command there as an Officer. I saw him at *Preston*, and other Places along the Road, till we came to *Carlisle*.

King's Counsel. Was you with him at *Carlisle*?

Mac Cormack. I was at *Carlisle*; but he was there before I came, and there I saw him act as a Captain; and when the Soldiers were drawn up in the *Castle-Yard*, I saw him there, and saw Arms distributed to some of the Soldiers who had none.

Prisoner's Counsel. Did you see him distribute any Arms to any of the Soldiers?—*Mac Cormack.* I cannot say that I did.

Prisoner's Counsel. Then who distributed those Arms?

Mac Cormack. It was a Scotch Officer, whom I am informed is since killed.—I heard so.

King's Counsel. Was not the Prisoner at the Bar at *Carlisle* when the Duke was before the Town?

Mac Cormack. Yes, I am sure he was, and commanded as an Officer; he had a white Cockade in his Hat, an *Highland Plaid Sash*, lined with white Silk, and all Military Accoutrements that Officers have.

King's Counsel. Then you are certain as to his Person?

Mac Cormack. I am certain this is the Gentleman, for he mounted the very first Captain's Guard that was mounted at *Carlisle*. I saw him at the Surrender, and he was carried into the Church, and made Prisoner with the rest of the Officers.

Serj. Wynne. Are you sure he is the very Man?

Mac Cormack. I am very sure of it, tho' he has been long out of my Sight.

L. C. J. Consider you are upon your Oath, and what you say affects his Life.

Mac Cormack. I am sure he is the very same, I know his Person perfectly well.

Serj. Wynne. How can you be so positive to him, did you ever see him before you came to *Manchester*?—*Mac Cormack.* Not to my Knowledge.

Serj. Wynne. Where did you come from, what Countryman are you?

Mac Cormack. I am an *Irishman*, I came from *Ireland*.

Serj. Wynne. What brought you to *Manchester*?

Mac Cormack. I am a Weaver by Trade, and I came to *Manchester* last May was Twelvemonth to seek for Business, and I continued there, and worked till the 30th of June; then Business falling short, I went into *Warwickshire*, and worked as a Haymaker for my Living.

Cross-Examination.

Prisoner's Counsel. It is a little extraordinary, that you should take such particular Notice of the Prisoner; was you in the Rebel Army; was he your Commander?

Mac Cormack. No, he was not; *Capt. * Peter Moss* was my Commander.

Serj. Wynne. Had you any Command in the Rebel Army, was you either a Captain, or a Lieutenant?

Mac Cormack. I had no Command at all.

Counsel. How came you hither to give your Evidence?

Mac Cormack. I was taken into Custody by Mr. *Carrington*, one of the King's Messengers, at *West-Chester*, and I did not know I was to come to London to be an Evidence.

Counsel. Have you had any Promise of a Pardon?

Mac Cormack. I have not, nor never had to my Knowledge.

Sir John Strange. Pray call *Samuel Maddox*, who appeared, and was sworn.

King's Counsel. Mr. *Maddox*, do you know Mr. *Fletcher*, the Prisoner at the Bar?

Maddox. I know him very well; and in the Month of last November, but I cannot particularly remember the Day, I saw him at the *Dog-Inn* in *Manchester*, where there were several Persons assembled, and his Name was put down as an Officer in a new-raised Regiment, called the *Manchester Regiment*; he marched as a Captain from *Manchester* to *Winslow*, and from thence on to *Macclesfield*, where the said Regiment was drawn up in the Church-yard; and all the Soldiers who were unarmed had Arms delivered unto them; the Prisoner, Mr. *Fletcher*, had there a Sword by his Side, and appeared in his Regimentals, as Captain, with a white Cockade, and a Plaid Sash.

The Rebels at *Macclesfield* were in general in Confusion for want of Men, and very much dreaded the King's Forces. I was determined to return to *Manchester*, and communicated my Thoughts and Intentions to several of my Comrades; the Prisoner, Mr. *Fletcher*, heard of my Resolution at a Place called *Blacketsey*, and then he came to me, and told me it would be a scandalous Thing to make a dishonourable Retreat; and putting his Hand in his Pocket pulled out a great Parcel of Gold, and told me I should never want while that lasted. I marched with him to *Derby*, and back to *Carlisle* afterwards.

Cross-Examination.

Prisoner's Counsel. How came you to be at the *Black-Dog* at *Manchester*?

Maddox. I went there accidentally; I was with the Regiment three Days before it marched, and I was never sober all the Time.

Prisoner's Counsel. What, not sober all the Time?

Maddox. I mean not all the Time I was at *Manchester*.

Prisoner's Counsel. Where did you see the Prisoner besides at *Manchester*?

Maddox. I saw him at *Penrith*, and I saw him at *Carlisle*, with other

Officers, and with the Pretender's Son; at both which Places he acted in the Capacity of a Captain: And when *Carlisle* was surrendered, he went into the Church with other Officers.

Prisoner's Counsel. Have you had no Promise of a Pardon?

Maddox. I have had none; I told you so, Sir, several times before.

Prisoner's Counsel. What, did none of your Friends advise you, or persuade you to do what you have done?

Maddox. I cannot say, but one of my Relations persuaded me to do what I could to save my own Life.

Prisoner's Counsel. Could not Mr. *Fletcher* have escaped to save his Life, if he would?

Maddox. I cannot tell but what he might; for *Capt. Bradshaw* got away, but he soon joined the Army again.

Prisoner's Counsel. Pray what Character does the Prisoner bear at *Manchester*?

Maddox. I do not know much of his general Character; I have seen him at the Assembly with the Ladies: He was a Chapman, and dealt in Linnen before this Affair.

King's Counsel. Pray call *Thomas Bradbury*, who appeared and was sworn.

King's Counsel. Mr. *Bradbury*, pray what do you know, or what have you to say against the Prisoner at the Bar?

Bradbury. I lived at *Manchester* when the Rebels were in that Town; and one Morning when a Serjeant and Drum were beating up for Volunteers at the *Exchange* for the Pretender's *Manchester Regiment*, I happened to be there, where I believe there were more than 1000 People assembled: And when the Serjeant had done his Speech, and concluded with saying God bless King *James* and Prince *Charles*! the Prisoner pulled off his Hat and hallooed.

Cross-Examination.

Prisoner's Counsel. As you live at *Manchester*, pray what Character does the Prisoner bear at that Town?

Bradbury. A good Character for aught I know, for I only came here to speak the Truth.

King's Counsel. Pray call *Austin Coleman*, who being sworn, was asked if he had ever seen the Prisoner act as an Officer?

Coleman. Yes, I have seen him act as a Captain at *Preston*, *Penrith*, and at *Carlisle*, when it was surrendered to the Duke of *Cumberland*.

Prisoner's Counsel. What Countryman are you?

Coleman. I am an *Irishman*, and I came to *Manchester* about twelve Months ago.

Thomas Craig was then called by the King's Counsel, and being sworn, was asked what he knew of the Prisoner?

Craig. I saw him march from *Manchester*; I saw the Colours of the *Manchester Regiment* flying, and the Drums beating; and I saw him act on the March as Captain, and I saw him surrender at *Carlisle* to his Royal Highness the Duke of *Cumberland's* Troops.

King's Counsel. Pray call *Capt. Nevet*, who appeared and was sworn.

King's Counsel. Pray, Sir, give the Court and the Jury an Account of what you know of the Prisoner at the Bar.

Capt. Nevet. I was at *Carlisle* when the Rebels surrendered the Town to his Royal Highness the Duke of *Cumberland*. When the Officers of the Garrison surrendered themselves Prisoners, and were in Custody, I had a particular Order from his Royal Highness to go to the Place of their Confinement, to take the Names, Ranks, and Qualities of all those that were there. When I called on the Prisoner at the Bar, he told me he was a Captain; and when I had taken the Names of all the rest, and what Commissions they had under the Pretender's Son, I went and made a Report that Evening to the Duke, and his Royal Highness commanded me the next Day to go to the same Place; and I called over their Names, and he answered by the Name of Captain *Fletcher*.

The Prisoner's Defence.

Prisoner's Counsel. Call *Anne Aston*, who was sworn. Do you know the Prisoner?

Aston. Yes, Sir, I have known him ever since he was born, for I have lived in the Family 27 Years; he managed the Trade for his Mother at *Salford*, just over the Bridge at *Manchester*, and he had a very good Share of Business for a Young Man. The Rebels came the 29th of November to *Manchester*, and we had a great many of them quartered upon us; Mr. *Fletcher's* Mother was very uneasy at the Sight of them; and went away, because she could not bear to see them eat and drink, and make free with every Thing in the House. They tarried at *Manchester* three Days, and upon the 8th of December, they returned again to *Manchester*, and *Capt. Robinson*, who commanded the Soldiers who were at our House before, came a second Time, and asked for our Master; he went out; and there were half a Dozen of Soldiers at the Door, and swore they would have him; and I never saw him after. I do not know he ever did a bad Thing in his Life; he always behaved well and dutiful to King *George*, and all the Royal Family. I never saw the least Willingness in him to join with the Pretender; all the Family were of the Church of *England*, and when they dragged him away, he went away with Tears in his Eyes.

She was Cross-Examined by *Sir John Strange*; and prevaricated so much in her Answers in most Questions that were asked of her, that no Credit was given to her Evidence.

Charles Worral was produced and sworn, who said, he knew the Prisoner an Apprentice, and had sold him Goods, and that the Prisoner paid him honestly; but as to his Principles, he knew nothing of them.

Then *John Hayward*† was called and sworn, and being asked what Business he followed, he said, he was a Dealer in Leather.

Prisoner's Counsel. What do you know of the Prisoner?

Witness. I cannot say that I know much of his Notions one way or other.

Prisoner's Counsel. I think, Sir, you live at *Manchester*?

Witness. Yes, I do, Sir.

Prisoner's Counsel. Then pray inform the Court and the Gentlemen of the Jury, so far as you know, what past at *Manchester* relating to the Prisoner, during the Time the Rebels were there.

Witness. I cannot say any Thing particularly.

* *Peter Moss* escaped out of *Newgate* the Night before the Rebel Prisoners were removed by *Habeas Corpus*, and hath not been heard of since.—Died in France.

† This is the same Person that was Evidence the Day before for Colonel *Townley*.

Prisoner's Counsel. Pray do you know that at the Time the Pretender's Party were beating up for Volunteers, at the Exchange in *Manchester*, the Prisoner was present, and took off his Hat and hallooed?

Witness. I was not out of doors at that Time; I had a Relation lay dead in my House at the same time.

The Prisoner's Counsel not having any thing more to say in his Defence, and the Testimony of Mrs. Ann Acton having very little Weight with the Court and Jury, after my Lord Chief Justice had summed up the Evidence, the Jury, without going out of Court, found the Prisoner, *Guilty*.

N. B. The Prisoner desired his Fetters might be taken off whilst he was on his Trial, which the Court granted; but after his Conviction, the Court gave the Gaoler Direction to iron him again, and take an especial Care of his Prisoner, for that he was convicted of High-Treason.

This Prisoner was executed the same Day, viz. the 30th of July 1746, in the same Manner as *Townley*, and his Head with *Townley's* was put up on *Temple-Bar*, on Saturday the 2d of August, the Saturday following their Execution.

He was about 28 Years of Age, and was bred up in *Salford*, adjoining to *Manchester*, where his Parents lived, who were very substantial People. His Father had been some time dead, but his Mother was then living, whose Business he managed. He was reckoned before he took on in the Rebel Army, to be a young Man of a good Character; but being unhappily prejudiced against the present Royal Family, he was very ready to join the Pretender's Forces as soon as they came to *Manchester*; and he gave *Murray*, the Pretender's Secretary, 50*l.* for his Captain's Commission.

There is one Thing pretty singular in the Story of Mr. *Fletcher*, which must not be omitted, because it shewed the Heartiness of the Man in the

Cause he endeavoured to support. At his Trial, Mr. *Maddox*, who was a principal Evidence against him, swore, that when the Rebels were at *Manchester*, they were in great Confusion for want of Men, and mightily disheartened at the Approach of the King's Forces; upon which he (*Maddox*) determined to leave them, and return to *Manchester*; and communicated such his Intention to several of his Comrades; which being told to *Fletcher*, he came to *Maddox*, and expostulated with him about it; telling him, what a Scandal it would reflect upon him to leave his Friends at a Juncture, when they had the greatest Occasion for his Assistance; that if he wanted Money, he need but speak, and he should have whatever he had Occasion for; and at the same time putting his Hand in his Pocket, shewed him a Handful of Gold.

Fletcher's Behaviour during the Time of his Confinement in *Newgate*, was, as the rest of his Fellow Rebel Prisoners, very cheerful; and he continued so during the time he was under Sentence of Death, even from the Gaol to the Place of Execution, and was the same to the last. He was a young Man of very good Parts, and very often acknowledged, that he had brought this Misfortune upon himself by his Obstinacy; for that his Mother had begged and intreated of him, even on her Knees, that he would keep himself out of the Rebellion; and when no Persuasions could prevail upon him, she offered him a thousand Pounds to do with as he pleased, if he would hearken to her Advice: But all to no Purpose; and therefore that he had Nobody to thank but himself for the Consequences that had happened.

At the Place of Execution he delivered Papers to the Populace, as the rest of them did, the Contents of which Papers were, that they died in a good Cause; that they did no way relent at what they had done, and doubted not but their Deaths would in time be revenged; and many treasonable and other vile Expressions not fit to be here mentioned.

XXXI. The Trials of THOMAS CHADWICK and WILLIAM BATTRAGH, for High Treason, at the Court-house Southwark, July 16, 1746.

THOMAS CHADWICK and William Battree, otherwise *Battro*, otherwise *Battragh*, otherwise *Bretab*, were both brought to the Bar, and both agreed in their Challenges of the Jury; but before Mr. *Chadwick* was tried, he desired his Irons might be taken off, which was done directly; and after having challenged thirteen Jurymen, the Twelve following Gentlemen were sworn to try them.

- 1 *Francis Bartholomew* of *Egham*, Gent.
- 2 *Thomas Dawson* of *St. George's*, Brazier.
- 3 *William Shurlock* of *Sher*, Yeoman.
- 4 *Richard Toy* of *Richmond*, Grocer.
- 5 *John Fielder* of *Essex*, Yeoman.
- 6 *James Vinal* of *Essex*, Wheelwright.
- 7 *John Otway* of *Ashed*, Yeoman.
- 8 *Thomas Puplett* of *Banstead*, Yeoman.
- 9 *John Start* of *Epsom*, Chandler.
- 10 *George Hart* of *Croydon*, Callico-printer.
- 11 *William Bridgestock* of *Croydon*, Farmer.
- 12 *John Rowles* of *Croydon*, Wheelwright.

Mr. Att. Gen. Call *Samuel Maddox*; who appearing in Court, was sworn.

King's Counsel. Mr. *Maddox*, Pray relate to my Lord and the Gentlemen of the Jury, what you know concerning the Prisoners at the Bar, or either of them.

Maddox. (looking on the Prisoners at the Bar) I know both of them; Mr. *Chadwick* was a Lieutenant, and Mr. *Battragh* served as an Ensign in the *Manchester* Regiment in the Rebel Army.

King's Counsel. Pray how did Mr. *Chadwick* appear; did he appear as an Officer?

Maddox. *Chadwick* wore a laced Hat, with a white Cockade in it, and I saw both of them march from *Manchester*; and when they marched, Mr. *Battragh* had on a Scotch Plaid Sash, lined with a white Ribband; I was with them when they marched from *Manchester* to *Winslow*; there were a great many Men lifted as we went on the Road.

King's Counsel. Can you take upon you to say that either of the Prisoners at the Bar enlisted any?

Maddox. I cannot be positive to that; but there were a great many Men enlisted by Captain *Deacon* upon our March from *Manchester*. Both the Prisoners appeared on Horseback as Officers; and I myself carried the Colours out of *Manchester*. And as we were upon the Road on our March, I saw the Prisoner, *Battragh*, carry the Colours once or twice, whereon was the Motto, LIBERTY AND PROPERTY, CHURCH AND KING.

King's Counsel. Did any thing remarkable happen at *Winslow*, relating to the Prisoners? did they act as Officers?

Maddox. I know nothing at all particular there.

King's Counsel. What Rout did you take when you left *Winslow*?

Maddox. We marched on for *Derby*.

King's Counsel. Did the Prisoners all along appear as Officers, and act as such?

Maddox. Yes, they did, *Chadwick* as a Lieutenant, and *Battragh* as an Ensign: I saw them at *Penrith*, and at *Preston*; *Battragh* belonged to Captain *James Dawson's* Company, but I do not know what Company the other Prisoner belonged to; and I saw both of them reviewed by the Young Pretender.

King's Counsel. And what further happened? Tell my Lord and the Gentlemen of the Jury every thing you know relating to this Matter.

Maddox. I cannot say any thing more that is very material, only that from *Manchester* all the Way they acted as Officers.

King's Counsel. Do you remember any thing that was remarkable when you came to *Lancaster*?

Maddox. I remember that all the Officers were very merry there, and Mr. *Chadwick* proposed to entertain them with a Tune; and myself, and most of the Rebel Officers went into *Lancaster* Church, and went up into the Organ Gallery, and Mr. *Chadwick* played a Tune on the Organ.

King's Counsel. What Tune did he play?—*Maddox.* He played *The King shall enjoy his Own* again; and we were all very merry.

King's Counsel. Pray inform the Court, if you saw any of the Prisoners at *Carlisle*.

Maddox. Yes, I saw both the Prisoners at *Carlisle*, in the Room with the Young Pretender.

King's Counsel. How came they in particular to be in the Room with the Young Pretender?—*Maddox.* We were all drawn up together to take Leave of him, before he left *Carlisle*.

King's Counsel. Was the Town of *Carlisle* put in a Posture of Defence against the King's Forces?

Maddox. Yes; we opposed his Majesty's Forces, and I saw both the Prisoners mount Guard in the Town Hall, where a Guard was placed a Day or two after the Pretender left the Town.

King's Counsel. Was you present when the Town was surrendered to his Royal Highness the Duke of Cumberland?

Maddox. I was; and both the Prisoners were put into the Ailes of the Church, amongst the other Rebel Officers.

Cross-Examination.

Prisoner's Counsel. How long have you known *Battragh*, or *Battro*, as they call him?

Maddox. I have known him two Years and upwards, he was an Attorney's Clerk, and came and persuaded me to join with the Young Pretender's Army, before I had an Inclination so to do: This we talked of privately in his Bed-chamber; he told me he had new Linnen made on purpose, and was going to the Sadler's to bespeak Bags to carry his Linnen and other Things in.

Prisoner's Counsel. Had not you and the Prisoner a Quarrel at *Carlisle*? I think you had a Trial of Skill there.

Maddox. That I confess, and I will tell you what it was about; it was about a very foolish Affair.—Provisions being a little scarce at *Carlisle*, I had some Sausages, and the Prisoner would have them from me, and I not caring to part from them, caused a Quarrel, and we fought together.

Prisoner's Counsel. Did not you tell him you would do for him, or bereaved on him, or some Words to that Purpose?

Maddox. No, never as I remember; I would not swear any Man's Life away for a Sausage.

Prisoner's Counsel. Do not you swear in expectation of saving your Life?

Mr. Att. Gen. It is not a proper Question;—that has been answered already.

Sir J. *Strange.* Do you expect to save your Life by false Swearing?

Maddox. No, I do not indeed; I will swear nothing but the Truth; and what I have sworn in this honourable Court, is all Matter of Fact.

King's Counsel. Pray call *Thomas Craig*; who appeared, and was sworn.

King's Counsel. Well, Sir, what have you to say to either of the Prisoners that stand by you?

Craig. I know Mr. *Chadwick* very well; but I cannot say that I have so much Knowledge of *Battragh*. I remember seeing Mr. *Chadwick* at *Manchester*, with a Cockade in his Hat: Then I afterwards saw him march from *Manchester* to *Winslow*, as a Lieutenant: I saw him at several other Places on the Road, and also at *Penrith*, where he still appeared as a Lieutenant.

King's Counsel. Then you are sure he was a Lieutenant in the Rebel Army?

Craig. Yes; he marched from *Manchester* to *Penrith Moor* as such, then I saw him at *Carlisle*, and there he mounted Guard as a Lieutenant. I am sure that I saw him once mount Guard.

Cross-Examination.

Prisoner's Counsel. Do not you expect to have a free Pardon?

Craig. As to that I must trust to his Majesty's Mercy.

Prisoner's Counsel. How came you to know Mr. *Chadwick* so well; do you know him so very well that you can be positive to him?—*Craig.* I have known him many Years, and I belonged to the *Manchester* Regiment.

King's Counsel. Call *Austin Coleman*; who was produced, and sworn.

King's Counsel. Give an Account, Mr. *Coleman*, to my Lords and the Jury, what you know of the Prisoners at the Bar.

(*Coleman* being sworn, and looking on them, and then pointing to *Battragh*.)

T nat

That Gentleman's Name is *Battragh*, and I have seen him at *Derby*; and the other is *Chadwick*, and him I have seen at *Manchester*; there he appeared as an Officer with a Plaid Sash, and a laced Hat, with a white Cockade in it: I did not see *Battragh* have any. They both appeared as Officers in marching along; they were sometimes on Foot, and sometimes on Horseback.

King's Counsel. Do you know any thing of their being at *Carlisle*?

Coleman. I saw them both in the Guard-Room with *Capt. Fletcher*.

King's Counsel. Did they wear their Sashes there, as other Officers did?

Coleman. I cannot remember that; but when the Town was surrendered to the Duke of *Cumberland*, they were put into the Church with other Rebel Officers.---I am sure of that.

(*Ormsby Mac Cormack was next produced and sworn.*)

King's Counsel. Do you know either of the Prisoners?

Mac Cormack. Yes, I have seen both of them in the *Manchester* Regiment; I saw *Battragh* with the Rebel Army, and he carried the Colours from *Penrith* to *Carlisle*.

King's Counsel. And did you see him at *Carlisle*?

Mac Cormack. Yes, I saw him there when the Town was besieged by the Duke of *Cumberland*.

King's Counsel. Did he ever mount Guard at *Carlisle*?

Mac Cormack. Not to my Knowledge; but I have seen him in the Guard-Room, with a Sword, a Sash, and a Cockade.

King's Counsel. And you always took him to be an Officer there, did you not?

Mac Cormack. Yes, for I very well remember that he was walking up and down the Castle Yard, as an Officer, when the Arms were distributing to the Rebel Soldiers there, and *Mr. Chadwick* was with them.

(*John Collins, a Boy of 13 Years of Age, was called and sworn.*)

Prisoner's Counsel. Do you know the Nature of an Oath, Child?

Collins. Yes, I do; I know I am sworn to speak the Truth, and I shall never be happy if I do not.

King's Counsel. Do you know either of the Prisoners? was you among the Rebels at *Carlisle*?

Collins. Yes, I was, and was a Servant to *Capt. Lowther*, and we were taken Prisoners by the Duke at *Carlisle*, where on my Knees I begged my Life of his Royal Highness, which he generously granted, and God bless him for it. I saw both the Prisoners at *Carlisle*, and there they always acted as Officers in the *Manchester* Regiment; *Chadwick* as a Lieutenant, and *Battragh* as an Ensign: I know them both perfectly well.

King's Counsel. Pray call *Captain Nevett*, who was sworn.

King's Counsel. I think when *Carlisle* surrendered to his Royal Highness the Duke, you had a Command from his Royal Highness to go to the Church where the Officers were Prisoners; and to take their Names.

Capt. Nevett. Yes, I had, Sir.

King's Counsel. Do you remember to have seen either of the Prisoners at the Bar at *Carlisle*?

Capt. Nevett. Perfectly well: The first Time that I saw them, *Mr. Chadwick* gave in his Name as a Lieutenant in *Townley's Manchester* Regiment; and the other Prisoner, *Battragh*, told me he was an Ensign in the same Regiment; I noted it so in my Paper: And on making a Report to his Royal Highness the Duke, and giving in a List of their Names and Qualities, I was ordered to go the next Morning, and I went accordingly, and called all the Prisoners over by their Names, and they answered, *Chadwick* as a Lieutenant, and *Battragh* as Ensign.

The King's Witnesses being all gone through, and neither of the Prisoners making any Defence, or calling any Witnesses to their Characters, the Jury, without going out of Court, found both the Prisoners Guilty of High Treason; and the Court ordered the Irons to be put on *Mr. Chadwick* again.

The Prisoner *Chadwick* was executed on *Kennington-Common*, on *Wednesday* the 30th of *July*, 1746, according to his Sentence; and his Head was preserved in Spirits, and sent down to *Carlisle* or *Manchester*, to be put up as those of *Townley* and *Fletcher's* had been on *Temple Bar*; but his Body was delivered to his Friends to be buried.

He was about 32 Years of Age, of very honest and creditable Parents in *Manchester*, and whose Father then lived there, and followed the Trade of a Tallow-Chandler and Soap-boiler. This unfortunate Man was bred up to the same Trade; but he playing pretty well on several Instruments, kept some of the most polite Company of the Place, and never followed any Trade.

He was a Person of great Resolution, and could, as he used to say, look Death in the Face with as much Pleasure as he could a Friend who came to visit him, and could meet it with as much Good-will. His Behaviour, during the whole Time of his Confinement, was always cheerful and merry, taking all Manner of Pleasures the Gaols afforded; and frequently declaring, that what he had done he was not sorry for, for if it was to do again, he would act in the same Manner.

The Morning of his Execution, whilst they were at Breakfast, *Mr. Chadwick* said to *Mr. Berwick*, *Ah! Duke* (for this is the Name that *Berwick* went by in the Rebel Army) *our Time draws very near; though as to my Part, I am as hearty as ever I was in my Life.* *Mr. Berwick* replied, *As to my Part, I think we all look pretty well, and I declare Death don't shock me in the least. I hope God will be merciful to us all; for I can lay my Hand on my Heart, and say, the greatest Injury I ever did was to myself and Relations; and though I have brought them and myself to Disgrace, they have been so kind as to forgive me, and would have saved my Life had it been in their Power.*

The other Prisoner *Battragh* received his Majesty's most gracious Reprieve.

XXXII. The Trial of THOMAS THEODORUS DEACON, for High Treason, at the Court-house, St. Margaret's-hill Southwark, July 17th, 1746.

THE Court being sat, the following Judges being present, viz. Lord Chief Justice *Willes*, Mr. Justice *Abney*, and Mr. Justice *Foster*, *Thomas Deacon* was put to the Bar.

King's Counsel. Call *Mr. Samuel Maddox*; who appeared, and was sworn.

King's Counsel. *Mr. Maddox*, give an Account to the Court and Jury what you know of the Prisoner that stands by you.

Maddox. I saw him at the Bull Head at *Manchester*, where he sat at a Table, writing down the Names of such as enlisted in the Pretender's Service; for which he was paid for every Name enlisted, One Shilling. There were several blue and white Ribbands lying before him, which, when he was not writing, he made up into Favours, and gave them to the Men enlisted. I saw him march from *Manchester* to *Winslow* as an Officer, wearing a Plaid Waistcoat, with laced Loops, a broad Sword by his Side, a Brace of Pistols stuck in his Girdle, and a Cockade in his Hat. When he beat up for Volunteers at several Places, he made a very long Speech, inviting all Gentlemen Volunteers to come and serve *Charles*, Prince Regent, and they should have good Quarters, be well used by the Officers, and enter into present Pay, and when they came to *London*, they should receive five Guineas to bear their Expences Home, if they thought proper to leave the Service, and should receive Thanks, and have a Protection. At *Winslow* he was ordered by the Pretender to march to *Derby* as a Guide, with Ammunition, &c. that had been seized; and at *Leake* he went with *Thomas Syddall* and *James Bradshaw* to raise Recruits, and joined the Rebel Army again at *Manchester*. That at *Preston* he commanded his Company, and gave Directions to the Officers under him, who obeyed him; and that at *Carlisle* he mounted Guard in the Town-hall during the Siege.

Thomas Bradbury, another Witness, swore, That the Prisoner was a Captain in the Rebel Army, and was dressed as above. That he, the Witness, being a Servant to a Printer at *Manchester*, the Prisoner, with other Rebels, came to him, in the Absence of his Master, and compelled him to print a treasonable Paper, which they called a *Manifesto*, and likewise an Advertisement; both which were delivered into Court and read. The Advertisement, or Hand-bills, were distributed by the Rebels, offering all fitting Encouragement to such as would enlist with them; and that he the said *Deacon* was in a great Hurry, and came several Times to the Printing-Office, and threatened *Mr. Bradbury*, if he did not get the Papers ready, he should be severely punished;---and that he the said *Deacon* brought with him, when he came for the said Papers, a great Number of Horse belonging to the Rebel Army, who threatened to pull down the House.

Thomas Craig, another Witness, swore, That he saw the Prisoner

mount Guard at *Manchester*, *Preston*, and *Carlisle*; that he was Lieutenant-Colonel, and promoted for his great Diligence, in raising Recruits.---*Capt. Nevett* swore, that the Prisoner said, his Name was *Thomas Deacon*, and that he was a Captain in the *Manchester* Regiment.---*Capt. Carey* confirmed *Capt. Nevett's* Testimony.

The Prisoner had no Witnesses to produce, so the Jury found him guilty of the Indictment. Death.

Mr. DEACON'S CASE, July 17, 1746 *.

IN *Mr. Deacon's* Case, his Counsel objected to the receiving the Evidence of a Printer touching the Prisoner's obliging him to print the Pretender's Manifesto at *Manchester*, and his publishing of it there, while the Rebel Army was in the Town; and also to the reading the Manifesto. They insisted that this ought not to be given in Evidence, because it is an Overt Act not laid in the Indictment; and also because the Orders were given and the Manifesto printed and published in *Manchester*, and all the Overt Acts are laid in *Cumberland*.

But it was answered by the Court (Lord Chief Justice *Willes*, Justice *Abney*, and Justice *Foster*), that an Overt Act not laid may be given in Evidence, if it be a direct Proof of any of the Overt Acts that are laid.

One of the Overt Acts charged in this Indictment is the assembling and marching *Modo Guerino*, in order to depose the King, and to set the Pretender on the Throne. It is proved that the Prisoner with the rest of the Rebel Army was at *Manchester*, and appeared in an hostile Manner there. Now what stronger Proof can there be that the Prisoner joined this Army for the Purpose mentioned in the Indictment, than his causing to be printed and dispersed among the People the Pretender's Manifesto? It never was doubted that the being present with Rebels and joining in proclaiming the Pretender, might be given in Evidence on such an Indictment as this; and yet that Circumstance was never expressly laid in any Indictment. But 'tis sufficient that it proves *Quo Animo* the Rebel Army was raised, and *Quo Animo* the Prisoner joined it.

As to the Objection that this Fact was not committed in *Cumberland*, where all the Overt Acts are laid, Mr. Justice *Abney* and Mr. Justice *Foster* held, that it is indeed necessary on this Indictment that some Overt Act laid be proved on the Prisoner in *Cumberland*; but that being done, Acts of Treason tending to prove the Overt Acts laid, though done in a foreign County, may be given in Evidence.

And the Manifesto was read.

Lord Chief Justice *Willes* declined giving any Opinion on the second Point. But no Objection was made during the whole Course of the Trials

to the giving Evidence of Overt Acts in a County different from that where the Fact was laid, an Overt Act having been first proved in the proper County. And that sort of Evidence was given in almost all the Trials †.

This unfortunate young Man, who was about twenty-two Years of Age, was the Son of Dr. Deacon of Manchester, who gave him a liberal Education, and designed to have brought him up to his own Profession; but he was unhappily prejudiced in Favour of the Pretender against the present Royal Family, by the Company he frequently conversed with; and by their Persuasion, took on in the Rebel Army as soon as it came into Manchester, and he had often declared before the Rebels came to the Town, that he would join them as soon as they did; and was one of the most strenuous Zealots for the Cause amongst them.

It was very unfortunate for his Family his taking a Commission in the Pretender's Service, for by his Example his two other Brothers did the

same, one of whom died in the Pretender's Service, and Charles the Younger was condemned, but reprieved on account of his Youth.

His great Activity in the Service made him so far taken Notice of by the Young Pretender, that he was made Lieutenant-Colonel of the Regiment, and was to have been Colonel of the same, as soon as Colonel Townley had raised his new Regiment of Horse.

His taking Leave of his Brother, Charles Deacon, in the County Gaol, was very moving; his Brother declaring he had rather have suffered with him, than to survive him; and that was the only Time any particular Alteration could be discerned in him, and then he was in great Agonies, and wept.

He was executed with Townley and the rest, on Kennington-Common, on Wednesday the 30th of July 1746, in the same Manner as Townley. His Body was delivered to his Friends to be buried, and his Head was preserved in Spirits, and sent down to Carlisle, or Manchester, to be put on one of the Gates.

XXXIII. The Trial of JOHN BERWICK, for High-Treason, at St. Margaret's-Hill, Southwark, July 17, 1746.

JOHN BERWICK was then brought to the Bar, and being arraigned on the same Indictment with the other Manchester Officers, the Jury were sworn to try him. The Treason, and Overt Acts of Treason, were laid to be committed on the 10th of November.

The first Witness for the King that was called and sworn, was Samuel Maddox; and he deposed, That he had often seen the Prisoner, particularly at Manchester, and other Places, and that he always appeared as an Officer, and gave his Command; he saw him at Carlisle; and that he was there when the Town surrendered.---Mr. Bowker, the Manchester Constable, said, That he saw him in the Town, and that he appeared in the same Garb as the other Officers belonging to the Regiment which they called the Manchester Regiment.

The Counsel for the Prisoner insisted, that the Charge was not proved, for that in all Cases of High-Treason, there must be two positive Witnesses to prove the Fact, and, as they apprehended, that was not done sufficiently by the two Witnesses that had been examined; on which the King's Counsel called Capt. Nevil and Capt. Carey, who both appearing, and being sworn, deposed, That when they went into Carlisle by the Duke's Order, to take an Account of what Rank all the Officers were, the Prisoner gave in his Name to them as a Lieutenant in the Manchester Regiment.

The Prisoner calling no Witnesses, the Jury found him Guilty.

JOHN BERWICK'S Case, July 17, 1746 †.

IN the Case of John Berwick, there was only one Witness that proved him to have been in Arms with the Rebels. This Witness proved that he was inrolled and reviewed as a Lieutenant in the Regiment called the Manchester Regiment, and did Duty as such at Penrith and Carlisle.

Two other Witnesses (Officers in the Duke's Army) swore, that after the Surrender of Carlisle, they were ordered by the Duke to take an Account of the Names of the Officers and of their respective Ranks in the Rebel Garrison; that accordingly they went to the Prison where the Officers were confined apart from the Common Men, and took such Account of them; that the Prisoner Berwick appeared among the Officers, and gave in his Name to them as Lieutenant in the Manchester Regiment.

Lord Chief Justice Willes and Mr. Justice Abney were of Opinion, that this Declaration of the Prisoner is not to be considered as a bare Confession after the Fact, but as an Evidence of the Fact itself, viz. That the Prisoner did appear and take the Rank of a Lieutenant in the Rebel Garrison. They thought too, that a Confession after the Fact proved by two Witnesses, was sufficient to convict within the 7 W. III.

Mr. Justice Foster doubted whether this Declaration, being made after the Surrender, can be considered in any other Light than as a Confession after the Fact §. And with regard to a Confession after the Fact, he said he never doubted whether it might be given in Evidence as a corroborating Proof. His Doubt was, whether it being proved by two Witnesses is a conclusive Evidence, nor an Evidence sufficient of itself to convict without other Proof. Since the 7 W. III. seems to require two Witnesses to Overt Acts, or a Confession in open Court ||; and says further, page 243. I would not in any thing I have said, be understood to arraign the Proceeding in the Case of Berwick, before-mentioned; he was found in a Prison assigned by the Duke (of Cumberland), after the Surrender, to the Officers in the Rebel Garrison, and to none but Officers, whither he went with the rest of them. He appeared among them, and took the Rank of an Officer. These Facts, together with his Declaration, all proved by two Witnesses, were, I think, properly considered by two learned Judges, not as a bare Confession after the Fact, but as an Evidence upon the Spot, and in the very Scene of Action.---See more relating to Confessions in Foster's Reports, Page 241, 242, 243, 244.

Berwick was convicted upon the Evidence of the Officers and of the other Witnesses.

This Prisoner was about 32 Years of Age, and was a Housekeeper in Manchester, and a considerable Dealer in chequ'd Linnen, where he kept a Shop, and had a good Trade; but not being so diligent as young Traders should be, and loving his Pleasure too well, 'tis thought he was running behind-hand in the World; and that not being able to settle his Accounts with his Creditors, was the principal Reason that induced him to take on with the Rebels.

The Commission he bore was a Lieutenantancy in the Manchester Regiment, given him by the Pretender; to whom he had been well recommended as a Man of undaunted Courage and Resolution, firm to his Party, staunch in his Principles, and of a bold, enterprising Disposition, of which he discovered manifest Tokens on every Opportunity that offered.

He was executed also on Kennington-Common, with Townley and the rest, according to the Sentence, on Wednesday the 30th of July, 1746, and his Head was put into Spirits, and sent to Manchester or Carlisle, to be put up in one of those Places; his Body being delivered to his Friends to be buried.

XXXIV. The Trial of DAVID MORGAN, of Monmouth, but late of Derby, Esq. for High-Treason, at St. Margaret's-Hill, Southwark, July 18, 1746.

The Names of the Jury.

James Glover,	Ralph Godfrey,	Thomas Symonds,
Joseph Brookes,	William Barnard,	John Jeffries,
John Mason,	John Voice,	Henry Rowd,
Joakin Faulk,	Thomas Clement,	John Clement.

THE King's Counsel opened the Indictment (which was the same as against all the rest), and proceeded, and called the following Witnesses to support the same against the Prisoner.

Solicitor General. Call Edward Tew (which was done accordingly) who appeared in Court, and was sworn.---Pray, Mr. Tew, inform my Lord and the Jury what you know relating to the Prisoner at the Bar.

Tew. I live at Preston next Door to the Sign of the Joyner's Arms, and when the Rebel Army was there, I assisted my Neighbour to wait on some Company that were at that House, most of whom were Officers belonging to the Rebels.

King's Counsel. Can you recollect ever having seen the Prisoner there? Tew. I remember him very well, for I waited on him at Dinner, when Lord Elcho and he dined there together.

King's Counsel. Do you remember any Discourse that passed?

Tew. The Prisoner asked Lord Elcho what Number of Men the Young Pretender [which the Prisoner called Prince] had landed with him.

King's Counsel. And what Answer did he make?

Tew. He said, not above half a dozen; but the Number soon increased when the Clans heard he was landed; and also that they had 17 Pieces of Cannon.

King's Counsel. And what further Discourse passed between them?

Tew. The Prisoner asked Lord Elcho what Religion the Pretender professed?

King's Counsel. And what was the Reply?

Tew. My Lord Elcho shook his Head, and said he could not very well tell; but he believed his Religion was to seek.

King's Counsel. And what passed then?

* The like Evidence was given in most of the Trials after the Rebellion of 1715, and admitted by the Judges upon the Commission in the North this Summer. See the Cases of Laver and Sir William Perkins in the State Trials.

† J. Foster's Reports, p. 9.

‡ Foster, p. 10.

§ Upon further Consideration I doubt there was too much Refinement in this Distinction. See 1. Disc. c. 3. S. 8. Foster, page 232.

|| The like Evidence was held sufficient upon the Commission in the North this Summer; upon the Authority of the Judges Opinions previous to the Trials of Gros and Francia. See Foster's Discourse on High-Treason, Chap. 3. S. 8.

Tew. The Prisoner asked if they had ever beat up for Volunteers in England, and Lord Elcho said they had not; and the Prisoner advised him to beat up for Volunteers, and said it would be an easy Matter to march forwards for London, for that there was not above 3000 Soldiers between there and London, and most of them were Dragoons, besides a few undisciplined Troops that were raised by Lord Gower and Lord Cholmondeley, who would make but little Opposition.

King's Counsel. Well, Sir, go on.

Tew. I know nothing more that is particular that passed at that Time; but the next Morning the Prisoner came, and asked for Lord Elcho.

King's Counsel. What Appearance did he make then?

Tew. He was in a white Cockade, and a Sword by his Side; and I saw him several Times walking up and down the Town with the Rebel Officers.

King's Counsel. Did you see the Young Pretender?

Tew. He marched at the Head of the Regiment, and did not lodge (as I have heard) but two or three Doors from the House where the Prisoner at the Bar lodged.

King's Counsel. What Number of People do you think the Young Pretender's Army consisted of?

Tew. The Talk in Town was, that they were 6000 strong: There was a great many, but as to the Number I cannot be positive.

King's Counsel. Do you imagine he was forced into the Rebels Service?

Tew. He was under no Force that I saw, for he appeared all along to be one of the Heads of them, and all of them seemed to have a great Regard to what he proposed, particularly about the Proposal he made for beating up for Volunteers.

King's Counsel. Will you ask this Witness any Questions?

Prisoner to Tew. I desire, Sir, that you would give the Court an Account how you came to know that my Name is Morgan.

Tew. I cannot say now that your Name is Morgan, but I am very positive to your Person.---I know your Face very well, and if I was not well assured that you are the very same Man, I would not swear it.

King's Counsel. Was the Young Pretender at that House?

Tew. I do not know; but they said that he lodged a few Doors farther.

JOHN BARRY sworn.

King's Counsel. John Barry, I desire you would inform the Court and Jury what you know relating to Mr. Morgan, the Prisoner at the Bar.

Barry. I came out of Monmouthshire with my Master and the Prisoner at the Bar, in the Month of November last, and at the Town of Preston we joined the Rebel Army. About a Mile on this Side of Preston, my Master and the Prisoner left their Horses, and walked to Preston on Foot to avoid any Suspicion of what their Design was.

King's Counsel. And what Part did the Prisoner at the Bar act; and how did he behave during the Time you was with the Rebel Army?

Barry. I saw him ride with the Rebel Army, from Preston to Manchester, and he was very active in encouraging the Rebel Officers and Soldiers. After that I saw the Prisoner at Ashborn, and he said there that he would not leave the Army as long as he lived.---I cannot say that he bore any Commission as an Officer: If he did, it is more than I know.

BENJAMIN BOWKER called and sworn.

King's Counsel. Mr. Bowker, acquaint my Lord and the Gentlemen of the Jury, what you know of Mr. Morgan the Prisoner.

Bowker. Upon the 29th of last November, I had this Paper delivered to me (holding a Paper in his Hand, and looking at it). It is a Paper ordering me to search for Arms.

King's Counsel. What are you, Sir?

Bowker. I am a Deputy-Constable of Manchester.

King's Counsel. Who gave you that Paper?

Bowker. The Prisoner at the Bar and Mr. Wallis, who was one of the Head-Constables.

King's Counsel. Then the Prisoner was with Mr. Wallis, when you had that Paper delivered to you?

Bowker. Yes, he was.

King's Counsel. What were the Contents of the Paper?

Bowker. It was a Warrant signed by Murray the Pretender's Secretary, to search for all the Arms I could find; and if any Body refused to deliver up and surrender their Arms, they were to suffer military Execution against their Goods and Effects.

[Then this Paper was delivered by Mr. Bowker to the Clerk of the Arraigns, and was read in Court; but it is so very treasonable, that it is improper to insert it. The Preamble called the Pretender's Son Regent of England, Scotland, and Ireland, and required all whom it may concern, to pay due Obedience to that Order.]

King's Counsel. What, did you get any Arms of the Town's People at Manchester?

Bowker. I did, and carried them to the Prisoner's Lodgings, and left them there, though I did not see him, but I asked for Esquire Morgan; and one of the Servants belonging to the House told me he would be there presently.

King's Counsel. Do you know any thing farther?

Bowker. I do not: I have spoke all that I can recollect.

King's Counsel. Call Samuel Maddox next, and swear him.

SAMUEL MADDOX sworn.

King's Counsel. Mr. Maddox, inform the Court where you first saw the Prisoner at the Bar.

Maddox. I saw Mr. Morgan, the Prisoner at the Bar, at Manchester, when he was joined with the Rebel Army; he had a white Cockade in his Hat, and a Sword by his Side, and publicly declared that he was of the Pretender's Party.

King's Counsel. Did he march away from Manchester with the Rebels?

Maddox. He marched with them to Derby; and there being an Information given that some Arms were secreted from the Rebels, he gave Orders for a Party of the Rebel Army to go and search for them.

King's Counsel. Did he go with that Party?

Maddox. Not to my Knowledge. I saw Capt. James Dawson* deliver him a Pair of Pistols.

King's Counsel. Whilst the Rebels were at Manchester, was not there some Talk of the Prisoner's being made Colonel of the Manchester Regiment, as it was called?

Maddox. I was in the Room at Mr. Cookson's, at the Dog at Manchester, when the Proposal was made for the Prisoner to be Colonel of the Regiment; but he refused it, and said, Mr. Townley was much fitter than he for such an Office; and then it was agreed amongst those that were present, that Mr. Townley should be Colonel; and he was declared so, and had the Pretender's Son's Commission.

King's Counsel. You say you saw him march from Manchester to Derby?

Maddox. Yes, I did; he marched as a Gentleman Volunteer, and was very active, and did all in his Power to promote the Interest of the Rebels.

(Mr. Maddox was cross-examined by the Prisoner.)

Prisoner. You talk so very exactly, I desire to know if you ever made any Memorandums of what passed?

Maddox. I did, but I have not got those Memorandums, for I delivered them to that Gentleman (pointing to the Solicitor of the Treasury's Clerk).

Prisoner. Are you sure they have never been altered?

Maddox. I am very sure they never were by my Direction; since they have been out of my Custody I have never seen them. I have made no use of them to refresh my Memory, for I can remember the Particulars very well without them.

King's Counsel. Call Captain Vere, and swear him. (Which being done, he stood up.)---Pray, Captain, inform us what you know of the Prisoner.

Vere. On the 3d of November I saw the Prisoner at Sir Peter Davenport's at Macclesfield, with several of the Rebel Officers; and I have seen him at several other Places march with the Pretender's People. I knew him very well, for he abused me, and called me a great Scoundrel, because he said I had prevented a Gentleman from getting a Commission under Sir Daniel O'Carroll.

King's Counsel. Are you positive the Prisoner is the same Person you saw at Macclesfield, and in the Pretender's Army?

Vere. I am sure he is the very same; I saw him at several Places, particularly I remember to have seen him about a Mile out of Derby, riding with the Pretender on a bay Horse.

King's Counsel. When was you at Macclesfield?

Vere. I saw him there on the 3d of November, and on the 5th I saw him at Derby; and I am sure he is the very same Man, because I know him very well.

Mr. How called and sworn.

King's Counsel. Mr. How, do you know Mr. Morgan?

How. Yes, I know him very well: This Gentleman (pointing to the Prisoner) who stands by me, is Mr. Morgan.

King's Counsel. What do you know of him?

How. He lodged at my House, and was accounted a principal Man amongst the Rebels, and they called him the Pretender's Counsellor.

King's Counsel. How do you know that he was a principal Man?

How. Because he seemed more active than any of them. He paid me the Reckonings when he used to dine with the Rebel Officers. He paid me a Guinea and three Shillings, and gave all Directions about every thing.

King's Counsel. Had you any Discourse with him?

How. Yes, I had; when the Rebels were at Derby, he asked me if I was surprized at their being there so soon? I told him, that I had expected them as that Night.

King's Counsel. What did he say then?

How. He said it was more than they expected themselves; and if I had heard such News, he was sure that the Devil had brought it me.

King's Counsel. And what do you know farther?

How. I have seen the Prisoner since he has been taken up.

King's Counsel. Where have you seen him?---*How.* In Newgate.

King's Counsel. Had you any Discourse with him there?

How. Yes, I had.

King's Counsel. Then relate it to the Court and Jury; speak all that you can remember.

How. I came to Town on Business, and being informed that Mr. Morgan was in Newgate, I went there out of Curiosity to see him; when I came there I spoke to him, and he seemed glad to see me, and asked me kindly how I did; and we drank together, and had some Discourse.

King's Counsel. What did that Discourse relate to?

How. I said I was very sorry to see him a Prisoner in such a Place.

King's Counsel. And what did he say to that?

How. He said he should soon be at Derby in spite of King George, or any body else.

The Prisoner's Defence.

Prisoner's Counsel. My Lord, and Gentlemen of the Jury, I cannot speak so exactly to the Evidence that has been given against this unhappy Gentleman, as I could wish, because I have not had my Brief above half an Hour. If my Instructions be right, I will take upon me to say, that we shall produce Evidence of good Credit and Reputation, who will prove, that this Gentleman, the Prisoner, was forced into the Service of the Rebels, and at several Times, and several Places, endeavoured to make his Escape from them; which he at last effected, and was seized, after he had made his Escape, by a Magistrate, and committed Prisoner. And to prove that the Prisoner did make his Escape, I shall call Mr. Chatterton, who is the Master of the House where the Prisoner lodged at Ashborn, in Derbyshire.

* Dawson was the Day before convicted of High-Treason, being one of the Rebel Captains.

Mr. CHATTERTON being called and sworn.

Prisoner's Counsel. Sir, do you know any Thing of the Prisoner's endeavouring to make his Escape from the Rebel Army? — *Chatterton.* Yes.

Prisoner's Counsel. And how did he propose to make it?

Chatterton. He was to go out of Town one Morning about one or two o'Clock, and ordered me to call him at that Time.

Prisoner's Counsel. And did you call him?

Chatterton. I did; but he did not care to rise then, for fear he should be stoppt (in endeavouring to get away) by the Rebel Guard, who were posted all about the Town. He said, that about five in the Morning would be the most proper Time, for then the Rebel Pipes would begin playing, and they would be all busy, and that was his only Time to make his Escape from them.

Prisoner's Counsel. And did he go away from your House, and out of Ashborn Town?

Chatterton. Yes, he went away, and asked me to go with him as a Guide to shew him some Bye-way to Stone; and said, it would be very proper for us to get to some Farm-house, and hide ourselves, lest the Rebels should send in Search of him, and if we should be taken after he had got away, and brought again to the Rebel Army, he did not know what might be the Consequence.

Prisoner's Counsel. Did you go with him as a Guide, Sir?

Chatterton. When he proposed it to me, I said, Mr. Morgan, it is impossible for me to leave my House, for we are all in a Hurry, and therefore you cannot expect I should go; but I will send a Man with you that will do as well.

Prisoner's Counsel. And you did send a Man with him?

Chatterton. I spoke to a Man who worked Labouring-work with me, who I knew was well acquainted with the Country, and he agreed to go; and they both set out of Ashborn, and the first News that I heard afterwards, was, that the Prisoner and my Man were both seized on Suspicion of being of the Rebel Army. And what I heard was very true; so I went to the Gentleman by whose Order they were apprehended, and enquired about the Matter, and told him how the Affair was, just in the same Manner I have informed this honourable Court; but his Worship would not discharge my Man till I had given Security for his Appearance, which I was obliged to do; so he was set at Liberty, and the Prisoner at the Bar was kept in Custody. — This is all that I know of the Matter.

(Here the Prisoner's Counsel rested his Defence, there being no other Witnesses to examine on his Behalf.)

Court to Prisoner. You have heard, Sir, what has been sworn; whatever you have to say in your Defence, now is your Time to speak it, and the Court will hear you. — (And then the Prisoner spoke to the following Effect, after the Cryer had made Proclamation for Silence.)

Morgan. I have heard what has been sworn against me by the Witnesses on the Behalf of the Crown; and I appeal to the Court and the Jury, if there are not the greatest Improbabilities in the World in the Evidence they have given against me. I would speak particularly to what happened at Manchester. The Deputy Constable swears, That I gave him an Order to seize all Arms he could find, and to bring them to my Quarters: Mr. Maddox swears, That at a Consultation amongst the Officers at Manchester, I was proposed for Colonel of the Regiment, which I refused, because I thought Mr. Townley was more fit for such a Command than myself.

Now can any reasonable Man imagine that I, who had refused to be the Chief Commander of the Regiment, would do the servile Office of going up and down the Town in Search for Arms?

Every Gentleman of the Army (and I see several in this Court) very well know, that to go on such an Errand, would ill become any Officer of a superior Rank; and as to my own Part, I am sure I could not have done any such Business.

I do not deny my being at several Places with the Rebels; and if I had been indulged with a longer Time to prepare for my Trial, I should have made appear very clearly, that I was taken Prisoner by the Rebels, and detained with them much against my Inclination; for there was no resisting Force.

My Landlord, Mr. Chatterton, has made it plainly appear to this honourable Court, that I made my Escape as soon as it was in my Power; and if I could have done it sooner, or have had an Opportunity to get away from them, I should have been very glad to have embraced it.

As to my Capacity as one bred to the Law, I confess I never pretended to much Knowledge that Way, and therefore was a very improper Person to counsel the Chief of the Rebels; for my Advice, I am sure, could be of little Service to him.

There were Abundance of Gentlemen of Fortune seized as well as myself, who were obliged to go with the Army, till they found Means to escape as I did. I had been to pay a Visit to a Gentleman at Etherton-Hall in Cheshire, and I was seized by the Rebels, and they took my Horses from me.

The Laws of England are very just and equitable; and they say, that every Man shall be tried by his Neighbours, of the same State and Condition with himself.

God help me, I am deprived of that Benefit, and I am now amongst Strangers, who know nothing of me: They are upon their Oaths, and must give Credit to the Witnesses; but I hope, and do not in the least doubt, that they will do me Justice.

I have served the Crown of England in two Campaigns with some Reputation. And I believe no Gentleman belonging to the Army, who knows me, will deny what I now tell this honourable Court. I cheerfully gave all the Assistance I could in the public Service, and I was always glad when my poor Endeavours were crowned with Success.

Here have been many Witnesses examined against me, and it is very impossible that I should confute them, because of the short Time allowed me.

I think it a very great Hardship that I should be the last tried of all these Gentlemen, because I could have brought several of them to prove my Behaviour both at Manchester and in other Places, was quite different from what the King's Witnesses speak of; but as they are convicted, they cannot give any Testimony for me, and that Assistance I might have had, can now be of no Use to me.

If I was to speak it with my last Breath, I must deny that I went vo-

luntarily into the Rebellion; but as the Evidence for the Crown is so strong against me, I must submit to the Determination of this honourable Court, and I submit myself accordingly.

(When the Prisoner had done speaking, Mr. Solicitor General stood up, and made a Reply, which was to the Effect following:)

Solicitor General. I should not have troubled your Lordships, or the Jury, with saying one Word more relating to the Prisoner that is now before you; but I find it necessary, from what has been offered in his Defence, to observe, that he has complained of many Hardships.

He seems to think it a great Grievance, that his being last tried has deprived him of many Advantages; but, in my Opinion, he has had a better Chance to defend himself, because it gained him more Time to get his Witnesses ready, and to prepare for his Defence.

Can any Man imagine, that either of the Persons who have been convicted (if Mr. Morgan had been first tried) would have appeared to clear him of the Charge that is laid against him? If they had done so, they would have been their own Enemies; for their Evidence would have been a plain Proof against themselves, and convinced every body that they were in the Rebellion.

The Prisoner has no need to complain of any Hardships; he has been used with as much Lenity and Tenderness as any Man in his Condition ever was; and nothing that he has asked, which the Law could grant, was ever refused him. He has had Counsel assigned him of his own choosing, to enable him to make his Defence, a Copy of his Indictment in due Time, and therefore he could not have any Pretence of being ignorant of what he stood charged with; and I am sure no one can say, but he has had a very fair and impartial Trial.

I think of all the Prisoners convicted, it is very evident, that the Prisoner's Case really appears the plainest of any; for of six Witnesses, there are four who were not concerned in the Rebellion, who positively swear to his Person, and that he was the most active of any one in the Rebel Service; and Mr. How particularly swears, That he lodged at his House, he gave Directions for every thing, and paid the Reckoning for himself and eight Officers who dined with him; and therefore he thought the Prisoner was one of the Heads of them: — These were his Words.

Then there is Mr. Bowker, the Deputy-Constable of Manchester, and he comes and swears, That the Prisoner at the Bar, with one Wallis (who is one of the Head Constables of Manchester, and Bowker's Principal) came to him with a Paper signed by the Pretender's Secretary, ordering him to search for all Arms, and carry them to the Lodgings of David Morgan, Esq. which he did accordingly, for in Case of Refusal, he, and all those who refused to deliver up their Arms, were threatened with military Execution. This Witness is positive to the Person of the Prisoner; and I think there can be no plainer Proof of High-Treason than what has been sworn.

As to what Mr. Chatterton has sworn of the Prisoner's Escape from the Rebels, and leaving Ashborn, I admit to be Matter of Fact, but this plainly makes against the Prisoner; for when he found their Affairs were desperate, he was willing to shift for himself, and went away privately from them, purposely that he might not be seized by the King's Forces. He had been amongst the Rebels a considerable Time before this happened, and if (as he pretends) he was detained against his Will, he undoubtedly had frequent Opportunities of leaving them; but that you find he never did, till his own Preservation and Safety required it.

As to his Complaint of Hardships, there is no one here that ever intended him any; but the Jury must go according to the Evidence; and I am sure that no Evidence in the World could have brought a Fact more home to the Prisoner than they have done this: And I doubt not but the Evidence that has been given will have a due Weight with the Jury, and that they will find him guilty of the Indictment.

The Jury, without going out of Court, brought the Prisoner in Guilty.

July 22, 1746.

All the Prisoners who then stood convicted were brought to the Bar to receive Judgment; and their Counsel, Serjeants Wynne and Eyre, took two Exceptions in Arrest of Judgment.

1. That the Teste of the Commission is not set forth in the Caption of the Indictment, and consequently, for aught appears on the Record, the Commission might issue before the Commencement of the Act, on which this Commission is grounded: And if so, the whole Proceeding is *coram non Judice*.

To this it was answered by the Attorney General, and agreed by the Court, that the Jurisdiction of the Court doth sufficiently appear on the Record. The Act of Parliament is undoubtedly the Foundation of this Proceeding: The Act, and this Commission grounded on it, are recited in the Caption: And it is expressly alledged, that the Commission did issue by Virtue of the Act; which could not be true, unless the Commission was subsequent to it.

Their second Exception, and on which they seemed chiefly to rely, was, that the Act impowers the Crown to issue Commissions for trying Persons then in Custody, or who shall be in Custody for High-Treason, in levying War before the first Day of January next, and it is not alledged in the Indictment that the Prisoners were in Custody at the Time of the Indictment: And consequently it doth not appear on the Record, that the Court hath any Jurisdiction over the Prisoners.

To this it was answered by the Attorney General, and agreed by the Court, that it doth sufficiently appear on the Record as it now stands, though not indeed on the Indictment, that the Prisoners are in Custody; the Record alledgeth that the Prisoners, at the Time of their Arraignment, being brought to the Bar in the Custody of the Sheriff to whose Custody they had before been committed for the Cause aforesaid, were asked, &c.

† The Common Commission of Gaol Delivery extendeth only to Prisoners in actual Custody; and yet it was never thought necessary to alledge in the Indictment that the Defendant was then actually in Prison: And if this Exception was to prevail, it would impeach all the Judgments that ever have been given at any Sessions of Gaol Delivery.

That the Act on which the Prisoners were tried runs thus in the very Words of this Act, all the Indictments at that Time were as these are, and this very Exception was then taken and over-ruled.

* See the Case of *James Macdonald* afterwards.

† V. 12 Mod. 449. the same Point.

Lord Chief Justice Lee produced a Note he took at that Time, in the Case of the *King and Oxburgh*; the same Exception was then taken and over-ruled upon the Reason last before given.

Judgment was then given as in Cases of High Treason. Mr. Serjeant Eyre afterwards, viz. August 2d, took an Exception that bears some Affinity to the last in behalf of *Donald Mac Donald* and some others who then stood convicted, and were brought to the Bar to receive Judgment: It was, that it doth not appear that the Prisoners were apprehended; and faith he, in fact they were not apprehended, but surrendered. Whereas the Act of Parliament, on which the Commission is grounded, speaks only of Persons that shall be apprehended and in Custody.

This fine-spun Objection was likewise over-ruled. The Surrender was as much upon Compulsion, as the Submission of a Person who cries for Quarter in the Heat of Battle is. In both Cases, the Submission is by reason of a superior Force, and for Fear of immediate Death.

David Morgan was about 51 years of Age, born in *Wales*, and bred to the Law, and had frequently (as a Barrister) attended the Courts at *Westminster Hall*, and elsewhere. He was a Person of a very mean Look, and seldom kept Company with any Gentlemen of his Neighbourhood; and if it had not been for his Estate, he might have starved, for he was so very lofty, and of so bad a Temper, that Nobody but such as were beholden to him cared to employ him. This *Morgan* was possessed of a very good Estate in *St. Leonard's Shoreditch*, but he let it all run to Ruin, because he would not pay the Ground-Rent.

The Rebels called *Morgan* the Pretender's Counsellor, and his Advice was consulted on every Occasion. Even after he was condemned, he was haughty and insolent beyond Expression; and the very Afternoon before his Execution, he grumbled to pay the Cook who dressed his Dinner, and said she was very extravagant in her Demands.

He read to his Fellow Prisoners above twenty Minutes at the Gallows, and died very unconcerned.

The Morning (about Six o'Clock) before he went to Execution he ordered Coffee to be made, and bid them take care to make it very good and strong, for he had never drank any since he had been in that Prison fit to come near a Gentleman; and because it was ready before he was unlocked, he seemed angry, and in a great Passion.

He was executed with the others on *Wednesday, July 30, 1746*, and his Body delivered to his Friends to be buried.

The Nine that were executed at *Kennington Common, July 30, 1746*, were *Francis Townley*, Col. of the *Manchester Regiment*; *Thomas Theodorus Deacon*, *James Dawson*, *John Berwick*, *George Fletcher*, and *Andrew Blood* (or *Blyde*), Captains in the *Manchester Regiment*; *Thomas Chadwick*, Lieutenant; *Thomas Syddall*, Adjutant to the same; and *David Morgan*, a Volunteer in the Pretender's Army; of these, *Fletcher*, *Berwick*, *Chadwick*, and *Dawson*, declared themselves Members of the Church of *England*; *Townley* and *Blood* died Papists; all their Speeches were filled with Treasonable Expressions, not fit to be repeated (as beforementioned): But we shall take notice what a strange enthusiastick Sort of Religion *Syddall* and *Deacon* were of, as they mentioned the Church they belonged to in their dying Speeches; and Mr. *Morgan's* Declaration as to his Faith.

Thomas Syddall the *Peruke-maker* says, "I die a Member not of the Church of *Rome*, nor yet that of *England*, but of a pure Episcopal

Church, which hath reformed all the Errors, Corruptions and Defects that have been introduced into the Modern Churches of Christendom: A Church which is in perfect Communion with the Ancient and Universal Church of Christ, by adhering uniformly to Antiquity, Universality and Consent; that glorious Principle, which if once strictly and impartially pursued, would, and which alone can, remove all the Distractions, and unite all the divided Branches of the Christian Church. This only Catholick Principle is agreed to by all the Churches, Eastern and Western, Popish and Protestant; and yet unhappily is practised by none, but the Church in whose Communion I die. May God in his great Mercy, daily increase the Members thereof! And if any would enquire into its Primitive Constitution, I refer them to our Common-Prayer-book; which is entitled, a *Complete Collection of Devotions, both publick and private, taken from the Apostolical Constitutions, the Ancient Liturgies, and the Common Prayer-book of the Church of England, Printed at London, 1734.*"

Mr. *Thomas Theodorus Deacon* said, in his Speech, "I profess I die a Member not of the Church of *Rome*, nor yet of that of *England*, but of a pure Episcopal Church, which has reformed all the Errors, Corruptions and Defects that have been introduced into the Modern Churches of Christendom: A Church, which is in perfect Communion with the Ancient and Universal Church of Christ, by adhering uniformly to Antiquity, Universality and Consent; that glorious Principle, which if once strictly and impartially pursued, would, and which alone can, remove all the Distractions, and unite all the divided Branches of the Christian Church. This truly Catholick Principle is agreed to by all Churches, Eastern and Western, Popish and Protestant; and yet unhappily is practised by none, but the Church in whose Holy Communion I have the Happiness to die. May God, of his great Mercy, daily increase the Members thereof! And if any would enquire into its Primitive Institution, I refer them to our Common Prayer-book; entitled as abovementioned."—This Book of Devotion was supposed to be wrote by Dr. *Deacon*, the Physician at *Manchester*, Father of the above.

The Speeches of the Rebels were suspected to be wrote by Mr. *Creak*, a Nonjuring Clergyman; (some said one of their Bishops) at least he had a hand in them.

Counsellor *Morgan* in his Speech said, "To conclude, my Brethren and Fellow Subjects, I must make Profession of that Religion I was baptized, have continued, and shall, through divine Permission, die in, which is that of the Church of *England*; and which I hope, will stand and prevail, against the Malice, Devices and Assaults of her Enemies; as well those of the Church of *Rome*, as those, equally dangerous, the Followers of *Luther* and *Calvin*, covered under, and concealed in, the specious Bugbears of Popery and Arbitrary Power. This my Faith, I have fully set forth in a Poem of two Books, intitled, *the Christian Test, or the Coalition of Faith and Reason*; the first of which I have already published, and the latter, I have bequeathed to the Care of my unfortunate, but very dutiful Daughter, Mrs. *Mary Morgan*, to be published by her, since it has pleased God I shall not live to see it. To these Poems I refer, which I hope will obviate all Cavil to the contrary."

XXXV. The Trial of ALEXANDER MAC GROWTHER, at the Town Hall, St. Margaret's Hill, Thursday, July 31, 1746, for High-Treason.

THIS Morning the Right Honourable the Lord Chief Justice Lee, the Right Honourable Lord Chief Justice Willes, Mr. Justice Wright, Mr. Justice Foster, Mr. Baron Reynolds, and Mr. Baron Clive, came into Court, and being seated, the Crier made Proclamation for Silence; and the Keeper brought *James Nicholson*, a Lieutenant in the Duke of *Perth's* Regiment, and *Donald Mac Donald*, otherwise *David Mac Donald*, otherwise *Daniel Mac Donald*, a Captain in *Cappock's* Regiment, to the Bar, and they desired to retract their former Plea; which the Court having granted, they pleaded Guilty, and hoped the Court would recommend them to his Majesty's Mercy.

Alexander Mac Growther was then called, and put to the Bar, and for his Trial put himself upon God and his Country, and after making some Exceptions, a Jury was sworn to try him.

The Counsel for the King having opened the Indictment, that the Prisoner was a Lieutenant in the Duke of *Perth's* Regiment, they proceeded to call their Witnesses, and Mr. *Allen* was called and sworn accordingly.

Solicitor General. Pray, Sir, acquaint the Court of all that you know of the Prisoner.

Mr. *Allen*. There are two *Mac Growthers*, but this is the oldest, and he was a Lieutenant in the Duke of *Perth's* Regiment; and the first Time he was in Arms in the Pretender's Service was the latter End of last August. He was a Tenant to the Duke of *Perth*, and accepted a Commission in the Rebel Service; he was called Lieutenant in *Perth's* Regiment by the Officers and Soldiers, and marched in his *Highland Dress* with the Rebels from their first beating up for Volunteers in *Scotland*. He was at *Edinburgh*, and seemed very glad when the Pretender had got Possession of the City, and encouraged the Soldiers to be diligent, for that there was no Fear of Success, and if they were hearty, vigilant and active, he did not doubt but they should succeed. He wore a white Cockade at *Edinburgh*, a Dirk by his Side, had Pistols in his Girdle, and a blue Bonnet, and the *Highland Rebels* paid a great Respect to him. He was at *Perth* when Possession was taken of that Town by the Pretender's Party, and always acted there as an Officer; and at every Place where the Rebels came was very warm in their Cause, bidding the Rebels under his Command keep a good Heart, and fear nothing.—He spoke this at the Battle of *Preston Pans*; and every Attack they made, he spirited up his Brother Officers, and desired them to keep a good Look-out, and take care the Soldiers did their Duty.

* Upon the Trials of the Lords *Kilmarnock*, *Cromartie* and *Balmerino*, to guard against this Objection, the Warrants for their Commitment were returned by the Lieutenant of the Tower, read and entered on the Journal.

† Foster's Reports, p. 13.

Mr. *Maddox* was next called and sworn, who deposed, That he saw the Prisoner at *Carlisle*, in his *Highland Dress*, at the Time when his Royal Highness the Duke besieged the City;—that he was in a *Highland Plaid*, a Bonnet, a White Cockade and Dirk, and was called Lieutenant *Mac Growther*, and greatly esteemed by the Rebels.

The Captains *Vere* and *Nevet*, who are Officers in the King's Service, deposed, That when the Rebels surrendered themselves, they had Orders from his Royal Highness the Duke to examine all the Rebel Officers; and when they examined the Prisoner, Mr. *Mac Growther*, he owned that he was an Officer (a Lieutenant) in the Duke of *Perth's* Regiment; and that he gave in his Name as an Officer;—and all the Witnesses agreed, that the Prisoner was under no Restraint, but acted as voluntarily as the other Rebel Officers.

Prisoner's Defence.

The Prisoner's Counsel insisted, that the Duke of *Perth* had compelled him to enter into the Rebellion, and had threatened him, if he refused to join them, to burn his House to the Ground, to destroy all his Cattle and Stock of Corn, and to lay waste all that belonged to him;—and to prove this they called four Witnesses, who, in general, deposed, That several of the Duke of *Perth's* Men came and threatened him, the Prisoner, with Destruction, if he refused joining the Rebel Forces; and to bind him with Cords; and that being compelled, he was forced to join them to save himself from Ruin.

The Evidence on both Sides being closed, my Lord Chief Justice summed up the Evidence to the Jury; and as the Proof was very strong, and it appearing that he marched with the Rebels, and enlisted at the Beginning of the Rebellion, and continued with them 'till the Surrender of *Carlisle*, the Jury (without going out of Court) found him Guilty.

ALEXANDER MAC GROWTHER'S CASE, July 31, 1746 †.

IN the Case of *Alexander Mac Growther*, there was full Evidence touching his having been in the Rebellion; and his acting as a Lieutenant in a Regiment in the Rebel Army called the Duke of *Perth's* Regiment. The Defence he relied on was, that he was forced in.

And to that Purpose he called several Witnesses, who in general swore, that on the 28th of August the Person called Duke of *Perth*, and the Lord *Strathallan*, with about Twenty *Highlanders*, came to the Town where the Prisoner lived. That on the same Day three several Summons were sent out

by the Duke requiring his Tenants to meet him, and to conduct him over a Moor in the Neighbourhood, called *Luiny Moor*. That upon the third Summons the Prisoner, who is a Tenant to the Duke, with about Twelve of the Tenants appeared; that then the Duke proposed to them that they should take Arms and follow him into the Rebellion. That the Prisoner and the rest refused to go; whereupon they were told, that they should be forced, and Cords were brought by the Duke's Party in order to bind them; and that then the Prisoner and Ten more went off, surrounded by the Duke's Party.

These Witnesses swore that the Duke of *Perth* threatened to burn the Houses, and to drive off the Cattle of such of his Tenants as should refuse to follow him. They all spoke very extravagantly of the Power Lords in Scotland exercise over their Tenants; and of the Obedience, (even to the joining in Rebellion) which they expect from them.

Lord Chief Justice *Lee*, in summing up, observed to the Jury, that there is not, nor ever was, any Tenure which obligeth Tenants to follow their Lords into Rebellion*.

And as to the Matter of Force, he said, that the Fear of having Houses burnt, or Goods spoiled, supposing that to have been the Case of the Prisoner, is no Excuse in the Eye of the Law for joining and marching with Rebels.

* N. B. If Threats of this Kind were an Excuse, it would be in the Power of any Leader in a Rebellion to indemnify all his Followers.

† See in *Foster's Reports*, 1 Discourse, Chap. ii. S. 8. p. 216.

The only Force that doth excuse, is a Force upon the Person, and present Fear of Death; and this Force and Fear must continue all the Time the Party remains with the Rebels. It is incumbent on every Man, who makes Force his Defence, to shew an actual Force, and that he quitted the Service as soon as he could; agreeable to the Rule laid down in *Oldcastle's Case*, 1 *Hale* 50. that they joined *pro timore Mortis & recessant quum cito potuerunt*.

He then observed that the only Force the Prisoner pretends to, was on the 8th of August; and that he continued with the Rebels and bore a Commission in their Army 'till the Surrender of *Carlisle*, which was on or about the 20th of December.

The Jury without going from the Bar found him Guilty. But he was reprieved, and not executed.

N. B. All the Judges that were in Town were present, and concurred in the Points of Law.

N. B. Many of the Scotch Prisoners made Force their Defence, and produced the same Sort of Evidence as *MacGrawther* did; and the same Directions in point of Law were given as in his Case. And the Matter of Fact whether Force or no Force, and how long that Force continued, with every Circumstance tending to shew the Practicability or Impracticability of an Escape, was left to the Jury on the whole Evidence.

XXXVI. The Proceedings at *St. Margaret's Hill, Southwark*, relating to ALEXANDER and CHARLES KINLOCH (Brothers to Sir JAMES KINLOCH, Bart.), on August 23, September 2, October 28, 29, November 15, December 15 and 20, 1746. Before the Lord Chief Justice *Lee*, Lord Chief Justice *Willes*, Lord Chief Baron *Parker*, Mr. Justice *Wright*, Mr. Baron *Reynolds*, Mr. Justice *Abney*, Mr. Justice *Dennison*, Mr. Baron *Clarke*, Mr. Justice *Foster*, Mr. Baron *Clive*, Sir *Thomas De Veil*, Knt. and *Peter Theobald*, Esq. relating to their Plea of being born in Scotland, and ought to be tried according to the Laws of that Kingdom, &c*.

August 23, 1746.

THIS Day Bills of Indictment were found against *Alexander Kinloch* and *Charles Kinloch*, and others of the Rebels to the Number of twenty-two. The Overt Acts were laid in different Shires in Scotland, according to the respective Cases of the Prisoners. And then the Court adjourned to the 2d of September for the Arraignment of the Prisoners.

September 2, 1746. On this Day, (there being no other Judge in Town) Mr. Justice *Foster* sat with two other Commissioners, Sir *Thomas De Veil*, Knt. and *Peter Theobald*, Esq. for the Arraigning the Prisoners. *Alexander Kinloch* and *Charles Kinloch*, and the rest of the Prisoners, who were Scotchmen born, upon their Arraignment severally delivered a Paper into Court whereof the following is a Copy:

"As I intend to insist on the Benefit of the Act of Union, by which all the Laws in Scotland at that time which concern private Right are saved to the Natives of Scotland, and declared to be unalterable by the Parliament of Great Britain, except for the evident Utility of the Subjects within Scotland; and as I am a Subject born within Scotland, and stand indicted for Treasons charged to have been committed by me in Scotland, I humbly beg that the Court will be pleased to assign me Counsel and a Solicitor to advise me as to the Manner of Framing, and the Use to be made of this Defence; and that the Court will be pleased to indulge me in a few Days time to advise with them, before I am compelled to plead; lest by pleading I may be deprived of the Benefit of any such Defence."

Mr. Justice *Foster* told the Prisoners that Copies of their Indictments having been delivered to them in due Time, they ought now to have been ready to plead such Pleas as they would stand by; and that the Court expected they should now plead accordingly. He told them withal, that if the Matter contained in their Papers would avail them at all, they would have the full Benefit of it upon Not Guilty: Since it amounts to no more than that their Cases are not within the Act of the last Session, by Authority of which Act alone this Court sits. They then severally pleaded Not Guilty.

The Case of ALEXANDER KINLOCH and CHARLES KINLOCH, October 28, 1746.

PRESENT Lord Chief Justice *Willes*, Mr. Justice *Foster*, and Mr. Baron *Clive*. *Alexander Kinloch* and *Charles Kinloch*, who were the first of the Prisoners concerned in the Paper delivered the Second of September that were brought to Trial, were set to the Bar; and they agreeing in their Challenges, one Jury was sworn and charged with them by the Clerk of the Arraignments. The junior Counsel for the Crown opened the Indictment, and the Solicitor General in a few Words opened the Evidence.

When the Counsel for the Crown had proceeded thus far, the Chief Justice, before any Evidence was given, told the Prisoners Counsel, that he was informed they had some Objection to make in behalf of their Clients grounded on the Act of Union; which Objection he said was proper to be spoke to before the Counsel for the Crown went into their Evidence. Whereupon Mr. *Joddrell*, one of the Prisoner's Counsel, stated his Objection, and spoke largely to it. The Chief Justice then said, that the Objection being in nature of a Plea to the Jurisdiction of the Court, could not be made on the Issue of Not Guilty; nor could any Evidence in support of the Objection be received upon that Issue; and therefore proposed that a Juror should be withdrawn; and that the Prisoners should have

leave to withdraw their Pleas of Not Guilty, and to plead this Matter specially: and that the Attorney General might demur, and so the Point would come regularly before the Court.

Mr. Justice *Foster* said on this Occasion, that when he assured the Prisoners, they would have the full Benefit of this Objection on their Plea of Not Guilty, he had no Intention of leading them into a Difficulty, which they could not get clear of, without the Indulgence of the Court. He thought they would be intitled *ex mero Jure* to the full Benefit of the Objection without such Indulgence; and added, that the Principle he went upon was this, If there be any Weight in the Objection, it must be that the Case of the Prisoners is not within the Act of the last Session, under which Act alone this Special Commission is executed. And if it be not within that Act, it is a Case at Common Law; and consequently, taking it to be a Case at Common Law, if no Overt Act be proved in the County where the Commission sits, and whence the Jury comes, the Prisoners must of course be acquitted.

Sir *John Strange*, of Counsel with the Crown, strongly insisted, that in point of Law the Prisoners were intitled to the Benefit of the Objection on Not Guilty, if they could avail themselves of it; and the Attorney General offered to waive all Advantage that might be taken against the Prisoners, if any Advantage could be taken; and pressed that the Trial might go on upon the Issue joined by them, and that the Merits of the Objection might be now considered.

But it was otherwise ordered, and a Juror was withdrawn, and the Jury discharged upon the Motion of the Prisoners Counsel, and at the Prisoners Request, and with the Consent of the Attorney General. And the Prisoners withdrew their former Plea, in order that they might be ready the next Day with their Pleas to the Jurisdiction in Form. To which the Attorney General declared he would demur *instantur*.

And the Court adjourned to the next Day.

The Entry on the Record touching this Matter, is as followeth:

"Upon the Motion of *Charles Hamilton Gordon*, Esq. and *Paul Joddrell*, Esq. being assigned as Counsel for the Defendants in this Cause, and by their Consent, and also at the Desire and Request, and by the Consent of the Defendants now at the Bar here, and also by the Consent of Mr. Attorney General on behalf of the King: It is ordered by the Court here, that *Richard Toy* the last of the Jurors sworn and impanelled in this Cause be withdrawn out of the Pannel; and that the rest of the Jurors in this Cause be discharged; no Evidence whatsoever having been given to the said Jury in this Cause, either on the Part of the King or of the Defendants. And it is further ordered by the Court here, that the said Defendants have leave to withdraw their Pleas of Not Guilty by them formerly pleaded to the Indictment in this Cause, and have leave to plead to the Jurisdiction of this Court: And that the said Defendants have Time 'till To-morrow to put in such Plea. And that they deliver Copies of such Plea to Mr. *Sharpe*, Solicitor for the King in this Cause, by Eight of the Clock this Evening. And thereupon the said Defendants do now here at the Bar withdraw their said Pleas of Not Guilty, in order to put in such Plea to the Jurisdiction of this Court as aforesaid."

October 29, 1746. On this Day, present the same Judges as Yesterday. *Alexander Kinloch* was first set to the Bar and again arraigned, whereupon he tendered a Plea ingrossed on Parchment and signed by his

* We cannot find that any Trial of these two Kinlochs was ever printed; the Evidence against them (and the rest tried at *St. Margaret's Hill*) being so very plain, nothing remarkable happened at their Trials. Their principal Objection being in nature of a Plea to the Jurisdiction of the Court, we shall insert their Plea, the Entry on the Record, Demurrer, &c. relating to this Point, with a brief Account of the Arguments of the Counsel and Court, and Judge *Foster's* Argument on the Case, from his Reports, p. 15. et seq.

Counsel Mr. Gordon and Mr. Jodrell; to which the Attorney General demurred, and the Prisoner instantly joined in Demurrer.

"And the said Alexander Kinloch in his own proper Person comes, and having heard the Indictment aforesaid read, and protesting that he is Not Guilty of the Premises charged in the said Indictment, for Plea nevertheless saith, That he ought not to be compelled to answer to the said Indictment: Because he saith that the Kingdom of Scotland, before and until the Time of the Union of the two Kingdoms of England and Scotland, was regulated and governed by the proper Laws and Statutes of that Kingdom, and not by the Laws and Statutes of the Kingdom of England; and that ever since the said Union of the said two Kingdoms that Part of the Realm of Great Britain called Scotland hath been, and yet is governed and regulated by the proper Laws of that Part of the said Realm called Scotland, and not by the Laws of that Part of the said Realm called England.

"And the said Alexander Kinloch further saith, That within the said Kingdom before the Union of the said two Kingdoms, and until the said Union thereof, and within that Part of Great Britain called Scotland ever since the said Union, there hath been, and now is a certain Court called the Court of Justiciary; and that all and singular Offences of High-Treason committed within the said Kingdom of Scotland before and until the said Union, and within that Part of the Realm of Great Britain called Scotland since the said Union by the Natives thereof, apprehended or taken for such Offences there (except Peers of the Realm of Great Britain), have been and of Right ought to be enquired of, heard and determined in the said Court of Justiciary before the Justices of that Court, or in some other Courts, or before other Justices within the said Realm of Scotland before the Union, and within that Part of the Realm of Great Britain called Scotland since the said Union; and not in any Court, or before any Justices within the Realm of England before the said Union, or within that Part of the Realm of Great Britain called England since the said Union.

"And the said Alexander Kinloch further saith, That Fochabars in the Shire of Murray in the said Indictment mentioned, the Place where the said Offence contained in the said Indictment is supposed to have been committed, before and until the said Union of the said two Kingdoms was within and Parcel of the said Kingdom of Scotland, and ever since the said Union was and now is lying within and Parcel of that Part of the Realm of Great Britain called Scotland.

"And the said Alexander Kinloch further saith, That he was born within that Part of the Realm of Great Britain called Scotland (to wit) at Fochabars aforesaid; and that at the Time when the said Offence in the said Indictment contained, is therein supposed to have been committed, and long before that Time, and since, he the said Alexander Kinloch was resident and commorant within that Part of Great Britain called Scotland (to wit) at Fochabars aforesaid. And this he is ready to verify. Wherefore the said Alexander Kinloch prays Judgment if the Court of our Lord the King here will further proceed upon the Indictment aforesaid against him, and that he may be dismissed from the Court here of and upon the Premises, &c.

Demurrer.] "And the said Sir Dudley Ryder, Knight, Attorney-General of our present Sovereign Lord the King, who for our said present Sovereign Lord the King in this behalf prosecuted, as to the said Plea of him the said Alexander Kinloch by him above pleaded as aforesaid, for our said present Sovereign Lord the King saith, That the said Plea and the Matter therein contained, are not sufficient in Law to preclude the Court here from their Jurisdiction to hear and determine the High-Treason mentioned and specified in the said Indictment, and above charged upon him the said Alexander Kinloch in and by the said Indictment. Wherefore for Want of a proper and sufficient Answer in this Behalf, he prayeth Judgment, and that the said Alexander Kinloch may answer in Court here to our said present Sovereign Lord the King touching and concerning the Premises aforesaid."

Joynder in Demurrer.] And the said Alexander Kinloch likewise. The Prisoner's Counsel admitted, that his Case is within the Letter of the Act of the last Session, by Authority of which this Court sits: But insisted, that by the known Rules of Construction, if any great or manifest Inconveniencies do arise from adhering closely to the Letter of the Act, the Court ought, and always doth depart from the literal Construction.

The Construction they insisted on was, that for Offences committed in England, Commissions might issue for hearing and determining the same in any County of England; and for Offences committed in Scotland, the like Commissions might issue into any County of Scotland, which would, they said, answer all the Ends of the Act mentioned in the Preamble; and would at the same Time avoid all the Inconveniencies which the Construction contended for in behalf of the Crown is attended with.

They then mentioned several Inconveniencies attending such a Construction of the Act: Some of which might possibly have merited the Attention of the Legislature at the Time the Act passed.

Mr. Attorney General in answer said, That the Rules of Construction as applied to Acts of Parliament grounded on Inconveniencies, whether imaginary or real, hold in no Cases but where the Meaning of the Act is doubtful: In plain Cases, where the Intention of the Legislature is evident, 'tis the Duty of the Court to put the Law in Execution, and to leave all Considerations of Inconveniencies to the Legislature. And if the Parliament had intended that different Commissions should issue for the Trial of Treasons committed in England and Scotland respectively, they would have said so: they would not have impowered his Majesty to issue Commissions into any County or Shire within the United Kingdom.

And the Objection he said is not new; it was made, but without Effect, in behalf of a Scotchman concerned in the Rebellion of 1715* (1 Geo. I. c. 33.).

The Lord Chief Justice declared his Opinion, in which the other Judges present concurred, that the Prisoner's Birth, Residence and Apprehension in Scotland are Facts perfectly immaterial to the present Question.

* This was the Case of William Hay upon the Special Commission at Carlisle, in the Year 1716. The Objection was then introduced, not by way of Plea to the Jurisdiction, but by Demurrer. And the Court after hearing the Prisoner's Counsel adjourned to the next Day. And having considered the Arguments of the Prisoner's Counsel, agreed to over-rule the Demurrer. Which being intimated to his Counsel, he by Leave of the Court, and with the Consent of the Solicitor-General, withdrew his Demurrer, and pleaded Guilty.

That they would have been so, if the Case had been at Common Law. For at Common Law every Man is triable, not where he was born, resided, or was apprehended, but where the Fact was committed: That these Facts being immaterial, and the whole Merits of the Objection appearing on the Face of the Indictment, the Prisoner might as well have Demurred to it, as pleaded in the Manner he hath done.

That in so plain a Case as this is, Arguments *ab inconvenienti* are of no Weight: The Law must take its Course: Inconveniencies in plain Cases are proper only for the Consideration of the Legislature.

His Lordship observed that the Words, *This Realm*, occur in four or five Places in the Act, and that in every Place where they do occur, except in the Clause in Question, they incontestably mean the United Kingdom of Great Britain, and can mean nothing else: And by no Rule of Construction can they be restrained in this single Clause, to that Part of the Kingdom called England.

The Court over-ruled the Plea, and ordered that the Prisoner should plead over to the Treason; and he pleaded Not Guilty. Charles Kinloch was then brought to the Bar, and being arraigned a second Time on the Indictment pleaded likewise Not Guilty. And both Prisoners agreeing to join in their Challenges, a Jury (the same Persons who were sworn and charged with them Yesterday) was sworn and charged with them. And they were both found Guilty, but not executed.

November 15, 1746. On this Day, Present the two Chief Justices, Mr. Justice Wright, Mr. Baron Reynolds, Mr. Justice Abney, Mr. Justice Foster, and Mr. Baron Clive. All the Prisoners who were convicted since the last Execution were brought to the Bar to receive Judgment. The two Kinlochs, Alexander and Charles, moved by (Mr. Jodrell) their Counsel in Arrest of Judgment: He took Notice of the Proceedings with regard to the Prisoners on the 28th and 29th Days of October, and insisted that their Trial on the 29th (a Jury having been sworn and charged with them on the 28th) was a Mis-trial, and the Verdict a mere Nullity.

He was proceeding to state his Reasons and Authorities, when Lord Chief Justice Lee interrupted him and said, that as there is a Variety of Opinions in the Books touching that Matter, which is really a Point of great Consequence, he thought it most adviseable to postpone the further Consideration of it to the next Adjournment, when he should desire the Assistance of all the Judges in the Commission. Then the Court, after passing Sentence on the others, adjourned to the 15th of December.

N. B. The Court being full, and the Bar crowded in Expectation of the Event of this Motion, Mr. Justice Foster thought it not improper to speak to the Purpose he spoke on the 28th of October. And he added, That from what was said by the Court on the 29th, he was confirmed in his Opinion, that the Prisoners might safely have pleaded the General Issue. For if, as was then admitted, the whole Merits of the Objection appear on the Face of the Indictment, the Prisoners undoubtedly might have had the Benefit of it in Arrest of Judgment. So that, *quacunq; Via*, whether they could have been let into it on Evidence (as they certainly might), or in Arrest of Judgment, they were not ill advised in pleading the General Issue.

December 15, 1746. On this Day, Present the two Chief Justices Lee and Willes, the Chief Baron Parker, Mr. Justice Wright, Mr. Baron Reynolds, Mr. Justice Abney, Mr. Justice Dennison, Mr. Baron Clarke, Mr. Justice Foster, and Mr. Baron Clive—Mr. Jodrell argued in Behalf of the Kinlochs in Arrest of Judgment.

He admitted that there is a Variety of Opinions in the Books touching the Power of the Court to discharge a Jury sworn and charged in a Capital Case. And that the Practice during the Reign of King Charles the Second at least, went in favour of that Power. But he said that ever since the Revolution the contrary Practice hath uniformly prevailed. And even in the Time of James the Second, the Judges in Lord Del-mere's Case (IV. State-Trials, 232.) declared, that a Jury sworn and charged in a Capital Case cannot be discharged, but must give a Verdict. And Common Justice, he said, requires, that when a Prisoner is brought upon his Trial, and a Jury is once sworn and charged with him, he is to stand or fall by the Event of that Trial; otherwise his Life may be brought in Jeopardy for the same Fact as often as the Court pleases, and even when he is not so well prepared for his Defence.

To shew that the Law and Practice before the Restoration was with his Clients, he relied on the Authority of Lord Coke in his 1st Inst. 227. b. and 3d Inst. 110. And to shew that the Judges since the Revolution concurred with Lord Coke, he cited Carthew 465; where it is reported to have been said by Holt at the Sittings in Guild-Hall, on the ninth Day of November 1698, in the Case of the King and Perkins, "That All the Judges of England upon Debate among themselves had agreed, that a Jury sworn and charged in a Capital Case cannot be discharged, though all the Parties consent to it."

He said that he had seen a MS. Note of the same Resolution by the late Mr. Justice Tracy, which agrees in Substance with Carthew's Report of it.

He observed, that according to Carthew's Report and Tracy's MS. the Judges at the same Time came to a Resolution, That in Criminal Cases, not Capital, a Juror may be withdrawn, or Jury discharged by consent of all Parties, but not otherwise.

That the Practice since that Time in Criminal Cases hath been conformable to this Rule. For this he cited the Cases of the King and Morgan, Hillary 9 Geo. II. on an Indictment for Perjury, and the King and Jelf, Trinity 7 Geo. II. an Indictment for Barratry; In both these Cases Lord Hardwick he said, at the Sittings, refused to withdraw a Juror at the Prayer of the King's Counsel, because the Defendant's Counsel refused to consent to it, and cited this Resolution in Carthew. The Use he made of these two Cases was, that since this Regard hath been paid to the Authority of the Resolution in Criminal Cases, as reported by Carthew, he hoped the same Regard would be now paid to that touching Capital Cases.

As to the Matter of Consent, he observed that Consent may cure an Irregularity, but cannot justify the breaking through any of the funda-

mental Principles of Law; especially such Rules as are in favour of a Prisoner who is answering for his Life. A Prisoner in this Circumstance, is hardly *Sui Juris*; he may be over-awed or surprized into a Consent, manifestly to his Prejudice: And therefore the Judges in the Resolution cited from *Carthew* (on which he relied as an Authority in Point with him) threw the Circumstance of the Consent quite out of the Case.

Upon the whole, he concluded that Judgment ought to be arrested.

To this it was answered by the Counsel on the Part of the Crown, (Mr. Attorney General, Sir John Strange, Mr. Solicitor General,) that except the Resolution reported by *Carthew*, there is not a single Authority in the Books which saith that a Juror may not be withdrawn, or the Jury discharged, even in Capital Cases, with the Consent of all Parties. That it was done in the Case of *Mansell* so long ago as the 26th of *Eliz.* (1. Ann. 103, 104.) And all the Judges of *Serjeant's-Inn* in *Fleet-Street* then agreed, that it might be done; and had often to their Knowledge been done. That the Rule laid down by Lord *Coke* in his first and third Institutes runneth in general Terms, and doth not indeed except the Case of Consent; but that Case must be supposed to be excepted.

That it frequently hath been done since Lord *Coke's* Time, even without Consent, where the Circumstance of the Prisoner, or the Demands of Publick Justice did require it. And for this they cited 2 *Hale*, 295, 296, 297. 1 *Vent.* 69. *Keil.* 46, 47. 52.

They said they did not cite these Books with an entire Approbation of the Practice in every Instance in which it prevailed; for some of the Cases, particularly *Whitebread's*, (II. State Trials,) ought never to be drawn into Example; but only to shew what the Opinion of those Times was.

That the Opinion of the Judges in Lord *Delamere's* Case doth not affect the present Question. For the only Question proposed to the Judges was, whether in the Trial of a Peer in the Court of the Lord High-Steward, the Court might, after Evidence given, adjourn the Peers-Triers from Day to Day. The Judges did not presume to answer that Question, it being a Point of Judicature of which that Court alone was the proper Judge. But they did say, that in the Case of a Common Jury sworn and charged, they ought to give their Verdict before they are discharged: Meaning only, that a Jury in a Capital Case cannot be adjourned and separated after Evidence given, but must be kept together till they agree on their Verdict. The Occasion which led them to say this sheweth, that the Case of an Adjournment was what they had then in Contemplation, and not the Case of a total Dismissal of the Jury. And so doth the Reason they give for the Practice; this, they say, is done for fear of Tampering and Corruption. In the Case of a bare Adjournment there may be Room for this Fear, but in the Case of a total Dismissal, when no Verdict is to be given, there cannot.

They insisted on *Rookwood's* Case (IV. State Trials) as a Case in Point. For had the Prisoner's Counsel taken Exceptions to the Indictment coming within the Restrictions of the Act of the 7th of King *William*, and had those Exceptions been allowed, the Indictment must have been quashed, and the Jury, though sworn and charged, must have been dismissed; and yet it cannot be imagined that the quashing that Indictment, and discharging that Jury, would have discharged the Prisoner from answering to the Treason on a fresh Bill of Indictment.

As to the three Resolutions reported by *Carthew*, the two last, they said, are manifestly against Law, in the Latitude laid down in that Book. The King in a Civil Case may by his Prerogative withdraw a Juror, for he cannot be nonfuit; and it is frequently done in Informations in the Exchequer on account of the Revenue: And though the Court refused to do it in the Cases of *Morgan* and *Jelfs*, cited on the other Side, yet in the Case of one *Wilkinson*, *Pasche* 6 *Geo.* II. which was an Indictment for misapplying Money raised on the Scavengers Rate, the Court did discharge the Jury at the Prayer of Mr. Justice *Abney*, then one of the King's Counsel, without the Defendant's Consent.

It is objected, that a Prisoner may be drawn into a Consent to his own Prejudice: But certainly a Prisoner may do much more than consent, he may abandon all Defence, he may plead Guilty. He may on his Trial waive all his Challenges, and put himself on the first Twelve that shall appear. An Accessory cannot be brought to his Trial before the Principal is convicted or outlawed; (2. *Hale* 224.) But if he pleaseth, he may waive that Privilege, and submit himself to a Trial, and it shall not be Error, because he consented. Besides, in the present Case, what was done was at the Prayer of the Prisoners, and, as the Court then took the Case, manifestly for their Advantage.

Cases may happen, where the Court, *ex debito Justitiæ*, and out of Regard to the Prisoner, ought to discharge the Jury, (1 *Hale* 35.) and postpone the Trial. The Case put by Lord *Hale* of a Madman putting himself on his Trial is strong to this Purpose. And other Cases of the like kind may be put.

On the whole, they prayed Judgment for the King.

Sir *John Strange* cited a Record of *Hilary* 8. *H.* VII. Rot. 3. a Copy whereof he brought into Court. It was an Indictment for Murder, and Not Guilty pleaded. The Jury having heard all the Evidence, withdrew to consider of their Verdict, and being returned, delivered their Verdict into Court in Writing. And being examined by the Court how they came by that Writing, confessed that it was delivered into their Hands by the Prisoner at the Bar as they passed by him. The Court thereupon discharged the Jury of the Prisoner, and committed them for this Misbehaviour. And a new Venire was awarded. And the second Jury brought him in Not Guilty.

The Arguments being long, and the Day far spent, the Court deferred giving their Opinion to the 20th.

December 20, 1746. On this Day, present the same Judges as on the 15th, the Court delivered their Opinions *seriatim*. And all except one (*Wright*) agreed that Judgment ought to pass upon the Prisoners. They agreed, That admitting the Rule laid down by Lord *Coke* to be a good general Rule, yet it cannot be universally binding: Nor is it easy to lay down any Rule that will be so. The Rule cannot bind in Cases where it would be productive of great Hardship or manifest Injustice to the Prisoner.

* He was an *Irish* Judge at this Time.

In the present Case, the Prisoners were advised upon their Trial to object to the Jurisdiction of the Court: But having pleaded to Issue, it was said that they were too late with that Objection. In order therefore to let them into the Benefit of this Objection, Liberty is given them, at their Request, to withdraw their Plea of Not Guilty, before Evidence given, and to plead to the Jurisdiction. Now the Plea of Not Guilty being withdrawn, the Jury had no Issue to try, nor Evidence before them, and must of course therefore be discharged; and consequently the Prisoners have no Right to complain of that which was a necessary Consequence of an Indulgence shewn them by the Court.

The Judges who concurred in this Opinion paid very little Regard to the Resolution reported by *Carthew*; not only for the Reasons insisted on by the Counsel for the Crown, but because, as no other printed Report of that Time taketh any Notice of this Resolution, it is very doubtful whether there ever was any such Resolution or no; especially since Mr. Baron *Clarke* informed the Court that he hath a MS. Report of the late Lord Chief-Justice *Eyre* of the Case of the King and *Perkins*, in which Case *Carthew* supposeth *Holt* to have reported this Resolution.

The Case was thus: *Perkins* was indicted for Perjury in an Answer in Chancery: The Issue came on to be tried before *Holt* at the Sittings in *Guildhall* the ninth Day of November 1698. When the Bill was produced by the Counsel for the Prosecution in order to intitle them to read the Answer, it appeared that the Bill had never been filed, so that neither Bill or Answer could be read. *Holt* offered to stay till the Prosecutors could send the Bill to the Office and have it filed. But they foreseeing that it could not be done in any reasonable Time, their Counsel insisted on behalf of the Crown, upon withdrawing a Juror; *Holt* would not allow of it, and the Defendant was acquitted.

Holt upon this Occasion said, "I have had Occasion to consider of this Matter. In Criminal Cases, a Juror cannot be withdrawn but by Consent. And in Capital Cases it cannot be done, even with Consent."

This is the whole of the Case as reported by *Eyre*, not a Word of any Resolution of the Judges on the Point. And *Holt's* Manner of Expression, *I have had Occasion to consider*, seemeth to imply that the Opinion he gave was the Result of his own Thoughts on the Subject.

With regard to *Tracy's* MS. it was observed by Mr. Justice *Abney*, that *Tracy* was not an *English* Judge at the Time the Judges are supposed to have come to these Resolutions, or even so early as the Year 1698. And therefore he must have taken up the Matter upon Report at second-hand.

They all agreed that the Opinion of the Judges in Lord *Delamere's* Case doth not affect this Question, for the Reasons insisted on by the King's Counsel; and joined in condemning the Proceedings in the Case of *Whitebread* and *Fenwick*, as cruel and illegal.

The learned Judge (*Wright*) who dissented, admitted that the discharging the Jury in the present Case was an Instance of great Indulgence towards the Prisoners. But he thought it safer to adhere to the Rule of Law, which is clearly laid down by Lord *Coke*, than upon any account to establish a Power in Judges, which it is admitted hath been grossly abused, and may be so again.

He observed, that *Mansell's* Case was the first, and except the present, is the only Case wherein the Prisoner's Consent appears to have been taken: And that the asking the Prisoner's Consent in *Mansell's* Case plainly betrayeth a Consciousness in the Judges that the Thing was irregular, and could not be done at the Discretion of the Court.

Cases he said have been put where the Circumstances of the Prisoner seem to require that such a Power should be lodged in the Court. And other Cases may be put, where publick Justice seemeth to require the same. But these are particular and single Inconveniencies. And the Policy of the Law of *England*, and indeed the true Principles of all Government, will rather suffer many private Inconveniencies than introduce one publick Mischief.

He considered the Trial by the same Jury which is sworn and charged with the Prisoner, as Part of the *Jus Publicum*; as a sacred *Deposum* committed to the Judges, which they ought to deliver down inviolate to Posterity. And concluded, that the Trial on the 29th being irregular, no Judgment ought to be given on that Conviction.

But Judgment was given as in Cases of High-Treason.

Mr. Justice *Foster* delivered his Opinion in this Case as followeth:

This Case hath been very well argued at the Bar; but the Counsel on both Sides went into the general Question, touching the Power of the Court to discharge Juries sworn and charged in capital Cases, farther than I think was necessary.

The general Question is a Point of great Difficulty, and of mighty Importance. And I take it to be one of those Questions, which are not capable of being determined by any general Rule that hath hitherto been laid down, or possibly ever may be. For I think it is impossible to fix upon any single Rule which can be made to govern the infinite Variety of Cases which may come under this general Question, without manifest Absurdity; and in some Instances, without the highest Injustice.

I therefore choose to consider the present Question singly as it standeth upon the Record, and to throw out of it every Consideration that is foreign to it. And possibly by so doing, most of the Objections that have been made in the present Case may receive this short Answer, That they are levelled at an improper Exercise of the Power, but do not reach the present Case.

The Question therefore is not, Whether a Jury may be discharged after Evidence given, in order to the preferring a new Indictment better suited to the Nature of the Case; where, through the Ignorance or Collusion of the Officer, or the Mistake of the Prosecutor, the Fact laid varrieth from the real Fact, or cometh short of it in Point of Guilt?

This was frequently done before the Revolution, (*Keil.* 46. 52. *Comb.* 401.) and in one or two Instances since. But this is not the present Question.

Nor is the present Question, Whether the Court may discharge a Jury sworn and charged, where undue Practices appear to have been used to keep material Witnesses out of the Way; (1. *Vent.* 69.) or where such Witnesses have been prevented by sudden and unforeseen Accidents?

† See *Anne Hawkins's* Case, inf.

This likewise is not the Question, and I give no Opinion on it; only let it be remembered, that Lord Chief-Justice *Hale* justifieth this Practice, (2. *Hale*, 295, 296, 297.) which he saith prevailed in his Time, and had long prevailed, by strong Arguments drawn from the Ends of Government and the Demands of public Justice.

Nor is it now a Question, nor I hope will it ever be a Question again, Whether in a Capital Case the Court may in their Discretion discharge a Jury after Evidence given and concluded on the Part of the Crown, merely for Want of sufficient Evidence to convict; and in order to bring the Prisoner to a second Trial, when the Crown may be better prepared.

This was done in the Case of *Whitebread and Fenwick*, (II. State Trials) and it was certainly a most unjustifiable Proceeding. I hope it will never be drawn into Example.

Nor is the present Question, Whether the bare Consent of the Prisoner, unassisted by Counsel, and consenting to his own Prejudice, will render the Court quite blameless in discharging a Jury after Evidence on both Sides gone through and concluded?

This was done in the Case of *Mansell* (1 Ann. 103.) which hath been cited at the Bar. But I think it ought not to have been done; for notwithstanding what the Record saith of the Uncertainty and Insufficiency of the Verdict, the Truth of the Case was no more than this: The Jury were not agreed on any Verdict at all; and therefore nothing remained to be done by the Court, but to send them back, and to keep them together, till they should agree to such Verdict as the Court could have received and recorded; and the Prisoner ought not to have been drawn into any Consent at all: For in Capital Cases I think the Court is so far of Counsel with the Prisoner, that it should not suffer him to consent to any Thing manifestly wrong, and to his own Prejudice.

I thought proper to premise these Things, in order to clear the present Question of every Consideration which I take to be foreign to it.

And now I will state what I take to be the present Question: And that is,

Whether in a Capital Case, where the Prisoner may make his full Defence by Counsel, the Court may not discharge the Jury upon the Motion of the Prisoner's Counsel, and at his own Request, and with the Consent of the Attorney General before Evidence given, in order to let the Prisoner into a Defence, which, in the Opinion of the Court, he could not otherwise have been let into.

And I am clearly of Opinion that a Jury may in such a Case be discharged. And that the discharging the Jury under these Circumstances, will not operate so as to discharge the Prisoner from any future Trial for the same Offence.

It seems that an Opinion did once prevail, that a Jury once sworn, and charged in any Criminal Case whatsoever, could not be discharged without giving a Verdict; but this Opinion (*Ray*, 84.) is exploded in *Ferrar's Case*; and it is there called a *Common Tradition* which had been held by many learned in the Law.

My Lord *Coke* was one of those learned Men who gave into this Tradition, as far at least as concerneth Capital Cases: And he layeth down the Rule in very general Terms, in the Passages which have been cited on Behalf of the Prisoners from his first and third Institutes.

The same Rule is laid down in *Hale's Summary of the Pleas of the Crown* (p. 269.); a very faulty, incorrect Piece, never revised by him, nor intended for the Press.

But as his Lordship, in his History of the Pleas of the Crown, justifieth the contrary Practice, his Authority is clearly on the other Side of the Question. And his Authority is the more to be regarded, because he had seen and well considered the Passages cited from Lord *Coke*; though I believe the Rule, as it standeth in his Summary, hath contributed not a little to the confirming many People in *Coke's* Opinion.

My Lord *Coke* layeth down the Rule in very general Terms; but he hath not given us any of the Principles of Law or Reason whereon he groundeth it. He hath indeed, in his first Institute, cited one, and but one Authority, in Support of it, and that Authority doth not, to my Apprehension, in the least warrant it.

A Man was indicted for Larceny, (21 E. III. 18.) and upon his Arraignment pleaded Not Guilty, and put himself upon the Country: And afterwards, when the Jury was in Court, he prayed the Liberty to become an Approver, and this was denied him; for when Issue is joined, it ought to be tried. And he was tried, and found Guilty, and hanged.

This is the Whole of that Case. Here is not the least Intimation given of any general Principle, that a Jury once sworn and charged cannot be discharged without giving a Verdict; nor did the Court, as I apprehend, go upon that Principle. It went upon a Principle quite different, a Principle adapted solely to the Case then before the Court, which I shall mention presently.

Indeed *Fitzherbert* (Corone 449.) who abridgeth this Case, doth say, that the Reason of the Judgment was, that the Inquest having been once charged, could not be discharged: Which possibly might induce Lord *Coke* to draw the same Conclusion from that Case.

But the Reason given by *Fitzherbert* is not the Reason given in the Book; nor doth it so much as appear by the Book that the Jury was sworn. The Words of the Book are, "*Après quant l' Enquest fut icy*," afterwards when the Jury was here, or in Court, whether sworn or not doth not appear by the Book. But whether the Jury was sworn or not, there was not the least Occasion to resort to any general Principle, That a Jury once sworn cannot be discharged; because there was, as I hinted before, another Rule at hand adapted to the Case of an Approver, which I think wholly governed that Case.

And the Rule was this; That a Person who had once pleaded to Issue, could not after that be admitted to a Confession in order to save his own Life, by charging other Persons supposed to be his Accomplices in the same Fact. For by once solemnly denying the Fact upon his Arraignment, he had, in the Opinion of those Times, lost all Credit, and so could not be received as an Evidence against other People.

This Rule is laid down by *Stamford*, (Pl. Cor. 144. B. Bro. Corone 42.) and it prevailed for a long Time: And 'tis observable, that *Brooke*, who abridgeth this very Case, carrieth the Reason the Court went upon no farther than the Law then went in the Case of an Approver: His Words are, "A Man was arraigned for Felony and pleaded Not Guilty, and afterwards would have become an Approver, and was not suffered, because he had joined Issue before." Not because the Jury was sworn,

and could not be discharged, but because he had, on his Arraignment, denied the Fact.

Thus then standeth the Case with regard to the single Authority cited by Lord *Coke*: The Judgment did not go upon the general Principle laid down by him and *Fitzherbert*, but upon a Principle peculiar to the Case of an Approver.

It must be owned, that the Judges did in After-times abate of their Rigour with regard to the Case of Approvers: and did admit Persons to the Liberty of approving, not only after Issue joined, but even after the Jury was sworn and Evidence in part given; but seldom after the Evidence gone through and concluded; as appeareth from several Instances mentioned by Lord *Hale*, 2. *Hale*, 288.

But then it must be owned, on the other hand, that whenever they did so, they went in flat Contradiction to the general Rule laid down by *Coke* and *Fitzherbert*.

I will only add, with regard to this Point, That the admitting, or not admitting Persons to become Approvers, was always considered as a Matter of mere Discretion in the Court; as a Matter of Grace and not of Right. And yet we see that in a Matter of mere Discretion, the Court did frequently, upon the special Circumstances of the Case, discharge Juries after they were sworn and charged, and had in Part heard the Evidence.

These Instances therefore must be considered as so many Exceptions to the General Rule: Though I confess they do not come up to the Case of discharging one Jury, and bringing the Prisoner to his Trial by another.

But still they shew that the Rule now contended for on the Part of the Prisoners cannot be true, in the Latitude the Words import. And I think they do in Part shew, what I hinted in the Beginning, that no General Rule can govern the Discretion of the Court on this Question in all possible Cases and Circumstances.

But this will appear in a stronger Light in those Cases where the Circumstances of the Prisoner appear on his Trial to be such, as that the Trial cannot proceed without manifest Injustice to him.

A great Variety of Cases might be put upon this Head. But as this is a Point which ought to be treated with great Caution, I think it safer to cite a Case which I find stated to my Hand, than to suppose and argue from any Cases of my own.

The Case I mean is that put by Lord *Hale* (1. *Hale*, 35.) which was mentioned the last Time at the Bar.

"In case a Man in a Phrenzy happen by some Oversight to plead to his Indictment, and put himself on his Trial; and it appeareth to the Court on his Trial that he is mad, the Judge in Discretion may discharge the Jury of him; and remit him to Gaol to be tried after the Recovery of his Understanding."

But without resorting to Authorities in a plain Case, the common Sense and Feeling of Mankind, the Voice of Nature, Reason and Revelation, all concur in this plain Rule, that no Man is to be condemned unheard; and consequently no Trial ought to proceed to the Condemnation of a Man, who by the Providence of God is rendered totally incapable of speaking for himself, or of instructing others to speak for him. And common Sense will at the same Time tell us, that the bare postponing a Trial under these Circumstances, will not discharge the Prisoner from a future Trial, when his present Disability shall be removed.

This Case is surely an Exception to any general Rule that the Wit of Man can lay down on this Point.

Another Case which I take to be an Exception to the general Rule contended for in Behalf of the Prisoners, is, when by the Indulgence of the Court, and the Consent of the Attorney-General, the Trial of the Issue goeth off after the Jury sworn and charged; in order to intitle the Prisoner to some Advantage in Point of Defence, which in the Rigour of the Law he could not otherwise be entitled to.

And this, I apprehend, appeareth from the Case of *Rookwood* (IV. State Trials), which also was cited at the Bar.

In that Case the Jury was sworn and charged, and the Indictment opened by the King's Counsel. The Prisoner's Counsel then offered some Exceptions to the Indictment, apprehending, as they said, that since the Act of 7th King *William* declareth that the Exceptions therein mentioned shall not be taken after Evidence given, the Prisoner, by a favourable Construction of the Act, had Liberty to take Exceptions at any Time before Evidence.

The Court was unanimously of Opinion, that the Prisoner's Counsel had lapsed their Time for taking any Exceptions at all. That the proper Time for taking Exceptions is before Issue joined, or at least before the Jury sworn.

And yet it being a Case of Life, and on a new Act of Parliament, the Court did agree that in that Instance only, the Counsel should be at Liberty, with the Consent of the Attorney-General, to take their Exceptions; confining themselves to the Exceptions mentioned in the Act, of which they could not have the Benefit in Arrest of Judgment.

The Prisoner's Counsel declined to enter into their Exceptions under that Restriction, and so the Trial went on. But had Exceptions under the Restrictions of that Act been taken and allowed, the Indictment must have been quashed; and the Jury then sworn and charged must have been discharged without giving a Verdict.

Lord Chief-Justice *Holt* did not come readily into the Expedient proposed by the rest of the Judges, of letting the Prisoner's Counsel into their Exceptions, even with the Consent of the Attorney-General: And in the Conclusion declareth, that the Attorney could not consent to it, (IV. State Trials, 666.) unless he would also consent to discharge the Jury.

These are his Words, as I have taken them from the printed Trial. His Lordship surely at that Time entertained no Doubt, that at the Prayer of the Prisoner and his Counsel, and with the Consent of the Attorney-General, a Jury sworn and charged in a Case of High Treason might be discharged. The other Judges present (who were the Lord Chief-Justice of the Common Pleas, the Lord Chief Baron, and four of the puisne Judges) must certainly be of the same Opinion; otherwise they would never have given Way to the taking of Exceptions, which, if they had been allowed, must have ended in discharging the Jury; and at the same Time could not in the Nature of Things have operated, so as to discharge the Prisoner from answering to another Indictment for the same Offence.

It is said, on the Authority of a very short and imperfect Note in *Cartwright*, That in less than two Years afterwards, all the Judges of England, upon Debate

Debate among themselves came to a Resolution, that in Capital Cases a Juror cannot be withdrawn, though all Parties consent to it.

It was very properly asked by the Counsel for the Crown, Upon what Occasion this Debate among the Judges was had? Whether any Case was then depending in Judgment before them which gave rise to the Conference, and which was to be governed by this Resolution, and what were the particular Circumstances of that Case, if any such there was? These Questions, I say, were very properly asked. For the true Extent of all Rules of this kind, however generally they may be penned, is, and always will be, in a great measure, adjusted by the Circumstances of the Case under Consideration, at the Time when the Rule appears to be given.

It seems Endeavours have been used to come at the necessary Light in these Particulars, but to no Purpose. Only it is said upon the Authority of a MS. of a late learned Judge (*Tracy*), that this Resolution, among others, was taken upon a Conference among the Judges in relation to an Indictment against the then Sheriffs of *London* for a bare Misdemeanour; but what were the Circumstances of that Case, or what became of it, doth not appear. And therefore I freely own, this extrajudicial Opinion (for with regard to Capital Cases it is extrajudicial) weigheth very little with me in the present Question; and doth by no means shake the Authority of *Rookwood's* Case, which I take to be a Case very nearly in point with the present; and moreover was a Case where the Point did judicially come before the Court, and in which the Court had the Assistance of very able Counsel on both Sides of the Question.

The only Difference between the Cases is this: *Rookwood* could not have had the Benefit of his Exceptions without the Indulgence of the Court, and Consent of the Attorney General; whereas the Prisoners at the Bar might, in my Opinion, have had the full Benefit of their Point of Law without either. I need not repeat what I said on this Head the last Time I spoke of this Matter. But as a Doubt arose on that Point, the Expedient now under Consideration was thought of. This Expedient the Court came into at the Prayer of the Prisoners and their Counsel, and with the Consent of the Attorney General.

Not to bring the Prisoners Lives twice in Jeopardy, (which is one

great Inconvenience of discharging Juries in Capital Cases) but merely in order to give them one Chance for their Lives, which it was apprehended they had lost by pleading to Issue.

Nor was it done to postpone their Trials to an unreasonable Distance, when their Witnesses might be dead or wearied out by a long and expensive Attendance, (which is another great Inconvenience which may attend the discharging of Juries at Discretion, and was an Ingredient of great Hardship in the Case of *Whitebread* and *Forwick*) but in order to bring them to a Trial with all the Speed that might be, in case their Plea should be over-ruled. And accordingly they were tried the very next Day, as soon as Judgment was given on their Plea.

Upon the whole, my Opinion is, that all general Rules touching the Administration of Justice must be so understood, as to be made consistent with the fundamental Principles of Justice. And consequently all Cases where a strict Adherence to the Rule would clash with those fundamental Principles, are to be considered as so many Exceptions to it. The Cases I have mentioned, and many others that might be mentioned, are Exceptions to the general Rule insisted on in behalf of the Prisoners.

The Case at Bar is I think an Exception to that Rule; and at the same time standeth clear of the Inconveniences mentioned by the Prisoners Counsel.

The discharging the Jury in this Case was not a Strain in favour of Prerogative, it was not done to the Prejudice of the Prisoners; on the contrary, it was intended as a Favour to them.

In that Light I say it was considered by the Court, in that Light it was considered by the Prisoners and their Counsel, and accordingly they prayed it; and in that Light *Mr. Attorney General*, with his usual Candour, consented to it.

And in that Light I know of no Objection in point of Law or Reason to it. And therefore I am of Opinion that Judgment ought not to be arrested.

The Difference of Opinion in the Court relating to their Cases, it is thought saved their Lives; for they were not executed, but pardoned, on Condition of being sent abroad.

XXXVII. The Trial of JAMES BRADSHAW, at St. Margaret's Hill, Southwark, October 27, 1746. for High-Treason.

JAMES BRADSHAW was indicted for High Treason, &c. The Counsel for the King opened the Indictment, that the Prisoner at the Bar stood indicted by the Name of *James Bradshaw*, for High-Treason, in compassing and imagining the King's Death, adhering to his Majesty's Enemies, and levying (with other false Traitors) a cruel and destructive War in these Kingdoms, &c. And the Treason was laid to be committed on the 10th of November, at *Carlisle*, in the County of *Cumberland*, in the nineteenth Year of his Majesty's Reign, against the Duty of his Allegiance, against the King's Peace, and the Forms of the Statute, &c. Then *Sir John Strange* set forth, that the Prisoner, contrary to his Allegiance to our Sovereign Lord King *George the Second*, met at *Manchester* to raise a Regiment, which the Pretender intended to distinguish by the Name of the *Manchester* Regiment, of which *Townley*, who was lately executed, was made Colonel, and that the Prisoner *Bradshaw* accepted of a Captain's Commission in the said Regiment, and acted as such; that afterwards he marched with the said Regiment to *Derby* in a hostile Manner, and in a Highland Dress, armed with Pistols and a Sword, a white Cockade on his Bonnet: That he paid his Company and exercised them: That afterwards he retreated with the Rebel Army from *Derby* to *Manchester*, and from thence to *Clifton-Moor*, where he in a Skirmish headed his Men against the Duke's Troops: That when he came to *Carlisle* he often waited on the Young Pretender's Levee: That when the Rebels found themselves closely pursued by his Royal Highness the Duke of *Cumberland*, there was a Counsel of War directly held amongst them, which Part of their Army should march for *Scotland*, and what Number should stay in the Garrison at *Carlisle*, to secure a Retreat for the rest of the Rebels.

The Prisoner, to pursue his avowed Disloyalty to the present happy Establishment, desired he might go on with the Rebels to *Scotland*, and accordingly did go with them in their Route to *Glasgow*, was at the Battle of *Falkirk*, where was such a Storm of Hail and Rain, that his Majesty's Men could not prime or discharge their Pieces: From thence he marched with the Rebel Army to *Sterling*, thence to *Perth* and *Strathbogie*, and finally was at *Gulladen Moor*, in the Lord *Elcho's* Troop of Horse, commonly called the Pretender's Life-Guards, where he was taken a Prisoner by his Majesty's Troops.—To prove which he called the following Witnesses.

Samuel Maddox being sworn, said, that *Mr. Bradshaw*, the Prisoner, was at the Bell in *Manchester* (the Young Pretender being present) where was a Consultation to raise a Regiment of Foot, for which *Mr. Marroy*, the Pretender's Secretary, delivered a Commission for that End; and that *Francis Townley*, a Roman Catholic Gentleman, was appointed Colonel

of the said Regiment, which was to be called the *Manchester* Regiment; and that *Mr. Bradshaw* was nominated Captain, and himself (*Mr. Maddox*) was also appointed an Officer; that afterwards he enlisted several private Men and Volunteers into the said Corps; that he saw the Prisoner march with the Rebel Army to *Derby*, and from thence back again to *Manchester* (when they found his Royal Highness the Duke of *Cumberland's* Army was near them), and from thence to *Carlisle*, in a Highland Dress, with Pistols and a Sword by his Side, and a White Cockade in his Bonnet: That at *Carlisle*, when the Young Pretender had sent for the Officers of the *Manchester* Regiment, to take his leave of them, and to direct them how to act if attacked by his Majesty's Forces, the Prisoner was there in the Chamber; but on account of some Misunderstanding between him and *Townley*, the Prisoner refused to stay behind with the Rebel Army at *Carlisle*, and desired the Young Pretender would permit him to go on with them to *Scotland*; and that accordingly the Prisoner did march out of the Gates of *Carlisle* to go with the Young Pretender to *Scotland*.

James Patterson being produced and sworn, said, that *Mr. Bradshaw*, the Prisoner at the Bar, marched with the Rebel Army from *Manchester* to *Derby*, armed with Pistols and Broad Swords, Drums beating, Pipes playing, Colours flying, and retreated with them from *Derby* to *Manchester*, and from thence to *Carlisle*, which Place he left (upon some Discontent with *Col. Townley*, who commanded the *Manchester* Regiment under the Young Pretender) to go in the Rebel Army, and then he engaged a Volunteer in Lord *Elcho's* Troop of Horse Guards, who were esteemed the Life-Guards to the Young Pretender.

Henry Giffen was also produced and sworn, who said, that he himself was unfortunately seduced into the Rebel Army, and entered into Lord *Elcho's* Troop of Horse Guards; that the Prisoner, *Mr. Bradshaw*, marched with them as a private Man in the said Corps; that the Troop was drawn up at the Battle of *Culloden*, and that he there saw the Prisoner on Horse-back in the said Troop, with Pistols, and a broad Sword by his Side, and a white Cockade, and that he continued with the said Troop till he was taken Prisoner by his Royal Highness the Duke of *Cumberland's* Army.

Then Captain *Moore*, an Officer in the Duke of *Cumberland's* Army was examined on Oath, and gave the Court the following Account of the Prisoner: That he saw the Prisoner (whom he had been acquainted with at *Manchester*) beyond the Wood of *Gulladen Moor*, and told him, that he was sorry to see him in such bad Company, having had Orders from his Royal Highness the Duke of *Cumberland* to take an Account of all the Officers and Soldiers that should be made Prisoners; that *Mr. Bradshaw*

See IV. State Trials, and *Holt's* and *Tracy's* Opinion in 1704, in the Case of *Anne Hawkins*, were as followeth:

Mr. Justice Tracy's MS. having been cited in the foregoing Case by the Prisoner's Counsel, and taken some Notice of by the Court, I think it not amiss to subjoin from the same MS. which I had not then seen, a Report of the following Case:

"At the Sessions at the Old Bailey before *Enslin* Term 1704, *Anne Hawkins* was indicted for breaking the Mansion-house of *Samuel Story* in the Night-time. It appeared on Evidence that the House belonged to the *African* Company; that *Story* was an Officer of the Company, and that he and many other Persons, as Officers of the Company, had separate Apartments in the House in which they inhabited and lodged; and that the Apartment of *Story* was broke open. It was held by *Holt* Chief Justice, myself, and *Baron Bury*, that the Apartment of *Story* could not be called his Mansion-house, because he and the others inhabit in the House merely as Officers and Servants of the Company; and thereupon the Jury was discharged of this Indictment, and it was amended, and laid to be the Mansion-house of the Company."

The Record hath been looked into; it warranteth the Report of the learned Judge in the substantial Parts of it, though in some Points it is defective. Two Bills were in fact preferred against the Woman; the first for Burglary and Larceny in the Dwelling-house of *Samuel Story*, to which she pleaded Not Guilty, and put herself upon the Country; the second for Burglary and Larceny in the Mansion-house of the *African* Company, in which she is charged to have committed the Burglary upon the same Day, and to have stolen the very same Goods, as in the former Bill.

It appeareth upon this second Bill, that she was acquitted of the Burglary and found guilty of the Larceny. But it doth not appear by any Entry on the first, that the Court proceeded on it farther than the receiving and recording her Plea, and remanding her to *Newgate*, probably till the second amended Bill could be prepared and sent to the Grand Jury. But certainly it is more reasonable to impute this Defect to the Neglect of the Officer who omitted to make the proper Entry, than to imagine that the learned Judge was totally mistaken in a plain Matter of Fact, falling within his own Knowledge.

Another Circumstance which may beget some Doubt, might be, and probably was, owing to mere Accident. The first Bill is now found upon the File among the Indictments of the then next preceding Sessions (March 8th 1703). But it ought to be remembered that neither *Holt*, *Tracy* nor *Bury* attended at that time; and that it appeareth by the Record, that they all did attend at the following Sessions. At which Time, according to the Judge's Report, the Point came under Consideration, upon Evidence given on the first Bill, and the second amended by the Direction of the Court was preferred.

said he was a Captain in the *Manchester* Regiment, but afterwards (on the Road to *Inverness*) he said that he belonged to Lord *Elche's* Troop of Life-Guards.

After they had gone through the Witnesses for the Crown, Mr. *Jodrell* and Mr. *Ford*, who were Counsel for the Prisoner, stood up and pleaded on his Behalf, admitting that what the Evidence for the King had said was true, that the Prisoner did unfortunately engage himself in the Rebel Army, and did march with them from *Manchester* to *Derby*, and from thence retreated with them to *Manchester*, and so on to *Carlisle*, and then accompanied them to *Scotland*, until they came to *Culloden Moor*, where he was taken Prisoner; but that the unfortunate Gentleman at the Bar, had been troubled with an Insanity of Mind, from his Youth, so that he was *Non Compos Mentis*, and consequently, if they should prove it, he could not be deemed guilty of the High Treason laid in the Indictment: For, said they, he hath been melancholy from his Childhood, and in his Apprenticeship endeavoured to destroy himself by flinging himself out of the Window; and we shall be able to prove that once he did fling himself out of the Window, that he attempted to kill the worthy Gentleman his Master, that he hath been confined in a Madhouse for these Lunatick Pranks, that after the Expiration of his Apprenticeship he married a fine Lady, whom he dearly loved, and on whose Death his Insanity of Mind increased; that the Rebels esteemed him no other than a Lunatick, first giving him the titular Name of a Captain in their *Manchester* Regiment, where he sometimes marched in the Columns, and sometimes rambled from them, and at other times a private Man in Lord *Elche's* Troop of Horse, and sometimes he was left behind. We shall likewise, says he, be able to prove to your Lordships Satisfaction, and the Court, that this unfortunate Gentleman, after the Death of his only Son, was in such a mad Condition, that he was strapp'd down to his Bed, and a Watch set over him, to prevent him from injuring himself, and those about him; and quoted a Case from Lord Chief Justice *Hale*, wherein it is mentioned, that a Person insane in Mind cannot be deemed Guilty of Treason or Felony.

Then *Thomas Buerdell* was called and sworn, who said, that he served his Apprenticeship with the Prisoner, to Mr. *Worral*, a *Manchester* Factor in *Lawrence-lane*, in *London*; that when he came out of his Time he went down to *Manchester* to set up for himself with a handsome Fortune; that in Part of his Apprenticeship he lay in the same Bed with the Prisoner, who used often to jump out of the Bed, and skip about the Room, like a Madman, and several times attempted to jump out of the Window; that he (the Evidence) was in danger of his Life, and particularly, one time he caught him by the Throat, in such a manner as had like to have destroyed him, whereupon he complained to his Master, who ordered them separate Beds: that at another time, his Master called him to an account, to settle the Books, and make up his Cash, when the Prisoner attempted to stab his Master with a Penknife, and that he was discharged from his Master before the time of his Apprenticeship was out.

Cross-Examined.

The Witness admitted that he did Business sometimes very regular for his Master; and that he was deficient in his Cash; but that he (the Witness) was obliged to put the Poker, Tongs, Fire-shovel, and Chairs out of the Room, to prevent him from doing any Mischief, and that he used to walk in his Sleep.

Then the Judge asked this Witness, if the Prisoner used to get drunk? which he could not deny.

John Davis was examined, and said, he had known the Prisoner sixteen Years; that he used to be out of his Mind in the Night, and heard him make a Noise inwardly; and that he was often strapp'd down; but being cross-examined by the Attorney General, he admitted that his being strapp'd down was to prevent him from walking in his Sleep; and that the Prisoner used to help to fix the Straps, which in the Morning he used to unloose himself.

Charles Fernagan said, that there were Iron Bars put in the Window to prevent the Prisoner from jumping into the Streets, and that he was often strapp'd down for the like Consequences. He often appeared in the Day-time melancholy, and had on him the Symptoms of a Man out of his Mind. The Witness (being cross-examined) admitted, that he kept his Books regular, that he drew Bills of Exchange that were always honoured by his Correspondents, who made no Hesitation on account of his Infirmary; but at other times he was attended by the Doctors for his Disorder of Mind.

A Clergyman, Brother-in-law to the Prisoner's deceased Wife, said the Prisoner was disordered in his Mind, that he often laid with him, that he was strapp'd down in the Night, to prevent him from doing Mischief. That once he seized him by the Throat, and if he had not been a strong Man, he would have killed him; and that he once jumped out of the Window and bruised himself.

Being cross-examined by the Attorney General, if his being strapp'd down was not to prevent his hurting himself in his Sleep, and if he did not use to walk in his Sleep? the Witness appeared puzzled to answer the Question, 'till the Lord Chief Justice demanded a categorical Answer, Whether his Illness, or Insanity of Mind, was any otherwise, than from Fits, or walking in his Sleep? The Witness, after being asked the Question six or seven times, with some Hesitation answered in the Affirmative.

Then Mr. *Roile*, a Country Farmer, was produced and sworn, and said the Prisoner came to his House, seven Miles from *Manchester*, six Months before the Rebels came there, to be retired, and take Physick for his Illness; that he did several frantick Tricks that appeared to him to be the Acts of a Lunatick; but being examined by the Solicitor-General, what particular Instances he could give, he said, one Day he advised him to plow the Field the wrong way, but could not remember any other Acts of Frenzy; but insisted, that he used to walk up and down in the Day-time melancholy, and sometimes walked in his Sleep.

Jane Richardson was produced and sworn, who deposes, That she lived a Servant-maid with the Prisoner several Years; that he was very fond of his Wife, and that in his Frenzy he used to come into her Room, and without Provocation tear off her Cap, and pull her by the Hair of her Head; that he used to be distracted a Week together, sometimes would go into his Wife's Chamber, when she was in Bed, and pull off all the

Cloaths, and fling them about the Room; and that at *Manchester*, he had jumped out of the Window; so that they contrived Straps to tie him down in his Bed.

[Here she opened a Handkerchief with two Sets of Straps; and showed them to the Court.]

These Straps, says she, I made myself; one Sett we kept at home, to tie him down in his Bed at Nights, to prevent him from hurting himself; or any Body else; and the other Sett he carried with him when he intended to lay Abroad: that when the Rebels came to *Manchester*, and some of them in his Parlour, she went into the Room to ask him how he did; upon which he got up, and pulled the Cap off her Head, and that she thought him a Lunatick. She farther added, That his Wife, on her Death-bed, desired, that she (the Witness) would live with her Husband, on account of his Weakness of Mind, to take Care of him; but on account of his rough Usage to her, she had some Thoughts of leaving him just before the Rebels came to *Manchester*: She likewise added, that the Prisoner's Illness had increased since the Death of his Child.

The Counsel for the Crown not being apprized that the Prisoner would make such a Defence, occasioned some Debate, whether they should examine more Witnesses, and then agreed they had a Right to examine Witnesses so far as to prove the Prisoner *Compos Mentis*, from the time of entering into the Rebellion, to the time of his being taken Prisoner at *Culloden*.

Sir *John Strange* then called *Samuel Maddox*; but first observed to the Court and Jury, that to him the Prisoner appeared to be the wisest Man in the *Manchester* Regiment, for nothing but Madmen would enter into such a Rebellion against so good and merciful a Prince, who had violated no Man's Property, and who, during a long Reign, had never invaded the Rights and Liberties of the Subject; but if an Instance could be given of the Wisdom of any of those People, who had madly engaged in the Rebellion, it was the Prisoner, who refused to stay with the others at *Carlisle*, where there was all the Probability that could be of their being taken by the Duke of *Cumberland*, to be delivered up to the Justice of their Country, some of whom had already been executed, and more like to undergo the same Fate, which the Prisoner hoped to avoid by the Retreat he made with the Rebels into *Scotland*.

Samuel Maddox being re-examined, said, That the Prisoner was his Captain, and inveigled him into the Rebel Army; that being short of Money, and discontented, the Prisoner gave him a Guinea; that he never knew the Prisoner out of his Mind; that often he used to send to *Maddox's* Master, who was an Apothecary, for Medicines that were cooling, which he apprehended to be for no other use, than after hard Drinking; that the Prisoner had sometimes been afflicted with Fits, but never to continue so as to deprive him of his Senses, so as not to know whether he was, or was not, engaging in a rebellious Act.

My Lord Chief Justice then summed up the Evidence in a very learned Manner, and explained the Quotations out of *Hale's* Pleas of the Crown; and without going out, the Jury brought the Prisoner in Guilty.

James Bradshaw, aged 29 Years, was descended from very substantial and reputable Parents, his Father being a large Dealer at *Manchester* in *Lancashire*, who having but an only Child, (this unfortunate Person) he gave him a liberal Education, by putting him to the Free School, where he learnt Writing and Arithmetick, and made a considerable Progress in the Classics. His Father then sent him up to *London*, *James* chusing to be a Tradesman rather than go to the University, of which he had his Choice; and accordingly was bound Apprentice to Mr. *Charles Worral*, an eminent *Manchester* Factor at the *Golden Ball* in *Lawrence-Lane* near *Cheapside*, where he continued six Years, well respected by his Master and the Customers, being very diligent and obliging in the Business; and by the young Gentlemen in the Neighbourhood, and through the whole Circle of his Acquaintance was very well beloved, being a very facetious, good-natured young Fellow. In the sixth Year of his Time, a young Lady, Daughter of Mr. *Waggstaff*, a wealthy Gentleman of *Manchester*, coming to *London* to see some of her Acquaintance as well as the Fashions and Curiosities of this Place, Mr. *Bradshaw* had frequent Opportunities of visiting her, and waiting upon her to all the gay and polite Places of Diversion which this Place afforded; he at length informed her of his Affection for her, and that his Intentions were honourable; if she could like him for a Husband, he should think himself the most happy Man in the World: After several Overtures and Addresses of this Sort, the young Lady kindly answered, that if both their Parents approved of it, she would consider on it; and Mr. *Bradshaw* growing very much in her Favour, she desired him to write to *Manchester* about it, which he did accordingly; but before he received an Answer to his Letter, he had Advice that his Father, who had been some time in a bad State of Health, was so very ill, that his Life was despaired of. On this he determined to go down to *Manchester*; and acquainting his Master with his Intention, and of his Father's Illness, Mr. *Worral* generously consented thereto; and moreover told him, that if his Father did not get over his Illness, or continued so long ill, that his Absence might be prejudicial to the Business, he should be at his Liberty with respect to serving out the Remainder of his Time and, that he should be glad to see him well settled where there was a good established Trade. Soon after his Arrival at *Manchester* his Father expired, and left him in Possession of a considerable Fortune to carry it on; and after he had made a decent Burial for his Father, he then renewed his Addresses to Miss *Waggstaff*, and in a little time was married to her, with whom he had a handsome Fortune, and an accomplished Lady sufficient to make any reasonable or prudent Man happy, in the State of Matrimony.

Not long after he entered into Partnership with Mr. *James Dawson*, a *Manchester* Warehouseman, near the *Axe-Inn* in *Aldermanbury*. In about two Years time he was so unfortunate as to lose his Wife, which it was believed affected him so as sometimes to cause an Insanity of Mind, and at other times, in his lucid Intervals, he appeared a bright Wit; but he gave himself up to the keeping of Company, whereby he contracted an Acquaintance with Jesuits and Popish Priests (for in those Principles he had been always educated), from whom he imbibed the Principles of Jacobitism more strongly, and from time to time contracted such an Affection to the Cause of the Pretender and his Adherents, as to declare publicly (soon after the Pretender landed) amongst his Associates, that he would embrace the

first Opportunity to serve the Cause. When the Pretender came to *Manchester*, he with several others of the same Principles, waited on that mock Prince, and tendered his Service to him, who finding Mr. Bradshaw to be a young Gentleman of a good Family and Fortune, and of some Interest, conferred on him the Trust of a Captain of a Regiment to be raised in *Manchester*, under the Command of Col. Townley, who was since executed on *Kennington Common*, for High-Treason; and Mr. Bradshaw had no sooner got his Commission, than he went about *Manchester*, and the neighbouring Villages, to recruit for the same Regiment, in which he had such Success, that he raised a Number of Men for the Service of the said Pretender, by whom he was greatly caressed, and at whose Levee he often attended, and was consulted with in several of their Councils of War. He afterwards marched in a gallant Manner at the Head of his Company with the Rebels to *Derby*, and accompanied them in their Flight back to *Manchester*, when they heard the Duke was at their Heels, and from thence to *Carlisle*, where he waited (with the rest of the Officers) on the Young Pretender to take his Leave of him, it being agreed, that some Part of their Army should stay at *Carlisle* to secure a Retreat for the Rebels; and then he insisted that he would not stay behind under the Command of Col. Townley, with whom there was no good Harmony; for some Misunderstanding happened between them, on Account of a young Lady, which they had severally addressed at a Ball, which was kept at the *Bull-Head Inn* in *Manchester*, for the neighbouring Gentry; and indeed this Animosity was increased by the haughty Behaviour of Col. Townley, who now imagined the other to be under his Dominion, and used often to put Mr. Bradshaw upon Duty that was disagreeable to him.

What gave Mr. Bradshaw the greatest Disquiet was, that when the Pretender proposed to raise a Regiment of Horse, of which Townley was to be Colonel, Townley was labouring for *Thomas Deacon* (executed with Townley, &c. at *Kennington*) to succeed him in the Command; and soon after the Rebel Army had left *Carlisle*, Bradshaw went away incognito, and joined them again in *Scotland*, where he lifted himself a Volunteer in Lord *Elcho's* Horse, commonly called amongst the Rebels the first Troop of Guards; and he continued with the Rebels in that Rank, until he was taken Prisoner at the Battle of *Culloden*.

As to Mr. Bradshaw's Conduct in general, even from the Time of his engaging in the Rebellion, and till within a short Time of his Death, it must be confessed, that his Behaviour has been all of a Piece. Nothing but Infatuation could determine a Man to shut up his Shop, leave his Business and Effects, and ruin (with all honest Men) his Character, to follow a wicked and rebellious Multitude: And truly for what?—To be made a Captain!—Nay, it is Matter of Fact, that he was worth several thousand Pounds, his Trade flourishing, and his Credit well established in the World; yet was he so hearty in the good old Cause (as he called it), that he advanced Cash out of his own Pocket to support his ragged Company.

Soon after the Battle of *Culloden-Moor*, which put a happy End to this wicked and unnatural Rebellion, an Order was sent from the Secretary of State's Office for bringing to *London* such of the Rebels as had been most active in the Young Pretender's Service, and amongst those that were put

on Ship-board was Mr. Bradshaw. There he behaved with the greatest Insolence imaginable, and did not scruple voluntarily to tell those Officers belonging to his Majesty who had the Care of him, that they could not hurt him, for he was above their Cut, or Words which carried the same Meaning.

When the Vessel on board of which they embarked arrived in the River, they were (viz. 43.) committed to the *New Gaol* in *Southwark*; by his Grace the Duke of *Newcastle's* Warrant, and continued Prisoners there till the necessary Proceedings were prepared for their Prosecution.

About the Time the *Manchester* Rebels were ordered for Execution (Bradshaw being at that Time a Prisoner in the *New Gaol*, *Southwark*), the Night before they suffered, he spoke to Mr. Townley and Mr. Berwick in a disrespectful Manner, saying, I find you must shortly march into other Quarters. Mr. Townley made no Answer; but Mr. Berwick, always remarkable for his Jocularities, said, "Johnny, you need not triumph at our Misfortunes, for, take my Word on't, you will find Mocking is catching."

Bradshaw, the Night preceding the Execution of the *Manchester* Rebel Officers, drank very freely, and seemed quite unconcerned at the melancholy Fate which was inevitably next Day to be the Consequence of their wicked Undertaking. Mr. Berwick told Mr. Chadwick, that Bradshaw seemed to reflect on them, rather than pity or condole with them. Mr. Chadwick replied, "What can you expect from him? I am only sorry that it reflects so much Dishonour on us all, as to admit such a Fellow an Officer in the Regiment."

In the Morning of the Execution of the *Manchester* Rebels, about seven o'Clock, when the Sledges came in to draw the Prisoners to Execution, Bradshaw was walking about the Gaol-Yard in his Morning Gown, with some Gentlemen, who came thither either out of Curiosity, or to take Leave of their dying Friends, and with a sneering and ungentleman-like Air, said, (pointing to the Sledges) "Don't you think these Things are very well contrived? Upon my Word, they will do exceeding well for the Purpose;"—and then raked amongst the Straw in the Sledges, telling the Drivers, that if they did not get more Straw, the Lads (meaning the Prisoners) would be wet; and many other silly Expressions, which, if inserted, the Reader would hardly credit.

When he was called upon his Trial, he appeared very gay, in a new Suit of Green Cloth Cloaths, and stood very unconcerned at the Bar, minding very little what was sworn against him: But when the Evidence was closed, and summed up to the Jury, and they brought him in Guilty, he was quite thunder-struck, and changed Colour very much, and was so feeble that he could scarcely walk from the Bar.

His Conviction and Condemnation made but little Alteration in him; for though he was not so ludicrous as he had been all along, he supplied that Part with an undaunted Assurance, and ill-grounded Hopes of a Reprieve, till his Master informed him on *Tuesday* Night, that all Endeavours that had been used to save his Life were ineffectual; and persuaded him to make his Peace with God.

He was executed as a Traitor on *Friday, November 28, 1746*; at *Kennington Common*.

XXXVIII. The Trial of Sir JOHN WEDDERBURN, Bart. at St. Margaret's-Hill, Southwark, November 4, 1746, before the Lord Chief Justice Lee, Sir Martin Wright, Sir James Reynolds, Sir Michael Foster, Knts. and Mr. Baron Clive, for High-Treason.

SIR John Wedderburn, Bart. was indicted for High-Treason; which Treason was laid to be committed on the 16th of April, in the 20th Year of his present Majesty's Reign.

Andrew Johnson said, He saw Sir John with the Officers of Lord *Strathallan's* Horse, in plain Cloaths, and a Sword by his Side, after the Battle of *Preston Pans*, free and not forced.

John Falkner said, He saw the Prisoner at *Holyrood-House*, amongst the Officers in the Rebel Army, in plain Cloaths, with a Small-sword by his Side.

Roger MacDonald said, He saw the Prisoner at *Aberdeen*, in a plain Dress and Small-sword (but no Cockade) with the Officers of Lord *Strathallan's* Horse, and that he lodged with Mr. Johnson at *Aberdeen*, without a Billet.

James Mortimer saw him at *Aberdeen*, with the Officers of Lord *Ogilvie's* Regiment, under no Restraint or Force.

John Bruce said, That he paid Sir John Ten Shillings for Ale-excise, and Twelve Shillings for Malt-excise; and unless he had paid it to him, the Rebels threatened to seize his Copper; for which Excise he took Receipts, but did not produce them, because he left them at Home.

Henry Edwards deposed, That he saw the Prisoner the latter End of October, at old *Gordon of Glenbuck's* House at *Perth*; that Sir John declared, he was not concerned in the Rebellion, that he had a Commission sent to him to collect the Excise; but it was in his Father's Name, and that he would go to *Edinburgh* to get it rectified; and he accordingly did go to *Edinburgh*, and about the Middle of November returned to *Perth*, where a Drum went about the Town proclaiming, that all Brewers, and Dealers in Leather, Candles, and other exciseable Goods, should go to Sir John, and pay the Excise, on Pain of Military Execution.

Then several Receipts for Money paid to him for Excise, were produced, and proved to be Sir John Wedderburn's Hand-writing for Excise, dated progressively from the 25th of November, to the 8th of January following.

Alexander Russell deposed, That he saw the Prisoner, Sir John, at *Holyrood House*, after the Battle of *Preston-Pans*, in a plain Dress, and a Small-sword by his Side, and that the Young Pretender issued an Order forbidding any Body from carrying Arms, but those who belonged to his Army; and that if Sir John had not belonged to the Rebels, he dared not wear a Sword.

Captain Eyre said, The Prisoner acknowledged himself a private Man in the Pretender's Life-Guards.

Andrew Robinson said, He was a Servant to Major *Glasgow*, and saw the Prisoner at *Dundee* with the Rebels, and at *Burroughburgh*, going to the Young Pretender's Quarters; that the Prisoner collected the Excise from six Persons in this Witness's Presence.

John Adamson said, he paid Excise to the Prisoner twice; and that the Prisoner had a Guard with him at his Quarters, where he received the Excise Duty.

The Prisoner's Defence.

The Counsel for the Prisoner alledged, by the Seventh of *William* the Third, No Overt-Acts of High-Treason shall be proved, unless the same is laid in the Indictment; and the bare Collecting the Excise was no Overt-Act, without they could prove him armed in the Rebellion; that the Prisoner's Father did collect the Excise for his present Majesty King *George* the Second; that the Rebels came and took his Horse out of his Park, and that he went after them to get them back again, where they seized him, and detained him a Prisoner, and forced him to continue with them to collect the Excise.

George Waters, Working-mason, was the first Witness examined for the Prisoner, and he deposed, That the Rebels came to Sir John's House in September 1745, and took away three of his Horses, for the Pretender's Service; when Sir John said, That he would not let his Horses go for such a Use; and went to get them back again; and that some of the Rebels told him, if he would not give them freely, he himself should go with them, and so forced him with them; that this Evidence went to him, when he found him guarded by the Rebels, so close, that he could not go out of the Room without Liberty from Lord *Strathallan*; that some time after he came to his House, and staid four Days at Home; that afterwards one hundred Men came armed, who guarded his House, and carried him away; that the Witness said, he saw him at the Day carried away by the *MacIntoshes*; that afterwards he came from the Day to his House, and staid at his House till the fifth of February, when forty or fifty Men came and pressed him, and carried him to *Edinburgh* in the Middle of March. The Witness further said, That his Brother was Collector of the Excise at *Inverness* for King *George*; that he had known the Prisoner two Years; that he always wore a Small-sword, and

that he was a Prisoner at his own House every Day, from November to the Beginning of February.

David Hutcheson deposed, That he was a Servant to the Prisoner Sir John Wedderburn; that five armed Men came and seized several of his Horses in his Park, and that his Lady went to them, and prevailed on them to release a Mare; that they abused her and called her Rebel-Bitch; that they seized the Prisoner when he went after his Horses, to get them back, and carried him to Lord Ogilvie's; that the Prisoner returned, and a hundred armed Men came and retook him Prisoner, and threatened to stab him with their Bayonets.

The Jury, without going out, brought him in Guilty. *Death.*

Sir JOHN WEDDERBURN'S Case *

THE Overt-Acts were laid at Aberdeen, in the Shire of Aberdeen. It was proved by two Witnesses, that he was with the Rebels at Aberdeen; and by those and other Witnesses, that he was at divers other Places with them.

The King's Counsel called Witnesses, who proved likewise, that he was appointed by the Pretender's Son, Collector of the Excise; and that he did actually collect the Assize in several Places where the Rebel Army lay, by virtue of that Appointment, for the Use of the Rebel Army.

The Prisoner's Counsel insisted, that this Sort of Evidence ought not to be admitted. For though collecting Money for the Service of Rebels is an Overt-Act of High-Treason, yet it not being laid in the Indictment, no Evidence ought to be given of it; and they relied on the Statute of 7 K. W. But in this they were over-ruled, upon the Reasons given in the Case of Deacon †.

Sir John Wedderburn, Bart. was the Son of Alexander Wedderburn, of Aberdeenshire, whose Family have been long resident in that Part of Scotland, several of whose Ancestors are honourably mentioned in the Scottish Histories, especially Sir David Wedderburn, who was killed at the Battle of Muffelburgh. The late Sir Alexander, Father to this unfortunate Gentleman, was greatly esteemed for his known Attachment to the Revolution Principles, and the Hanover Succession; inasmuch that the Government thought proper to make him a Receiver of the Excise, and other Duties,

which, with a small Estate he had near Dundee, enabled him to bring up a numerous Family; but being of a liberal and generous Spirit, he left the Estate incumbered, so that when Sir John arrived to his Honour of a Baronet, he had nothing to support it; though on the Expectation of having an Estate to descend to him free, he married a young Lady of a reputable Family in his Neighbourhood; for on his Father's Death the Estate was destined to be sold, in order to satisfy the Father's Debts; that when Sir John found nothing coming in order to support his Family, he retired to a small Farm, with a thatched House and Clay Floor, which he occupied with great Industry, and thereby made a laborious but starving Shift to support a Wife and nine Children, who used to run about in the Fields barefoot.

The extreme Poverty of Sir John, and his numerous Dependents, overcame Sir John's Duty to all kind of Society, and the present happy Establishment; and being tempted with a Commission from the Pretender to collect the Excise, yet in some Measure forced to do it, Sir John's Loyalty at last gave way to his Poverty; though it is admitted, that he never did any Acts of Violence to his Majesty's Subjects, any other than receiving the Duties arising by the Excise, having never bore Arms, or caused any one to enlist into the Rebel Service.

After Sir John was made a Prisoner, he was delivered to the Care of Captain Eyre, an Officer appointed by the Duke of Cumberland, to take charge of the Rebel Officers, who treated him with great Humanity, according to his Birth and Dignity; and conveyed him on board one of his Majesty's Ships of War to the River Thames, from whence he was carried with the other Officers, to the New-Gaol in Southwark, where he was lodged in the Master-Side of the Gaol with Sir James Kinloch, Mr. Hamilton, and others, during which Time he behaved like a Gentleman; being plentifully supplied, and indeed flattered himself with being acquitted, as he thought he had not armed himself in the Rebellion, but was very much shocked when the Jury found him Guilty; and after Sentence of Death, his Behaviour was consistent with the Character of a Gentleman, being sensible of his Error, and the Calamity he had brought on himself, his inoffensive Lady, and innocent Posterity.

He was executed at Kennington-Common as a Traitor, Nov. 28, 1746.

XXXIX. Proceedings at the Court of King's-Bench, Westminster, 21 Nov. 1746, against CHARLES RATCLIFFE, Esq. on a Conviction and Attainder of High-Treason in May 1716, before special Commissioners of Oyer and Terminer ‡.

HE was concerned with his Brother, the late Earl of Derwentwater, in the Rebellion of 1715; and in May 1716, was convicted and attainted of High-Treason before special Commissioners of Oyer and Terminer, pursuant to the Act of the first of the late King. While he was under Sentence of Death, and probably before the Act of general Pardon of the third of the late King passed, (See the 45th Section of the Act) he made his Escape out of Newgate, and got over to France.

At the latter End of the Year 1745, he was, with some other Officers, French, Scotch, and Irish, taken on the Coast on board a French Ship of War; which was laden with Arms, Ammunition, and other warlike Stores, bound, as was supposed, for Scotland, where the Rebels were at that Time in Arms.

On Friday the 21st of November 1746, he was brought to the Bar by virtue of a Habeas Corpus, directed to the Constable of the Tower, or his Deputy; and the Record of his Conviction and Attainder was at the same Time removed thither by Certiorari.

The Habeas Corpus, with the Return, and also the Certiorari and Record of the Conviction and Attainder being read, the Substance of the Record was opened to him in English by the Secondary on the Crown Side; who then asked him what he had to say why Execution should not be done upon him according to the Judgment. He prayed that Counsel might be assigned him, and named Mr. Ford and Mr. Jodrell; who were accordingly assigned his Counsel.

They prayed a few Days Time that they might have an Opportunity of knowing from the Prisoner himself the Truth and Merits of his Case, which was granted.

They also prayed a Copy of the Record, which was denied them. But the Officer, by the Direction of the Court, read over the Indictment a second Time very distinctly, and the Prisoner's Counsel took Notes of it, and the Prisoner was ordered up on Monday next.

His Counsel moved for a Rule of Court that they might have Access to their Client at all seasonable Times. But his Solicitor admitting that he had obtained a Warrant from a Secretary of State to the same Purpose, the Court did not make any Rule in the Case; nor did the Counsel press it; but the Court declared, That if the Secretary's Warrant had not been obtained, they would have made such Rule; for the Prisoner is now the Prisoner of this Court, and the Lieutenant of the Tower is, as far as

concerneth the Prisoner's Case, a Minister of this Court, and subject to the Rules of it.

November 24, 1746. The Prisoner was brought to the Bar, and being again arraigned, he, *ore tenus*, pleaded that he is not the Person mentioned in the Record before the Court. The Attorney-General, *ore tenus*, replied, the Prisoner is the same Charles Ratcliffe mentioned in the Record, and this I am ready to verify; and Issue was joined.

The Prisoner's Counsel pressed strongly to put off the Trial of this Issue, upon an Affidavit of the Prisoner, which was sworn in Court, that two material Witnesses named in the Affidavit are abroad; one of them at Brussels, and the other at Saint Germain; and that he believeth they will attend the Trial, if a reasonable Time be allowed for that Purpose. But the Court refused to put off the Trial, and a *Venue* was awarded returnable *instantly*. For, said the Court, this Proceeding is in Nature of an Inquest of Office, and hath been always considered as an instantaneous Proceeding; unless proper Grounds for postponing the Trial be laid before the Court. It was so considered in the Case of the King against Barkhead and others (Keil. 13, 1 Lev. 61. 1. Sid. 72.) upon the same Issue as this is; a *Venue* was awarded, and a *Jury* returned and sworn *instantly* to try that Issue. It was so considered likewise in the Case of the King against Roger Johnson in this Court, Michaelmas the Second of this King.

If Mr. Ratcliffe hath any thing to offer, which may give the Court reasonable Grounds to believe that his Plea is any thing more than a Pretence to delay Execution, we are ready to hear him; the single Issue is, whether he be or be not the Person mentioned in this Record. This is a Fact well known to him, and if he is not the Person, he might, if he had pleased, have made that Matter Part of his Affidavit; he may do so still if he can do it with Truth; And if he refuseth to give the Court this Satisfaction, touching the Truth of his Plea, the Court doth him no manner of Injustice in denying him the Time he prayeth.

As the Jurymen were called to the Book, the Prisoner challenged one of them, and insisted on his Right to a peremptory Challenge; but his Challenge was over-ruled. For though there are some Opinions in the Books (S. P. C. 163. Co. L. 157.) that in collateral Issues of this Kind, the Prisoner hath a peremptory Challenge, yet the later and better Opinion is, that he hath not; and the modern Practice hath gone accordingly,

* From Foster's Reports, p. 22.

† See the Cases of Rookwood and Louwick in the Fourth Volume of State Trials.

‡ From Foster's Reports, p. 40.

§ See the Record in Dr. Cameron's Case, Vol. X.

|| See a Report of the Case in Judge Foster's Reports, p. 46. and 2 Strange, p. 824.

Chief Justice Hale (2. Hale 267.) saith, "In case of an Issue joined on Error in Fact assigned for reversing an Outlawry, the Prisoner hath no peremptory Challenge;" and in p. 378. of the same Book, it seemeth to be admitted as a general Rule, that in Inquests of Office (and the present Trial is in nature of an Inquest of Office) the Prisoner hath no peremptory Challenge. In *Barkstead's Case* cited before, (1 Lev. 61. 1 Keb. 244.) the Prisoners were not permitted to challenge peremptorily; and in the Case of *Roger Johnson*, which hath likewise been already cited, the Court declared that the Prisoner had no peremptory Challenge.

The Jury being sworn to try the Issue, the Indictment was read over to them in English for their Information as to the Name and Addition of the Prisoner; and the Evidence being concluded, the Jury withdrew for a few Minutes, and then returned with their Verdict, that the Prisoner at the Bar is the same *Charles Ratcliffe* that is mentioned in the Record.

Note. The Prisoner, during the Trial of this Issue, had the Assistance of his Counsel; who cross-examined the King's Witnesses, and observed fully upon the Evidence.

After the Verdict was brought in, the Prisoner's Counsel took notice of the Act of general Pardon passed in the third of the late King; and said, that possibly their Client might upon Consideration be found to be intitled to the Benefit of it; and concluded with a Motion, that the Court, before they award Execution, would give them some Time to consider the Act, and to be informed by their Client touching the Circumstances of his Case, that they might be able to submit his Case to the Opinion of the Court, how far he is, or is not intitled to the Benefit of the Act.

But the Court declared, that the Prisoner having once pleaded in Bar of Execution, and that Plea having been falsified by the Verdict, his Plea is peremptory, and the Verdict conclusive; and nothing now remaineth but for the Court to award Execution.

Mr. Justice Foster was satisfied that the Principle the Court went upon is a good general Rule, but he thought it not universally true. He considered the Case of a parliamentary Pardon as an Exception to it; for surely the Court will never, in any State of a Cause, award Execution upon a Man who plainly appeareth to be pardoned. And therefore he thought that if any Person, whether as Counsel for the Prisoner, or as *Amicus Curiae*, will now shew that the Prisoner is intitled to the Benefit of the Act, he ought to be heard. But to this it was answered by the Chief Justice, That the Act of Pardon containing many Exceptions, both as to Persons and Crimes, the Party who would take the Benefit of it must plead it specially with all proper Averments; so as to shew that he is not within any of the Exceptions, according to the Resolution (*Cartb. 131.*) in the Earl of Salisbury's Case.

The Counsel for the Crown did not urge either of these Points against the Prisoner. And I have been since informed that, in favour of Life, they were determined to waive them; and were provided with Evidence, then attending in the Hall, to prove (which was the Truth of the Case) that the Prisoner, after his Attainder, made his Escape out of *Newgate*, which brought him within the Exception in the 45th Section of the Act. And the Prisoner's Counsel being apprized of this by the Counsel for the Crown in a Conversation between them at the Bar, thought it in vain to press their Motion any farther. And Execution was accordingly awarded, and a Rule made that it be done on Monday the 8th of December. And a Writ was ordered to the Lieutenant of the Tower to deliver the Prisoner to the Sheriff of *Middlesex* on that Day; and another to the Sheriff to receive him, and to cause Execution to be done.

N. B. Since the Prisoner's Counsel, after sufficient Time allowed them to inform themselves of the true State of his Case, had nothing to offer to induce the Court to think that their Client was intitled to the Benefit of the Act, only that possibly upon further Consideration, he may appear to be so intitled, there was certainly no Room to delay the awarding Execution upon so slight a Suggestion from the Bar. And Mr. Ratcliffe had no Injustice done him in that respect.

He was beheaded on *Tower Hill* on the Day mentioned in the Rule.

The Award of Execution in Mr. Ratcliffe's Case was agreeable to the Precedent in the Case (*Cro. Jac. 495. Hist. 21.*) of Sir *Walter Raleigh*. He was convicted and attainted at *Winchester* before special Commissioners, and being brought into the King's Bench by *Habeas Corpus*, Execution was there awarded on the former Judgment; Judgment not being pronounced afresh, it having been pronounced before.

In the Cases of *H. Stafford* (1 H. VII. 23, 24, 25. 1 Lev. 61. 1 Sid. 72.) and of *Barkstead, Okey and Corbet*, (State Trials, Vol. VIII.) who were attainted by Act of Parliament, the Tenour of the Acts was removed by *Carters* into Chancery, and sent thence by *Mittimus* into the King's Bench; and the Chief Justice pronounced the usual Judgment as in Cases of High-Treason.

* The Rule laid down in *Cartb. 131.* from *Pleaden* is laid down in the same Latitude in many of the old Books; but it is to be observed, that the Acts of General Pardon in those Times, had no Clauses enabling the Party to avail himself of the Pardon on the General Issue without specially pleading the same. The first Act which hath that Clause, that I have met with, is the Act of Oblivion (15th Car. II.) and all Acts of general Pardon since that Time have had Clauses to the same Purpose. Foster. p. 45.

† On Nov. 21, *Charles Ratcliffe, Esq.* (who was taken on board a French Ship bound for Scotland, with *Fitz James's* Horse) was brought under a strong Guard from the Tower to the King's Bench Bar, Westminster, in order to prove him the Person convicted of High-Treason for the Rebellion in 1715, and who escaped out of *Newgate*; when his former Judgment was read to him; but he told the Court he was quite unprepared, and desired longer Time, and prayed that Counsel might be assign'd him; accordingly the Court granted him Mr. *Jodrell* and Mr. *Ford* for his Counsel, and ordered him to be brought up to Westminster the Monday following.

Accordingly, on that Day, Nov. 24, he was again brought to the Bar, but refused to hold up his Hand, or acknowledge any Jurisdiction over him, but that of the King of France, where he had lived about 30 Years, insisting on a Commission he had in his Pocket from the French King; but on hearing his former Indictment and Conviction, which were read to him in English, he said he was not the *Charles Ratcliffe* therein named, but that he was the Earl of *Derwentwater*; and his Counsel informed the Court, that this was the Plea he relied on; to which the Attorney General replied, with an Averment of his being the same *Charles Ratcliffe*; and thereupon Issue was joined. Then the Counsel for the Prisoner moved to put off his Trial, upon his own Affidavit (to which he had subscribed himself the Count de *Derwentwater*), that two of his material Witnesses were abroad. To which Affidavit the Counsel for the Crown objected, as not being intitled in the Cause before the Court, nor the two Witnesses sworn to be material, in the Issue then joined between the King and the Prisoner; and also, because the Prisoner had not so much as undertaken to swear for himself that he was not the Person; which, as it was a Fact entirely in his own Knowledge, ought to be required of him, if he would intitle himself to this Favour from the Court; this being a Proceeding very different from the Trial upon a *Not Guilty*, in an original Prosecution on a Charge of High-Treason or other Crime, the Identity of the Person being the single Fact to be enquired of, and a Case in which the Crown had a Right by Law to proceed in *instante*. Upon this, the Prisoner amended his Affidavit as to the Witnesses, but refused to supply it so far as to swear he was not the same Person. And the Court said this was a new Precedent, there being no Instance of any Application to put off the Trial of a Question of this Sort before; and that this was like an Inquest of Office, in Order to inform the Conscience of the Court, and what the Publick had a Right to proceed in *instante*: And therefore that the Prisoner ought to give all reasonable Satisfaction to induce them to grant such a Favour as he desired, for that they could not in Conscience and Justice to the Publick, indulge him, without a reasonable Satisfaction, that his Plea was true. But the Prisoner still refusing to swear to the Truth of his Plea, the Jury were called, and after two or three of the Pannel were sworn, Mr. *Ratcliffe* challenged the next that was called, as of Right, without assigning any Reason; but upon Debate of the Question, How far he had right to challenge? the Court said it had been determined before in all the later Cases, and particularly in the Case of one *Jordan*, that the Prisoner in such a Case as this had no peremptory Challenge: Upon which the rest of the Jury were sworn, and after a clear Evidence of the Identity of the Person on the Part of the Crown, the Prisoner producing none on his Part, the Jury withdrew about ten Minutes, and then found their Verdict, that he was the same *Charles Ratcliffe* that was convicted of Treason in 1716. Then the Attorney General moved to have Execution awarded against the Prisoner on his former Judgment; to which the Prisoner's Counsel objected, tendering a Plea of Pardon by Act of Parliament, in Bar of Execution. But the Court said, as he had already pleaded such a Plea as he chose to rely on and stand by, and as that was found against him, nothing more remained for them to do at present, but to award Execution; and if his Counsel had any thing to offer on his behalf, they would have Time to do it before the Day of Execution: Then they ordered a Rule to be made for the proper Writs for his Execution on Dec. 8, and remanded the Prisoner to the Tower. From his Case, printed at that Time.

There was no Proceeding of this Kind in the Case of the Duke of *Monmouth*, who was attainted by Act of Parliament 1 Jac. II. For the Action at *Sedgemoor* happened on the 8th of July 1685, which in that Year fell out to be the last Day of Trinity Term, and on the 15th he was executed. But that was a Time of great Heat and Violence, and few Things then done ought to be drawn into Example.

N. B. The Act of the Third of the late King giveth the Party Liberty to take Advantage of it on the general Issue without specially pleading the same; (2 H. and M.) and so doth that on which the Earl of *Salisbury* relied. The Court therefore could not in the Earl's Case, ground itself on the Rule of Pleading laid down in *Cartb. 131.*; though the Rule might possibly be mentioned *obiter* by some of the Judges. I think the true Ground the Court went upon, which indeed the Reporter himself seemeth to hint at but very darkly, was, that the Earl having been committed by the House of Peers upon an Impeachment by the Commons for High-Treason, this Court cannot allow him the Benefit of the Act; it hath no Cognizance of the Crime he standeth charged with; the Matter lieth before another and higher Judicature, and thither his Lordship must resort.

And there he afterwards had the full Benefit of the Act without being put to plead it. For on the 10th of October 1690, upon reading the Earl's Petition, setting forth that he had been long a Prisoner in the Tower, notwithstanding the late Act of free and General Pardon, and praying to be discharged, the Lords ordered the Judges to attend on the Monday following to give their Opinions, whether the Earl be pardoned by the said Act; on the 6th the Judges delivered their Opinions, that if his Offences were committed before the 13th of February 1688, and not in Ireland, or beyond the Seas, he is pardoned. Whereupon it was resolved that he be admitted to Bail; and the next Day he was bailed, and on the 30th of October (See the Journals of the Lords) he and his Sureties were discharged from their Recognizances.

Charles Ratcliffe, Esq. according to a Rule of the Court of King's Bench, was executed on *Little Tower-Hill*; whither, two Troops of Life Guards, and one Troop of Horse Grenadier Guards, and a Battalion of Foot Guards, marched about eight in the Morning. The Horse lined the Way from the Scaffold to *Iron-Gate*, and the Foot with some of the Horse encompassed the Scaffold. About Ten, the Block, covered with Black, with a Cushion, and two Sacks of Sawdust, were brought up, and the Block fixed; and soon after the Coffin of the unhappy Gentleman, covered with Black Velvet, and having eight Handles, but no Plate upon it, was placed on the Scaffold.

In the mean Time, Mr. Alderman *Winterbottom* and Mr. Alderman *Alles*, the two Sheriffs, with their Under-Sheriffs, met at the *Mitre Tavern* in *Church-street*, and from thence proceeded, the Under-Sheriffs in a Mourning-Coach, and the Sheriffs in their Chariots, to the lower End of the *Minories*, where they were met by their Officers, who marched before them till they came over-against the Victualling-Office, where they stood, and then the Under-Sheriffs went down to the *East-Gate* of the Tower, which is next to *Iron-Gate*, when getting out of the Coach, they went up to the Gate, and seeing the Warders thro' the Gate, they demanded Admittance to the Lieut. Governor of the Tower; upon which the Gate was opened, and they went in, and in about ten Minutes returned, and went into the Mourning-Coach again, which waited for them; and in a short time after, the Prisoner was brought in a Landau, out at the *East-Gate*, and then the Procession began as follows; First, the Sheriffs Officers, then the Mourning-Coach in which were the two Under-Sheriffs with their Wands; then the Landau with the Prisoner, and the Officers of the Tower who had him in Custody; the Landau was guarded by a party of Foot-Guards with their Bayonets fixed. Thus they proceeded up *Little Tower-Hill*, till they came over-against the Victualling-Office, where the Sheriffs waited to receive him; and where the Prisoner got out of the Landau, and was put into the Mourning-Coach, which carried him about 100 Yards further, to a Booth built on purpose to repose himself in, and hung with Black, at the Foot of the Stairs of the Scaffold. When he got out of the Landau, seeing some Gentlemen he knew, he paid his Compliments in a very genteel Manner, and smiled, and coming to the Side of the Mourning-Coach, he asked the Officers who stood to wait, whether he was to go in there? And being answered that he was, he only said, *It is well*, and stepped in directly. Being come to the Booth, attended with the Sheriffs, he said there about ten Minutes, which he spent chiefly in his Devotions, speaking but very little to any body. He then walked up upon the Scaffold with great Calmness, being dressed in a Scarlet Coat, with Gold Buttons, the Sleeves faced with black Velvet, Scarlet Waistcoat trimmed with Gold Lace, a Scarlet Pair of Breeches, and white Silk Stockings, and his Hat with a white Feather round it. He soon asked for the Executioner, who coming to him, he took a Parcel of Gold out of his Pocket, and gave it him, saying, *I am but a poor Man, there's ten Guineas for you; if I had more I would give it you; and I desire you to do your Execution so as to put me to the least Mifery you can.* He then kneeled

down before the Block, and putting his Hands together, made a short Prayer, when two of the Warders of the Tower came to him, one of each Side of him; one of them took off his Wig, and the other put a white Cap upon his Head; and then the unhappy Criminal rose upon his Legs, and with their Assistance pulled off his Coat and Waistcoat. He then turned about and took his Leave, in a respectful Manner, of the Sheriffs, and then untied the Collar of his Shirt, which was fastened with a black Ribbon, and began to tuck the Collar of his Shirt down; but not being able to reach far enough behind, he desired the Executioner to do it for him; which he did accordingly. Then, after saying a short Prayer to himself, and crossing himself several Times, he laid his Head down upon the Block; and desired the Executioner to strike far enough, adding these his last Words, *When I spread my Hands thus, do you take my Head off.* Which Signal he gave in less than half a Minute, when one Stroke of the Axe sever'd his Head, except a Bit of Skin, which was cut asunder at two or three Chops. The Body then fell down upon the Scaffold; and the Executioner searching his Pockets, found half a Guinea, a Silver Crucifix, and his Beads. Four Undertaker's-Men stood ready with a Piece of red Bays to receive the Head as it fell off, and the Body and Head were put into the

Coffin, and conveyed in a Hearse, to the *Nags-Head*, in *Gray's-Inn-Lane*, and soon after interr'd at *St. Giles's in the Fields*.

Thus fell this unhappy Man, aged 53, 30 Years within three Days after his Escape out of *Newgate*, Part of which Time he spent with the Pretender in *Italy*, but the greatest part in *France*, where he married the Lady *Newburgh*, Relict of *Levingston*, Lord *Newburgh*, a Scots Nobleman, by whom he had a Son, who was some time Prisoner with him in the Tower, and thought at first to be the Pretender's younger Son: He was the youngest Brother of *James Earl of Derwentwater*, who was beheaded in 1716, they both being taken at *Preston*. They were the Sons of Sir *Francis Ratcliffe*, by the Lady *Mary Tudor*, natural Daughter to *K. Charles II.* by Mrs. *Mary Davis*.

Mr. *Ratcliffe* behaved with much more Decency at his Execution, than at the Bar of the *King's-Bench*, when the only Trial was, whether he was the same Person who was condemned for the Rebellion in 1715, and made his Escape out of *Newgate*: For there he behaved himself in an insolent Manner, which did him no Service: But at his Execution he was calm and sedate, and suffered with much Composure and Resignation.

XL. Proceedings against ÆNEAS MACDONALD, alias ANGUS MACDONALD, at St. Margaret's Hill, Southwark, December 10, 1747, and at the Court of King's-Bench, Easter Term, 21 Geo. II*.

IN the Year 1747, a Bill of Indictment was found against him under the special Commission in *Surry* for the Share he had in the late Rebellion. The Indictment ran in the same Form as those against the other Prisoners, without any Averment that he was in Custody before the first of January 1746. But the Counsel for the Crown were aware of the Exception taken in the Case of Mr. *Townley* and others, and that since the whole Proceeding against the Prisoner was subsequent to January 1746, the Answer then given would not serve the present Case. That Bill was therefore withdrawn before the Prisoner pleaded to it: And a new Bill, concluding with an Averment that he was apprehended † and in Custody before the first of January 1746, was preferred and found against him. On that Bill he was arraigned in July 1747, and his Trial came on the 10th of December following.

The Overt Acts charged in the Indictment were sufficiently proved. And also that the Prisoner was apprehended and in Custody before the first of January 1746.

The Counsel for the Prisoner insisted that he was born in the Dominions of the French King, and on this Point they put his Defence.

But apprehending that the Weight of the Evidence might be against them, as indeed it was, with regard to the Place of the Prisoner's Birth, they endeavoured to captivate the Jury and Bystanders, by representing the great Hardship of a Prosecution of this kind against a Person, who, admitting him to be a Native of Great Britain, had received his Education from his early Infancy in France; had spent his riper Years in a profitable Employment in that Kingdom, where all his Hopes centered. And speaking of the Doctrine of natural Allegiance, they represented it as a slavish Principle, not likely to prevail in these Times; especially as it seemed to derogate from the Principles of the Revolution.

Here the Court interposed and declared, that the mentioning the Case of the Revolution as a Case any way similar to that of the Prisoner, supposing him to have been born in Great Britain, can serve no Purpose but to bring an Odium on that Great and Glorious Transaction. It never was doubted that a Subject born, taking a Commission from a Foreign Prince, and committing High Treason, may be punished as a Subject for that Treason, notwithstanding his Foreign Commission. (*Dyer*. 298. 300. 1 *Hale*, 68. 66.) It was so ruled in *Doctor Storey's Case*: And that Case was never yet denied to be Law. It is not in the Power of any private Subject to shake off his Allegiance, and to transfer it to a foreign Prince. Nor is it in the Power of any Foreign Prince by Naturalizing or employing a Subject of Great Britain, to dissolve the Bond of Allegiance between that Subject and the Crown.

However, as the Prisoner's Counsel had mentioned his French Commission as a Circumstance tending in their Opinion to prove his Birth in France, the Court permitted it to be read, the Attorney-General consenting. It was dated the first of June 1745, and appointed the Prisoner Commissary of the Troops of France, which were then intended to embark for Scotland.

The Court, with the Consent of the Counsel for the Crown, permitted the Cartel between France and Great Britain for the Exchange or Ransom of Prisoners likewise to be read. And observed, that as it relateth barely to the Exchange or Ransom of Prisoners of War, it can never extend to the Case of the Prisoner at the Bar, supposing him to be a Subject born. Because by the Laws of all Nations, Subjects taken in Arms against their lawful Prince, are not considered as Prisoners of War, but as Rebels; and are liable to the Punishments ordinarily inflicted on Rebels.

Lord Chief Justice *Lee* in his Direction to the Jury, told them that the Overt Acts laid in the Indictment being fully proved, and not denied by the Prisoner, or rather admitted by his Defence, the only Fact they had to try was, whether he was a Native of Great Britain? If so, he must be found Guilty. And as to that Point, he said the Presumption in all Cases of this Kind is against the Prisoner; and the Proof of his Birth out of the King's Dominions, where the Prisoner putteth his Defence on that Issue, lieth upon him. But whether the Evidence that had been given in the present Case (which he summed up very minutely) did or did not amount to such Proof he left to their Consideration.

The Jury found him Guilty, but recommended him to Mercy. He received Sentence of Death as in Cases of High Treason; but was afterwards pardoned upon the Conditions mentioned afterwards.

Macdonald at the Suit of Ramsay.

While Mr. *Macdonald* lay under Sentence of Death, a Creditor of his, — *Ramsay*, obtained Leave from my Lord Chief Justice at his Chambers to charge him in Custody of the Sheriff, in an Action for a considerable Sum of Money; and accordingly he was so charged.

In Easter-Term, the 21st of the King, Mr. Attorney General acquainted the Court, that his Majesty had given Orders for preparing a Pardon for Mr. *Macdonald* to pass the Great Seal, upon Condition of his retiring out of his Majesty's Dominions, and continuing abroad during his Life. And that one of the Secretaries of State had sent his Warrant to the Keeper of the New Prison to deliver Mr. *Macdonald* into the Custody of a Messenger; but that the Keeper refused to obey this Warrant, alledging, that as his Prisoner stood charged in an Action at the Suit of Mr. *Ramsay*, he could not deliver him into the Custody of a Messenger without incurring the Danger of an Escape. Mr. Attorney concluded with a Motion, that the Process Mr. *Macdonald* stood charged with at the Plaintiff's Suit might be discharged.

He was supported in this Motion by Sir *John Strange* and the Solicitor General. It was said by Mr. Attorney, but not strongly insisted on, that a Person under an Attainder is *civiliter mortuus*; his Person and Estate are absolutely at the Disposal of the Crown; and consequently he is not liable to Civil Suits. And to this Purpose he cited *Trusell's Case*. (1 *Leon*. 326. *Cro. Eliz*. 213.)

To this Point Mr. *Henley* and Mr. *Ford* for the Plaintiff insisted, and so the Court agreed, that the later Resolutions have been, and the Law hath been long settled, that an attainted Person is liable to Civil Suits: but by the Rules of the Court he ought not to be charged, without Leave of the Court, or of a Judge at his Chambers.

The Point reported by *Leonard* and *Croke* to have been adjudged in *Trusell's Case* came afterwards under Consideration in Actions brought by other Persons against that very *Mun* (*Co. Ent*. 246. a. b. *Cro. Eliz*. 516. *Co. Ent*. 248. 2 *Ann*. 38. *Moo*. 753. 3. *Inst*. 215.) and was ruled quite otherwise.

The Point chiefly insisted on by the Counsel on the Side of the Motion was, that to charge the Defendant in this Case, so as to make his Person liable, would be a Means of defeating the King's Pardon; because he would be thereby disabled to comply with the Terms of it. It would be in effect saying, that his Majesty shall not grant a Pardon on these Conditions, he shall pardon absolutely, or not at all.

To this Purpose they cited *Foxworthy's Case*, reported in *Salk*. 500. 2. *Ld. Raym*. 848. *Far*. 153. And the Case of *Coppin* and *Gunner* in 2. *Ld. Raym*. 1572.

But the Court said, We cannot judicially take notice of his Majesty's Intentions touching the Pardon. The Crown, in case of Pardons, signifieth its Pleasure finally and irrevocably by the Great Seal, and by that alone. A Pardon may not pass at all, or it may be upon other Conditions than are suggested at the Bar, or it may be a free Pardon. And therefore till the Pardon is passed, it is too early for the Court to give any Opinion upon the main Question. Accordingly the Court gave no Opinion; and Mr. Attorney took nothing by his Motion †.

Mr. *Macdonald* having afterwards made his Creditor Mr. *Ramsay* easy with regard to his Debt, the Action was withdrawn. And he was in December 1749, delivered into the Custody of a Messenger by virtue of a Warrant for that Purpose from the Duke of *Newcastle*, one of his Majesty's Principal Secretaries of State.

N. B. The Person of a Man under an Attainder is not absolutely at the Disposal of the Crown. It is so for the Ends of publick Justice, and for no other Purpose. The King may order Execution to be done upon him according to Law, notwithstanding he may be charged in Custody at the Suit of Creditors. But till Execution is done, his Creditors have an Interest in his Person for securing their Debts. (6 *H. IV*. 6. b. 7. a.) And he himself as long as he liveth, (*Crom*. 113. a.) is under the Protection of the Law. To kill him without Warrant of Law is Murder; for which the Murderer is liable to a Prosecution at the Suit of the Crown, and likewise to an Appeal (*Bro. Appeal* 5.) at the Suit of the Widow: For though his Heir is barred by the Attainder, which corrupteth his Blood, and dissolveth all Relations grounded on Consanguinity, yet the Relation grounded on the matrimonial Contract continueth till Death.

* *Foster's Reports*, p. 59.

† N. B. The Rule in *Foxworthy's Case* seems to have been over-hasty, and the Reasons on which it is grounded appear to me to be inconclusive: That in *Coppin* and *Gunner* seems more equitable; since it secured to the Defendant the Benefit of his Pardon, without Prejudice to the Plaintiff, who might resort for Satisfaction to the Effects of the Defendant, if he could find any.

And if a Person under an Attainder be beat or maimed, or a Woman in the like Circumstances ravished, they may, after a Pardon, maintain an Action or Appeal, as their Cases respectively may require (3. Inst. 215.) And though before a Pardon they are disabled to sue in their own Names, I make no doubt that they are intitled to prosecute, according to the Nature of their respective Cases in the Name of the King; who will do equal Right to all his Subjects.

N. B. During the Trials of the Rebels at St. Margaret's Hill, Southwark, under the Commission of 1746, one of the Prisoners challenged peremptorily, and for Cause, so many of the Jurors, that there was not a sufficient Number left on the Pannel to proceed on his Trial. In that Case the Court, *ore tenus*, (for it was, as hath been already observed, a Commission of Goal Delivery as well as of Oyer and Terminer) ordered a new Pannel, and adjourned for several Days. On the Day of Adjournment the Sheriff returned a Pannel of the same Jurors that had served through the whole Proceeding, those who had been challenged by the Prisoner, or sworn before, included. And a sufficient Number appearing, he was tried.

The like Case happened on the Trial of one of the Assassins in King William's Time. (IV. State Trials, 728. to 733) Mr. Cook on the 9th of May challenged in the like manner 'till the Jurors remaining on the Pannel were not sufficient to make a full Jury; whereupon the Court, *ore tenus*, ordered a new Pannel, and adjourned to the 14th. On that Day his Counsel insisted that a new Pannel ought not to have been or-

dered; but that an *Habeas Corpora* with a *Tales* should have been awarded, according to the Opinion in *Stanford* (f. 155). But the Court declared, that this being a Proceeding under a Commission of Goal Delivery as well as Oyer and Terminer, they might, and indeed always do in the like Case, award a new Pannel if necessary, *ore tenus*, without Writ or Precept.

In a mere Commission of Oyer and Terminer no Pannel is ordered 'till the Defendant hath pleaded to Issue, and Issue is actually joined; and then it is done by Precept in the Nature of a *Venire*. And if in such Case there should be a Want of Jurors, an *Habeas Corpora* with a *Tales* may, said the Court, possibly issue; but no *Tales* can be granted upon a Commission of Goal Delivery. And Mr. Justice Powell upon that Occasion said, that if the Sheriff had returned all new Men without regard to those who appeared and were sworn or challenged on the 9th, it had been well enough.

The Reason of the Adjournments in these Cases was, that the Prisoners might have Copies of the new Pannels in due Time, pursuant to the 7th of King William; otherwise new Pannels might have been ordered returnable *instantly*.

The original Pannel in 1746 was upon great Deliberation ordered, sitting the Court, *ore tenus*, as under the Commission of Goal Delivery; though, as I have already observed, a Precept in common Form for holding the Sessions had issued under the Seals of the three Chiefs and three senior Judges.

XLI. The Whole Proceedings in the House of Peers, upon the Indictments against WILLIAM Earl of KILMARNOCK, GEORGE Earl of CROMERTIE, and ARTHUR Lord BALMERINO, for High-Treason, in Levying War against his Majesty: Begun on Monday the 28th Day of July, and continued on Wednesday the 30th of July, and Friday the First of August, 1746.

Die Martis, 24^o Junii, 1746.

THE Duke of Newcastle, by His Majesty's Command, acquainted the House, That Bills of Indictment of High-Treason were Yesterday found, by the Grand Jury of the County of Surrey, against William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino.

Ordered, That the said Indictments be removed before this House by *Certiorari*: And that a Writ or Writs of *Certiorari* be issued for that Purpose.

Then a Committee was appointed to inspect the Journals of this House upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring the Lords above named to a speedy Trial: And to report to the House, What they shall think proper thereupon.

Their Lordships, or any Five of them, to meet To-morrow, at the usual Time and Place; and to adjourn as they please.

Ordered, That the Lord Chief Justice of the Court of King's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, do attend the said Committee.

Die Jovis, 26^o Junii, 1746.

THE House being informed, That the Writ of *Certiorari*, issued for removing the Indictments of High-Treason, found by the Grand Jury of Surrey against William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, was brought into the House;

The said Writ, Return thereof, and Indictments, were read.

The Lord Monson acquainted the House, That the Committee appointed to inspect their Lordships Journals upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring the Lords abovementioned to a speedy Trial, had agreed upon a Report: Which they had directed him to make to the House, when their Lordships will please to receive the same.

Ordered, That the said Report be received To-morrow; and the Lords to be summoned.

Die Veneris, 27^o Junii, 1746.

THE Lord Monson (according to Order) reported, from the Lords Committees appointed to inspect the Journals of this House upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, lately indicted of High-Treason, to a speedy Trial; That the Committee have met, and inspected the Journals of this House, in relation to the Trials of Peers in Capital Cases; and were attended by the Lord Chief Justice of the Court of King's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer: And having heard the said Judges upon the Construction of the Act of the Seventh and Eighth Year of King William the Third, intituled, *An Act for regulating Trials in Cases of Treason, and Misprision of Treason*, and considered the Matter to them referred, have come to the following Resolution, viz.

I. That it is the Opinion of this Committee, That, by virtue of the said Act, upon the Trial of any Peer or Peeres in any of the Cases of Treason, or Misprision of Treason, within that Act, all the Peers, who have a Right to sit and vote in Parliament, ought to be summoned Twenty Days at least before every such Trial, to appear at such Trial.

II. That it is the Opinion of this Committee, That such Summons ought to be by Order of this House, requiring, That every Peer, who hath a Right to sit and vote in Parliament, do appear at, and attend such Trial; and by Letters, to be wrote by the Lord Chancellor, or Speaker of the House for the Time being, to each particular Peer: And that such Order of the House be fixed upon the Doors of this House, and of Westminster-Hall; and also be published in the *London Gazette*, at least Twenty Days before such Trial; and that such Letters be sent at least Twenty Days before such Trial.

III. That it appearing to this Committee, That the antient and usual Method of summoning the Lords to attend upon Trials of Peers in Capital Cases, in Parliament, has been, by sending the Letters of Summons, to such Lords as are not in Town, by the Post; it is the Opinion of this Committee, That the Letters, to such Lords as are not in Town, be sent by the Post, according to the antient Usage.

IV. That it is the Opinion of this Committee, That the House be moved to resolve and declare, That such Order, so fixed up and published as abovementioned, and such Letters, so sent as abovementioned, are a due Summons of the Peers in Cases of Trials during the Sitting of Parliament, within the true Intent and Meaning of the said Act of the Seventh and Eighth of King William the Third.

V. That it is the Opinion of this Committee, That every Lord, before he shall sit or vote upon such Trial, ought to take the Oaths, and make and subscribe the Declaration required by Law to be taken and subscribed by Lords, in order to their Sitting and Voting in Parliament.

VI. That it is the Opinion of this Committee, That, in the Letters to be wrote, pursuant to the Resolutions abovementioned, Notice be taken, that the Lords are summoned, pursuant to the said Act of the Seventh and Eighth Year of King William the Third; and that their Attendance is required at such Trial, upon Pain of incurring the utmost Displeasure of the House; and that, in case the Lord, to whom any such Letter is directed, shall be incapable of attending, by reason of Sickness, or other Disability, he do send Two Witnesses to attest the same upon Oath.

Then the said Report was read by the Clerk.

And the Three First Resolutions, being read a Second time, were severally agreed to by the House; and ordered accordingly.

And the Fourth Resolution being read, the House was moved pursuant to the Direction of the Committee.

And thereupon,

Resolved and Declared, That the Order for the Attendance of the Peers, who have a Right to sit and vote in Parliament, fixed up and published as abovementioned, and such Letters wrote by the Lord Chancellor, or Speaker of this House, and sent as aforesaid, are a due Summons of the Peers in Cases of Trials during the Sitting of Parliament, within the true Intent and Meaning of the said Act of the Seventh and Eighth Year of King William the Third.

Then the Two last Resolutions being read a Second time, were severally agreed to by the House; and ordered accordingly.

Ordered, That William Earl of Kilmarnock be tried on Monday the Twenty-eighth of July next, at Nine of the Clock in the Morning, upon the Bill of Indictment for High-Treason found against him: And that George Earl of Cromertie be tried on the same Day, at Ten of the Clock in the Forenoon, upon the Bill of Indictment for High-Treason found against him: And that Arthur Lord Balmerino be tried on the same Day, at Eleven of the Clock in the Forenoon, upon the Bill of Indictment for High-Treason found against him.

Ordered, That the Trials of the said Peers be had in Westminster-Hall.

Ordered, That an humble Address be presented to his Majesty, to acquaint his Majesty, That this House hath appointed the Trials of William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, to begin, in Westminster-Hall, on Monday the Twenty-eighth Day of July next; and humbly to desire, That his Majesty will be graciously pleased to give Orders, That a Place be prepared in the said Hall for the said Trials; and also to appoint a Lord High Steward, to continue during the said Trials.

Ordered, That the said Address be presented to his Majesty by the Lords with White Staves.

Ordered, That every Peer, who hath a Right to sit and vote in Parliament, do appear at, and attend, the said Trials: And that this Order be affixed on the Doors of this House, and of Westminster-Hall; and also be printed and published in the *London Gazette*, at least Twenty Days before the said Trials.

Ordered, That the Lord Chancellor do write Letters to all the Peers, requiring their Appearance and Attendance at the said Trials, pursuant to the Directions contained in the foregoing Report.

Die Lunæ, 30^o Julii, 1746.

THE Lord Chamberlain reported, That the Lords with White Staves had, according to Order, presented to his Majesty the Address of this House Yesterday, for a Place to be prepared in *Westminster-Hall*, for the Trials of the Peers indicted of High-Treason, and for the Appointment of a Lord High Steward: And that his Majesty was pleased to say, He would give Orders accordingly.

Die Lunæ, 7^o Julii, 1746.

UPON reading the Petition of *William Earl of Kilmarnock*, now a Prisoner in the *Tower of London*, praying, in regard he has Notice given him, that his Trial is appointed upon the Twenty-eighth Day of this present *July*, That their Lordships will please to appoint Mr. *George Ross* to be his Solicitor;

It is *Ordered*, That the said *George Ross* be assigned Solicitor for the Petitioner, as desired; and that he may have Access to him at all seasonable Times.

Upon reading the Petition of *George Earl of Cromartie*, now a Prisoner in the *Tower of London*, praying, That this House will be pleased to appoint Mr. *Adam Gordon*, Attorney at Law, to be his Solicitor;

It is *Ordered*, That the said *Adam Gordon* be assigned Solicitor for the Petitioner, as desired; and that he may have Access to him at all seasonable Times.

Die Martis, 8^o Julii, 1746.

THE Lord *Monson* reported from the Lords Committees appointed to inspect the Journals of this House, upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding, in order to bring *William Earl of Kilmarnock*, *George Earl of Cromartie*, and *Arthur Lord Balmerino*, lately indicted of High-Treason, to a speedy Trial, That they had again met, and taken into further Consideration the Matter to them referred; and were come to the following Resolutions; viz.

That it is the Opinion of the Committee, That all the Lords, who shall attend the said Trials, do attend the House, to take the Oaths, in order to their Sitting and Voting upon such Trials, on the *Thursday* and *Friday* next preceding the Day appointed for the said Trials.

That it is the Opinion of the Committee, That the said Resolution be printed and published in the *London Gazette*.

Which, being read twice by the Clerk, were agreed to by the House; and ordered accordingly.

Die Mercurii, 9^o Julii, 1746.

UPON reading the Petition of *Arthur Lord Balmerino*, now a Prisoner in the *Tower of London*, praying, That this House will appoint Mr. *George Ross* to be his Solicitor;

It is *Ordered*, That the said *George Ross* be assigned Solicitor for the Petitioner, as desired; and that he may have Access to him at all seasonable Times.

Die Veneris, 11^o Julii, 1746.

ON a Report made by the Lord *Monson*, from the Committee before-mentioned:

Ordered, That the Lord High Steward be directed to acquaint the Lords to be tried, and all other Persons, who may have Occasion to speak to the Court, that they address themselves to the Lords in general, and not to the Lord High-Steward.

Die Martis, 15^o Julii, 1746.

UPON reading the Petition of *George Earl of Cromartie*, now a Prisoner in the *Tower*, praying, in regard he is informed, several Resolutions have been agreed to by this House, in order to the speedy Trials of the Petitioner, and others, that he may have Copies thereof, the Indictment found against him, the *Certiorari* for removing the same, and the Return thereof, or any other Proceedings that shall be agreed upon in relation to his Trial:

Ordered, That the Petitioner may have Copies of such Proceedings as have been had in this House concerning him; together with a Copy of the said Indictment, *Certiorari*, and Return, as desired.

Die Mercurii, 23^o Julii, 1746.

ORDERED, That the Constable of his Majesty's *Tower of London*, or the Lieutenant of the same, or his Deputy, do bring to the Bar of this House in *Westminster-Hall*, on *Monday* next, at Nine of the Clock in the Morning, the Bodies of *William Earl of Kilmarnock*, *George Earl of Cromartie*, and *Arthur Lord Balmerino*, now in his Custody; together with Copies of their respective Commitments, signed by the said Constable or Lieutenant.

Die Jovis, 24^o Julii, 1746.

THE Lord *Monson* reported, from the Lords Committees appointed to inspect the Journals of this House upon former Trials of Peers in Capital Cases; and to consider of the proper Methods of Proceeding in order to the Trials of *William Earl of Kilmarnock*, *George Earl of Cromartie*, and *Arthur Lord Balmerino*, lately indicted of High-Treason; That the Committee have taken into further Consideration the Matter to them referred; and have come to the following Resolutions (amongst others); viz.

That it is the Opinion of the Committee, That all Proclamations to be made in the Court in *Westminster-Hall*, during the said Trials, be made in the King's Name.

That it is the Opinion of the Committee, That the Three Lords, indicted of High-Treason, be brought to the Bar of the Court in *Westminster-Hall*, at the same time, in order to be arraigned.

That it is the Opinion of the Committee, That in case the Three Lords, indicted of High-Treason, should plead Guilty to their Indictments, the House be immediately adjourned to the Chamber of Parliament; but if one or more of the said Lords should plead Guilty, and the other Not guilty, in that case, the Lord or Lords so pleading Guilty be forthwith remanded, in Custody of the Chief Governor of the *Tower of*

London, to the said *Tower*; and that the Trial of the other Lord or Lords pleading Not guilty do proceed.

Which Report, being read twice by the Clerk, was agreed to by the House; and ordered accordingly.

Die Lunæ, 28^o Julii, 1746.

THE Lords met in the House of Lords in their Robes; and, after Prayers, adjourned into *Westminster-Hall*.

The First Day in *Westminster-Hall*.

ABOUT Eleven of the Clock, the Lords came from their own House into the Court erected in *Westminster-Hall*, in the Manner following:

The Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Assistant to the House of Lords; and the Clerk of the Parliament.

Clerk of the Crown in Chancery, bearing the King's Commission to the Lord High Steward; and the Clerk of the Crown in the King's-Bench.

The Masters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldest Sons, Two and Two.

Peers Minors, Two and Two.

York and *Windsor* Heralds.

Four Serjeants at Arms with their Maces, Two and Two.

The Yeoman Usher of the House.

Then the Peers, Two and Two, beginning with the youngest Baron.

Then Four Serjeants at Arms with their Maces, Two and Two.

The Serjeant at Arms attending the Great Seal, and Purse-Bearer.

Then *Garter King at Arms*, and the Gentleman Usher of the Black-Rod, carrying the White Staff before the Lord High-Steward.

Philip Lord Hardwicke, Lord High-Chancellor of *Great Britain*, Lord High Steward, alone; his Train borne.

When the Lords were placed in their proper Seats, and the Lord High-Steward upon the Wool-Pack;

The Clerk of the Crown in Chancery having his Majesty's Commission to the Lord High Steward in his Hand, and the Clerk of the Crown in the King's Bench standing before the Clerk's Table with their Faces towards the State, made Three Reverences; the First at the Table, the Second in the Midway, and the Third near the Wool-Pack; then kneeled down; and the Clerk of the Crown in Chancery, on his Knee, presented the Commission to the Lord High Steward, who delivered the same to the Clerk of the Crown in the King's-Bench to read: Then rising, they made Three Reverences, and returned to the Table. And then Proclamation was made for Silence; in this manner:

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up, uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up uncovered, while the Commission was read.

GEORGE R.

GEORGE the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth. To our Right Trusty and Well-beloved Councillor *Philip Lord Hardwicke*, Baron of *Hardwicke*, in Our County of *Gloucester*, Our Chancellor of *Great Britain*, Greeting. Know ye, That whereas *William Earl of Kilmarnock*, late of the City of *Carlisle*, in our County of *Cumberland*; *George Earl of Cromartie*, late of the Town of *Perth*, in the Shire of *Perth*; and *Arthur Lord Balmerino*, late of the said City of *Carlisle*, in Our said County of *Cumberland*; stand severally indicted before Our Justices and Commissioners, assigned and constituted by Our Letters Patent under our Great Seal of *Great Britain*, bearing Date the Fifth Day of *June*, in the Nineteenth Year of our Reign, by virtue and according to the Form of the Statute, made in this Our present Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied, or shall levy, War against His Majesty; and for the better ascertaining the Qualifications of Jurors in Trials for High-Treason, or Misprison of Treason, in that Part of Great Britain called Scotland*; made to them, and to any Three or more of them; to deliver Our Gaol of Our County of *Surry* of the Prisoners therein being, or such as shall or may be detained in the same, on or before the First Day of *January*, in the Year of our Lord One thousand Seven hundred and Forty-six, for or on Account of the High-Treason mentioned in the said Act, in levying War against Us within this Realm; and to inquire, by the Oath of good and lawful Men of the same County, of all such High-Treasons, in levying War against Us within this Realm by the said Prisoners, or any of them, or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be guilty of High-Treason, in levying War against Us within this Realm, and shall be apprehended and imprisoned for the same, on or before the said First Day of *January*, in the said Year of our Lord One thousand Seven hundred and Forty-six; and the same Treasons to hear and determine, according to the Form of the said Statute, by the Oath of Twelve Jurors, good and lawful Men of the said County of *Surry*, of High-Treason, by them the said *William Earl of Kilmarnock*, *George Earl of Cromartie*, and *Arthur Lord Balmerino*, committed and perpetrated in levying War against Us within this Realm; and considering, that Justice is an excellent Virtue, and pleasing to the Most High; and being willing that the said *William Earl of Kilmarnock*, *George Earl of Cromartie*, and *Arthur Lord Balmerino*, should be heard, examined, sentenced and adjudged before Us, in this Our present Parliament, touching and concerning the said High-Treason whereof they stand severally indicted as aforesaid; and that all other Things which are necessary in this behalf, should be in due Manner done and executed; and for that the Office of Steward of *Great Britain* (whose Presence is required upon this Occasion) is now vacant (as We are informed); We, very much confiding in your Fidelity, Prudence, provident Circumspection,

Circumspection, and Industry, have for this Cause ordained and constituted you Steward of Great Britain, to bear, execute and exercise (for this Time) the said Office, with all Things due and belonging to the same Office in this behalf: And therefore We command you, that you diligently set about the Premises, and (for this Time) do exercise, and execute with Effect, all those Things which belong to the Office of Steward of Great Britain, and which are required in this Behalf. In Witness whereof, We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the Twenty-eighth Day of July, in the Twentieth Year of Our Reign.

By the King Himself, signed with his own Hand.

Biffe.

Serjeant at Arms. God save the King.

Then Garter, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by Garter, Black Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Wool-Pack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Clerk of the Crown, by Direction of the Lord High Steward, read the *Certiorari*, and the Return thereof; together with the Captions of the Indictments, and the Indictments certified thereupon, against the Earl of Kilmarnock, the Earl of Cromertie, and the Lord Balmerino, in *hac verba*:

The *Certiorari* } **G**EORGE the Second, by the Grace of God, of and Return. } Great Britain, France, and Ireland, King, Defender of the Faith, To Our Justices and Commissioners assigned and constituted by Our Letters Patent under our Great Seal of Great Britain, made to them, and to any Three or more of them, to deliver Our Gaol of Our County of Surry of the Prisoners therein being, or such as shall or may be detained in the same, on or before the First Day of January, in the Year of Our Lord One thousand Seven hundred and Forty-six, for or on Account of the High-Treason mentioned in the Statute made in this Our present Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied, or shall levy War against his Majesty; and for the better ascertaining the Qualifications of Jurors in Trials for High-Treason, or Misprision of Treason, in that Part of Great Britain called Scotland*, in levying War against Us within this Realm; and to enquire, by the Oath of good and lawful Men of the same County, of all such High-Treasons, in levying War against Us within this Realm, by the said Prisoners, or any of them, or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be guilty of High-Treason in levying War against Us within this Realm, and shall be apprehended and imprisoned for the same, on or before the said First Day of January, in the said Year of our Lord One thousand Seven hundred and Forty-six, and the same Treasons to hear and determine, according to the Form of the said Statute, and to every of them, Greeting. We command you, and every of you, that all and singular Indictments for High-Treason, in levying War against Us within this Realm, whereof William Earl of Kilmarnock, late of the City of Carlisle, in the County of Cumberland; Arthur Lord Balmerino, late of the same Place; and George Earl of Cromertie, late of the Town of Perth, in the Shire of Perth; stand severally indicted before you in our said County of Surry; which said Indictments now remain in your Power, or in the Power of some or one of you, with all Things touching the same, as fully and perfectly as the same were taken before you, by what names, Stiles or Titles soever the said William Earl of Kilmarnock, Arthur Lord Balmerino, and George Earl of Cromertie, may be called or distinguished in the same, you do, without Delay, deliver, under your Seals, or the Seals or Seal of some or one of you, to Us, in this Our present Parliament, together with this Writ. Witness Ourselves at Westminster, the Twenty-fifth Day of June, in the Twentieth Year of Our Reign.

Biffe.

Return. } **B**Y virtue of this Writ to us, and others, our Fellows, directed, we do deliver the within-mentioned Indictments for High-Treason; whereof the within named William Earl of Kilmarnock, Arthur Lord Balmerino, and George Earl of Cromertie, stand severally indicted; which said Indictments lately remained before us, and others our Fellows, but are now annexed to this Writ, with all Things touching the same, as fully and perfectly as the same were lately taken before us, and others our Fellows; to our present Sovereign Lord the King, in this present Parliament; together with this Writ, according to the Form of the said Writ, as we are within commanded.

The Answer of Sir William Lee, Knight; Sir John Willes, Knight; and Sir Thomas Parker, Knight; Three of the Justices and Commissioners within mentioned.

W. Lee.
J. Willes.
T. Parker.

Surry. } **B**E it remembered, That at a Special Sessions of Oyer and Terminer, and Gaol-delivery, of our Sovereign Lord the King, of and for the County of Surry, holden at the Borough of Southwark, in the said County, on Monday the Twenty-third Day of June, in the Twentieth Year of the Reign of our said present Sovereign Lord George the Second, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, before Sir William Lee, Knight, Chief Justice of our said present Sovereign Lord the King, appointed to hold Pleas before the King himself; Sir John Willes, Knight, Chief Justice of the Court of Common-Pleas; Sir Martin Wright, Knight, one of

the Justices appointed to hold Pleas before the King himself; Sir James Reynolds, Knight, one of the Barons of the Court of Exchequer; Sir Thomas Abney, Knight, one of the Justices of the said Court of Common Pleas; Sir Thomas Burnet, Knight, one other of the Justices of the said Court of Common Pleas; Charles Clarke, Esquire, one other of the Barons of the said Court of Exchequer; Edward Clive, Esquire, one other of the Barons of the said Court of Exchequer; Sir Thomas Deveil, Knight, and Peter Theobald, Esquire, and others their Fellows, Justices, and Commissioners of our said present Sovereign Lord the King, assigned by Letters Patent of our said present Sovereign Lord the King, under his Great Seal of Great Britain, made by virtue of the Statute made in this present Parliament, intituled, *An Act for the more easy and speedy Trial of such Persons as have levied, or shall levy War against his Majesty; and for the better ascertaining the Qualifications of Jurors in Trials for High-Treason, or Misprision of Treason, in that Part of Great Britain called Scotland*, to the said Justices and Commissioners above named, and others, and to any Three or more of them (of whom our said present Sovereign Lord the King willed, That any of them the said Sir William Lee, Sir John Willes, Sir Martin Wright, Sir James Reynolds, Sir Thomas Abney, Sir Thomas Burnet, Charles Clarke, Edward Clive, and Sir Thomas Deveil, and others, in the same Letters Patent named and appointed, should be one), to deliver the Gaol of the said County of the Prisoners therein being, or such as shall or may be detained in the same on or before the First Day of January, in the Year of our Lord 1746, for or on Account of the High-Treason mentioned in the said Statute, in levying War against our said present Sovereign Lord the King within this Realm; and to inquire, by the Oath of good and lawful Men of the same County, of all such High-Treasons in levying War against our said present Sovereign Lord the King, within this Realm, by the said Prisoners, or any of them; or by any other Person or Persons who are now in actual Custody for or on Account of the same, or who are or shall be guilty of High-Treason, in levying War against our said present Sovereign Lord the King, within this Realm, and shall be apprehended and imprisoned for the same on or before the First Day of January, in the said Year of our Lord 1746; and the same High-Treasons to hear and determine according to the Form of the said Statute, by the Oath of Sir William Richardson, of Bermondsey, Knight; Sir Abraham Shard, of Kennington, Knight; Sir Thomas Hankey, of Clapham, Knight; Sir Peter Thompson, of Bermondsey, Knight; Josias Wordsworth, of Adcombe, Esquire; Percival Lewis, of Putney, Esquire; Samuel Atkinson, of Croydon, Esquire; John Copeland, of Camberwell, Esquire; Charles Hoskins, of Croydon, Esquire; Joseph Creswick, of Stratham, Esquire; William Clarke, of Southwark, Esquire; Joseph Willoughby, of Croydon, Esquire; Thomas Bevois, of Bermondsey, Esquire; Elias Bird, of Rotherhithe, Esquire; Thomas Tarrant, of Southwark, Esquire; Edward Stevens, of Southwark, Esquire; Henry Robinson, of Wandsworth, Esquire; John Heathfield, of Croydon, Esquire; Nathaniel Green, of Southwark, Esquire; Isaac Eeles, of Lambeth, Esquire; John Smith, of Lambeth, Esquire; Hammett Richardson, of Bermondsey, Esquire; and Samuel Nicholson, of Croydon, Esquire; good and lawful Men of the said County, being then and there sworn, and charged to inquire for our said present Sovereign Lord the King, touching and concerning the Premises in the said Letters Patent mentioned; it is presented, that the Bill of Indictment, to this Schedule annexed, is a true Bill.

Surry. } **T**HE Jurors for our present Sovereign Lord the King, upon their Oath, present, That William Earl of Kilmarnock, late of the City of Carlisle, in the County of Cumberland, being a Subject of our said present most Serene Sovereign Lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, and not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, entirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right ought to, bear towards our said present Sovereign Lord the King; and also devising, and, as much as in him lay, most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King; and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom; and also to put and bring our said present Sovereign Lord the King to Death, and final Destruction; and to raise and exalt the Person pretended to be the Prince of Wales during the Life of James the Second, late King of England, and so forth; and, since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of, King of England, by the Name of James the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the Tenth Day of November, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of Carlisle aforesaid, in the County of Cumberland aforesaid, with a great Multitude of Traitors and Rebels against our said present Sovereign Lord the King, to wit, to the Number of Three thousand Persons, whose Names are as yet unknown to the said Jurors, being armed and arrayed in a warlike and hostile Manner, to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms did falsely and traitorously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsely and traitorously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traitorous Intentions and Purposes aforesaid, did falsely and traitorously prepare, order, wage, and levy, a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and

Arms did, with the said Traitors and Rebels so assembled, armed and arrayed, as aforesaid, falsely and traitorously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said City of Carlisle, and the Castle thereto belonging within the same City (the said City and Castle being a City and Castle of our said present Sovereign Lord the King); and the said City and Castle, with Force and Arms, then and there did falsely and traitorously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, David Gray, Hugh Douglass,
John Vere, Samuel Maddock;
James Barclay, Charles Campbell, Esquire.
Sworn in Court.

A true Bill.

The Caption of the Indictment against George Earl of Cromertie was read, in the like Form as that against William Earl of Kilmarnock; and then followed the Indictment; viz.

Surry. } THE Jurors for our present Sovereign Lord the King, upon their Oath, present, That George Earl of Cromertie, late of the Town of Perth, in the Shire of Perth, being a Subject of our said present most Serene Sovereign Lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, intirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right ought to bear towards our said present Sovereign Lord the King; and also devising, and, as much as in him lay, most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King, and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom, and also to put and bring our said present Sovereign Lord the King to Death and final Destruction, and to raise and exalt the Person pretended to be Prince of Wales, during the Life of James the Second, late King of England, and so forth, and since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of, King of England, by the Name of James the Third, to the Crown, and to the Royal State and Dignity of Kings, and to the Imperial Rule and Government of this Kingdom, upon the First Day of December, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the Town of Perth aforesaid, in the Shire of Perth aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King; to wit, to the Number of a Thousand Persons, whose Names are, as yet, unknown to the said Jurors, being armed, and arrayed in a warlike and hostile Manner; to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsely and traitorously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsely and traitorously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traitorous Intentions and Purposes aforesaid, did falsely and traitorously prepare, order, wage, and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms, did, with the said Traitors and Rebels, so assembled, armed, and arrayed, as aforesaid, falsely and traitorously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said Town of Perth (the said Town of Perth being a Town of our said present Sovereign Lord the King), and the said Town of Perth, with Force and Arms, then and there did falsely and traitorously possess, hold, keep, maintain, and defend against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, Hugh Ross,
David Gray,
John McKay,
James Logie.
Sworn in Court.

A true Bill.

The Caption of the Indictment against Arthur Lord Balmerino was read in the like Form as that against William Earl of Kilmarnock; and then followed the Indictment; viz.

Surry. } THE Jurors for our present Sovereign Lord the King, upon their Oath, present, That Arthur Lord Balmerino, late of the City of Carlisle, in the County of Cumberland, being a Subject of our said present most Serene Sovereign Lord George the Second, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, not having the Fear of God in his Heart, nor having any Regard for the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traitor and Rebel against our said present Sovereign Lord the King, his supreme, true, natural, lawful, and undoubted Sovereign Lord, intirely withdrawing that cordial Love, and that true and due Obedience, Fidelity, and Allegiance, which every Subject of our said present Sovereign Lord the King should, and of Right ought to bear towards our said present Sovereign Lord the King; and also

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devising (as much as in him lay) and most wickedly and traitorously intending to change and subvert the Rule and Government of this Kingdom, duly and happily established under our said present Sovereign Lord the King; and also to depose and deprive our said present Sovereign Lord the King of his Title, Honour, and Royal State, and of his Imperial Rule and Government of this Kingdom; and also to put and bring our said present Sovereign Lord the King to Death and final Destruction; and to raise and exalt the Person pretended to be Prince of Wales, during the Life of James the Second, late King of England, and so forth, and since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, and to the Royal State and Dignity of King, and to the Imperial Rule and Government of this Kingdom, upon the Tenth Day of November, in the Nineteenth Year of the Reign of our said present Sovereign Lord the King, at the City of Carlisle aforesaid, in the County of Cumberland aforesaid, with a great Multitude of Traitors and Rebels, against our said present Sovereign Lord the King; to wit, to the Number of Three Thousand Persons (whose Names are, as yet, unknown to the said Jurors); being armed and arrayed in a warlike and hostile Manner; to wit, with Colours displayed, Drums beating, Pipes playing, and with Swords, Clubs, Guns, Pistols, and divers other Weapons, as well offensive as defensive, with Force and Arms, did falsely and traitorously assemble and join himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, did falsely and traitorously, and in a warlike and hostile Manner, array and dispose himself against our said present Sovereign Lord the King; and then and there, with Force and Arms, in Pursuance and Execution of such his wicked and traitorous Intentions and Purposes aforesaid, did falsely and traitorously prepare, order, wage, and levy a publick and cruel War against our said present Sovereign Lord the King, then and there committing and perpetrating a miserable and cruel Slaughter of and amongst the faithful Subjects of our said present Sovereign Lord the King; and also then and there, during the said War, with Force and Arms, did, with the said Traitors and Rebels, so assembled, armed, and arrayed, as aforesaid, falsely and traitorously, against the Will of our said present Sovereign Lord the King, enter into, and take Possession of, the said City of Carlisle, and the Castle thereto belonging within the same City (the said City and Castle being a City and Castle of our said present Sovereign Lord the King), and the said City and Castle, with Force and Arms, then and there did falsely and traitorously possess, hold, keep, maintain, and defend, against our said present Sovereign Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

Witnesses, Hugh Douglass,
John Vere,
James Barclay,
David Gray,
James Logie.
Sworn in Court.

A true Bill.

Lord High Steward. Is it your Lordships Pleasure that the Judges have Leave to be covered?

Lords. Ay, ay.

Clerk of the Crown. Serjeant at Arms, make Proclamation for the Lieutenant of the Tower to bring his Prisoners to the Bar.

Serjeant at Arms. Oyes, oyes, oyes! Lieutenant of the Tower of London, bring forth your Prisoners, William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, to the Bar, together with Copies of their respective Commitments, pursuant to the Order of the House of Lords.

Then William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, were all brought to the Bar, by the Deputy-Governor of the Tower, having the Ax carried before them by the Gentleman-Gaoler, who stood with it, on the left Hand of the Prisoners, with the Edge turned from them. The Prisoners, when they approached the Bar, made three Reverences; and then fell upon their Knees at the Bar. The Deputy-Governor of the Tower also delivered in the Copy of the Commitment.

Lord High Steward. Your Lordships may rise.

Then the Prisoners rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers; which Compliment was returned them by his Grace, and the Lords.

L. H. S. Let the Copy of the Commitment be read.

Which was read as follows:

Thomas Holles, Duke of Newcastle, Marquis and Earl of Clare, Viscount Houghton, Baron Pelham of Laughton, Knight of the Most Noble Order of the Garter, one of the Lords of his Majesty's Most Honourable Privy Council, and Principal Secretary of State, &c.

THESE are in his Majesty's Name to authorize and require you to receive into your Custody the Bodies of William Earl of Kilmarnock, George Earl of Cromertie, and Arthur Lord Balmerino, herewith sent you, for High-Treason, in levying War against his Majesty; and to keep them safe and close, until they shall be delivered by due Course of Law: And for so doing, this shall be your Warrant. Given at Whitehall, the Twenty-seventh Day of May 1746, in the Nineteenth Year of his Majesty's Reign.

HOLLES NEWCASTLE.

To the Right Honourable the Lord Cornwallis, Constable of his Majesty's Tower of London, and in his Absence to the Lieutenant of the said Tower, or his Deputy.

This is a true Copy of the original Warrant.

CORNWALLIS.

Then Proclamation having been again made for Silence, the Lord High Steward spake to the Prisoners as follows:

4 G

L. H. S.

L. H. S. *WILLIAM* Earl of Kilmarnock, *George* Earl of Cromertie, *Arthur* Lord *Balmerino*, your Lordships are brought before the most august Judicature in this Kingdom, in order to receive your several Trials, upon different Charges of High-Treason against you, returned before this House.

As the Crimes, whereof you stand accused, are of the most heinous Nature, so the Accusations against you are grounded upon no slight Foundations: They are no less than Indictments for levying War, and raising a Rebellion against his Majesty, found by a Grand Jury of Gentlemen, of great Worth and Consideration, in the County of *Surry*, upon Evidence produced before them.

But though your Charge is thus weighty and solemn, it is still but a Charge, and open to all such Defences as the Circumstances of your several Cases, and the Rules of Law and Justice will admit.

The Law is the solid Basis and Support of the King's Throne: It is the great Bulwark of the Property, the Liberty, and Life of every Subject; and it is the Security of the Privileges and Honours of the Peerage. By this Measure, which is uniform and equal to every Member of the Community, your Actions, which are now called in Question, are this Day to be examined and judged.

If your Lordships are innocent, this will be one Ground of a reasonable Confidence in your present unhappy Circumstances: But to this Consideration your own Thoughts cannot fail to add another; I mean, that the Rules of this Law are to be expounded and dispensed to you by this illustrious Assembly, the whole Body of the Peers of *Great-Britain*, in whose noble and discerning Minds nothing can have Weight but Evidence and Justice: Guilt alone can take place against you, and Innocence alone can acquit you.

Your first Consideration will be, What Pleas to put in to these Indictments: If your Lordships shall put yourselves upon your Trials, you may rest assured, from the Motives I have already mentioned, that they will be legal, fair, and impartial; and as you stand here to answer for your Estates, your Lives, your Honours, and your Posterity, it is incumbent upon you to recollect yourselves, and to call up all those Succours of Reason, Discretion, and Temper, which you are Masters of.

There is a Circumstance in your Case which is new, and makes it unnecessary for me to say much, by way of Admonition, concerning your Defence: Your Lordships are the first of your Rank and Quality who have been brought to Trial upon Indictments for High-Treason, since the Act made in the Reign of our great Deliverer King *William* the Third, for regulating of Trials in Cases of High-Treason, and Mispri-son of Treason.

It has been the peculiar Happiness of this Nation, since the Revolution, that our Princes have had that Confidence in the Affections of their People, and the Interests of both are become so evidently the same, that the regal Sanction has, since that Period, been graciously granted to Laws for the Security of the Subject, which were in vain wished for in former Reigns.

However injuriously that Revolution has been traduced, whatever Attempts have been made to subvert this happy Establishment founded upon it, your Lordships will now have the Benefit of that Law in its full Extent.

Before I conclude, I am by Command of the House to acquaint your Lordships, and all other Persons who shall have Occasion to speak to the Court, during these Trials, that they are to address themselves to the Lords in general, and not to any Lord in particular.

L. H. S. Your Lordships will do well to give Attention, while you are severally arraigned upon your Indictments.

Here the Earl of *Kilmarnock* was arraigned, in the Form of the said Indictment against him, by the Clerk of the Crown in the King's-Bench.

Clerk of the Crown. How say you, *William* Earl of *Kilmarnock*, are you guilty of this High-Treason whereof you stand indicted, or not guilty?
Earl of Kil. Guilty.

L. H. S. The Distance I am at from the Bar is so great, that I am not sure whether I heard your Lordship right; and therefore desire to ask you, Whether you plead guilty, or not guilty?
Earl of Kil. Guilty, my Lords.

George Earl of *Cromertie* was arraigned in the same Manner, upon the said Indictment against him.

Clerk of the Crown. How say you, *George* Earl of *Cromertie*, are you guilty of this High-Treason whereof you stand indicted, or not guilty?
Earl of Crom. Guilty.

L. H. S. Not perfectly hearing your Lordship's Answer, I must give you the same Trouble as I did the Earl of *Kilmarnock*, by asking your Lordship the same Question, Whether you plead guilty, or not guilty?
Earl of Crom. Guilty, my Lords.

Arthur Lord *Balmerino* was arraigned in the same Manner, upon the said Indictment against him.

Cl. of the Cr. How say you, *Arthur* Lord *Balmerino*, Are you guilty of this High-Treason whereof you stand indicted, or not guilty?

Lord Balmerino. Will your Lordships be pleased to hear me, and I will be very short: I have only Two or Three Words to say: I will not take up your Time, my Lords.

L. H. S. Your Lordship is now arraigned; and the Indictment has been read to you: Now is your Time to plead.

Lord Bal. If I should plead guilty, there is no occasion to speak after that.

L. H. S. This is not a proper Time to speak to other Matters. It is my Duty to inform your Lordship of the Rules of Law, and Methods of Proceeding; which require that you should first plead to the Indictment.

Lord Bal. Then, my Lords, you will oblige me to take up more of your Lordships Time than I intended; for I cannot plead guilty. I desire to be heard: I will not take up your Lordships Time. I want an Answer to one Question, and then I will plead.

L. H. S. If your Lordship has any thing material, you may mention it. *Lord Bal.* My Lords, if there be any Fault in the Form of the Indictment, or if it is so faulty, that no Judgment can be given upon it, I want to know, Whether I can be indicted again.

L. H. S. If your Lordship has any Exception to take to the Indictment for Mis-writing, Mis-spelling, or any Informality of that Nature, now is your proper Time to offer such Exceptions.

Lord Bal. My Lords, I am indicted by the Title of Lord *Balmerino*, of the City of *Carlisle*; and, I am sure, that is no Title belonging to me: And I am indicted for being at the Taking of his Majesty's City and Castle of *Carlisle* on the 10th of *November*; and I can prove, that, at that Time, I was not within Twelve Miles of it: Now, my Lords, Will that be of any Use to me? I can prove I was Twelve Miles off, when they say I was at *Carlisle*.

Cl. of the Cr. Serjeant at Arms, make Proclamation for Silence.

Serj. at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King doth strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

L. H. S. My Lord *Balmerino*, you have made Two Objections of different Natures; the first of them is to the Addition of Place given to you in this Indictment; and the other goes to the Fact thereby charged upon you. As to the First, I must inform your Lordship, that the Words late of the City of *Carlisle* in the County of *Cumberland*, are not made Part of your Title, but are only an Addition of Place, which the Law, for good Reasons, requires to be inserted by way of Description of the Defendant in all Indictments; and it is most commonly taken from that Place, where the Crime is by such Indictment charged to have been committed. As to your other Objection, it relates to the Fact alledged in the Indictment, and will depend upon the Evidence; which cannot be entered into till your Lordship has pleaded.

Lord Bal. Then, my Lords, though I could prove I was elsewhere, it would be of no Use to me at all.

L. H. S. Your Lordship mistakes me; I do not tell you so; but only, that this your last Objection cannot be taken into Consideration, till after you have pleaded, and the Evidence appears.

Lord Bal. I can make it appear, that I was not at *Carlisle* at that Time.

L. H. S. I have acquainted your Lordship according to my Duty, with the Method of Proceeding, and the proper Time for making use of your Objection. It must be left to your Consideration, how far you think it for your Advantage to insist upon it.

Cl. of the Cr. *Arthur* Lord *Balmerino*, Are you guilty of the High-Treason whereof you stand indicted, or not Guilty?

Lord Bal. Not Guilty, my Lords.

Cl. of the Cr. *Culprit*, How will your Lordship be tried?

Lord Bal. By God and my Peers.

Cl. of the Cr. God send your Lordship a good Deliverance.

L. H. S. Let the Lieutenant of the *Tower* take my Lord *Kilmarnock* and my Lord *Cromertie* from the Bar.

These Two Lords were then taken from the Bar by the Lieutenant of the *Tower*; who returned again, and stood on the Right Hand of *Lord Balmerino*; the Gentleman-Gaoler standing all the Time on his Left Hand, with the Ax turned from him.

Cl. of the Cr. Serjeant at Arms, Make Proclamation.

Serj. at Arms. Oyes, Oyes, Oyes! All manner of Persons, that will give Evidence on behalf of our Sovereign Lord the King, against *Arthur* Lord *Balmerino*, the Prisoner at the Bar, let them come forth, and they shall be heard; for now he stands at the Bar, upon his Deliverance.

L. H. S. My Lords, The Distance of this Place from the Bar is so great, that I must desire your Lordships Leave to go down to the Table, for the Convenience of Hearing.

Lords. Ay, Ay.

Then his Grace removed to the Wool-pack, and delivered the White Staff to be held by the Gentleman-Usher of the Black Rod; who, during the whole Trial, always received and delivered back the White Staff upon his Knee.

Sir Richard Lloyd, Counsel for the King.

May it please your Lordships,

ARTHUR Lord *Balmerino* stands indicted at your Lordships Bar for High-Treason; and the Charge against him, in the Indictment, is, That he being a Subject of our present most Serene Sovereign Lord King *George*, and not having any Regard for the Duty of his Allegiance, as a false Traitor and Rebel against our Sovereign Lord the King, his supreme, true, natural, and lawful, Sovereign, and withdrawing that cordial Love, and true and due Obedience, which every Subject of his Majesty should and ought to bear toward him; and wickedly and traitorously devising and intending to change and subvert the Rule and Government of this Kingdom, and to depose and deprive his Majesty of his Title, Honour, and Royal State, and Imperial Rule and Government of these Kingdoms, and to put and bring him to Death and final Destruction, and to raise and exalt the Person pretending to be Prince of *Wales*, during the Life of *James* the Second, and since pretending to be, and taking upon himself the Stile and Title of, King of *England*, by the Name of *James* the Third, to the Crown, and to the Imperial Rule and Government of this Kingdom; that he did, upon the Tenth Day of *November*, in the Nineteenth Year of his present Majesty's Reign, at *Carlisle*, in the County of *Cumberland*, with a Multitude of Rebels, armed, and arrayed, in a warlike and hostile Manner, with Arms, as well offensive as defensive, assemble themselves together; and then and there did falsly and traitorously array themselves, with Force and Arms, against our said Lord the King; and then and there did levy a public and cruel War against the King, and make a miserable and cruel Slaughter of his Majesty's Subjects, and, with the said Traitors and Rebels, so armed and arrayed, did enter into, and take Possession of, the said City and Castle of *Carlisle*, the same being a City and Castle of our said Lord the King, and did falsly

and traitorously keep and defend the same against our said Lord the King, against the Duty of his Allegiance, against the Peace of our said present Sovereign Lord the King, and against the Form of the Statute in such Case made and provided.

My Lords, to this Indictment he has pleaded, That he is not guilty: It is incumbent upon us, who have the Honour to serve the Crown in this Prosecution, to prove this Guilt upon him; and then nothing remains for us, but to pray your Lordships Judgment accordingly.

Mr. Serjeant Skinner, the King's Serjeant.

My Lords,

I AM Counsel, in this Cause, for the King, against the unfortunate Peer at your Lordships Bar; who stands accused of a Crime, the highest which is known to the Laws of this Realm.

For High Treason comprehends all other Offences: Murder and Rapine accompany, and are closely connected with High-Treason; and Waste, Destruction, and Famine, are the Marks it leaves behind.

To be guilty of the lowest of these, as a single Offence, would be abhorrent to a Person of a noble Heart: To be guilty of each of these Offences, is such a Weight of Crime, as would depress and bear down a noble Mind: Yet such is the Case of that unhappy Person, who is guilty of the Crime of High-Treason.

I will not bring a railing Accusation against this unfortunate Lord: Indeed, the Offence cannot admit of Aggravation: But, when I consider the inevitable Ruin which must have befallen our Country, if these pernicious Designs had taken their Effect; the total Subversion of our Religious and Civil Liberties; I then cannot help lamenting that neither high Blood, nor those generous Sentiments of Gratitude and Humanity, which are usually implanted in a noble Breast, that these could not restrain a high-born Peer from engaging in those wicked Councils; the uniting in which is a Stain to his Honour, and will be a Mark of Infamy to his Posterity.

For the most grievous Thought, to this unhappy Lord, must be, That the Consequences of his Crime will affect his Descendants: He was their Root of Honour; he now derives to them Disgrace and Infamy.

But the Law in this proceeds with great Reason and Justice: The Punishment of the guilty Person alone may not be sufficient to deter Men from the Commission of this Crime: He may be so hardened, as to think his own Suffering to be light; but he may lament for the Fate of his Children and Family: Such likewise were the Laws of Nations the most famed for their Rule and Polity.

In this House, so eminently distinguished for Learning as well as Honour, I want no Apology, when I repeat the Opinion of the great Roman Lawyer and Orator, upon this Subject: *Tully* states this as an Objection; and I submit, that he gives an Answer, natural and affecting: His Words are:

Nec verò me fugit, quàm sit acerbum Parentum Scelera Filiorum Pœnis lui; sed hoc præclarè Legibus comparatum est; ut Caritas Liberorum amici-ores Parentes Reipublicæ redderet.

Rebellion surely is the Sin of Witchcraft; otherwise what can engage a Person in an Attempt to destroy the Religious and Civil Liberties of his Country, tho' in the same Ruin he thus involves the Fate of himself and his Posterity? Our Religion is a reasonable Service; its Establishment is the Law of the Land; and for a Protestant Peer to endeavour to extirpate this our most holy Religion, and to introduce Superstition and Idolatry amongst us, is a Proposition as absurd as Transubstantiation: Our Civil Rights must have fallen a Sacrifice to the Ambition of France; for it was a vain Imagination, to think, that France would in earnest have set any King over us. Whoever is a British King, must, in Time, at least, act upon British Principles: From that Moment he is equally an Enemy to France, as any of the boldest or best of his Predecessors. France knows, and will pursue, her natural Interest: To make us Tributary, to make us Provincial, to destroy us as a Nation, was, and must, and can only be, the true Design of France.

But the Genius of the Nation exerted itself in the Cause of Liberty, under the Command of his Royal Highness the Duke; and when we consider our Misfortunes under former Leaders, and how the true English Valour prevailed, when animated and influenced by the Presence and Example of so great a Commander, we may justly apply to his Royal Highness what was said of *Scipio*, *Tantus Exercitus, quantus Imperator*.

Before I come to the particular Part, which the Lord at the Bar has acted; it may be necessary to give a short History of this unnatural Rebellion: And here the Names of the Two unfortunate Peers, who have just confessed their Guilt at your Lordships Bar, must often occur.

In June 1745, the Son of the Pretender landed in the West Highlands of Scotland: Few then were his Company or Followers; but the Cloud, which seemed, at first, to be no larger than a Man's Hand, quickly gathered, and blackened that Part of the Hemisphere. The first who appeared were the *Macdonalds* and the *Camerons*, Men famed for Rebellious Acts: They were soon joined by the Duke of *Perth*, the Marquis of *Tullibardine*, Lord *Elcho*, and Lord *George Murray*; and when they came to *Perth*, their Number was five thousand Men; from thence they marched to *Edinburgh*, and there they proclaimed the Pretender; and soon after, September the Twenty-first, followed the Battle of *Preston-Pans*. I wish that we could forget the Miscarriages of that Day!

In October the Pretender's Son was joined by another Body of Rebels, under the Command of the Earl of *Kilmarnock*: His Lordship made his first Appearance on the Banks of the River which divides England from Scotland: Here I wish, for the Sake of the Nation, and for his own Sake, that the noble Lord had made some Stop, and had well considered the Enterprize on which he was going: Could he have then foreseen the Calamities, which his rash Undertaking has brought upon his Native Country; could he have then beheld with his Eyes the Rapine, the Violence, and the Oppression, which have ensued; the Opposition of the Son to the Father, of the Brother to the Brother, and how all the Charities of one Man to another were destroyed; could he have foreseen his own shameful Retreat, and final Overthrow, his Feet had never passed the Banks of that River.

From thence they marched into England, laid Siege to *Carlisle*, and took it; and here again they proclaimed the Pretender: From thence they went to *Penrith*, and to many other Places in England, till they came to *Derby*: In this Town they heard, that his Royal Highness the Duke was advancing towards them. Here Rebellion grew pale; the Fame of the Duke's Approach made them retreat: Their March was expeditious; yet they left behind them so many Marks of their Cruelty and Barbarity, as if their only Design was to plunder and destroy.

His Royal Highness, with a Detachment, pursued the Rebels to *Clifton*; and it is doubtful, whether their Cowardice or Cruelty was here the most remarkable: They fled, and yet, in their Haste, they took Time to murder the King's Soldiers, who lay wounded on the Ground: From hence they got back to *Carlisle*, and from thence proceeded to *Dumfries* and *Glasgow*. And here I must remember the noble Zeal and Firmness which the Magistrates and Citizens of *Glasgow* expressed for their Royal Master, Our most Gracious Sovereign: They paid, indeed, most heavy Exactions for this their Loyalty; which remain like so many Scars; but the Wounds were honourable.

From thence they marched to *Bannockburn*, and so to *Stirling*: Here they were joined by the Earl of *Cromartie*, and then laid Siege to *Stirling-Castle*: This occasioned the Battle of *Falkirk*: To this Place the Lord *Balmerino*, the Prisoner at the Bar, marched at the Head of his Regiment: Here the Rebels retired; but Victory was reserved for his Royal Highness. But, before I leave this Field, I must lament the Fate of a valiant Soldier and Commander; wounded, indeed, in the Field of Battle, but afterwards murdered in cold Blood: Let one more Mark of Infamy, at least, be fixed on this Rebellion, for this murderous Act, committed on so worthy and brave a Gentleman.

From *Falkirk* the Rebels retired to *Stirling*; from thence into the Highlands, those Hills of the Robbers: After some Time they joined again at *Inverness*; they attacked *Fort George*, then in the Possession of his Majesty's Forces, and took it; they took *Fort Augustus*, and demolished it; before *Fort William* they met with a Repulse: From thence they marched to *Culloden* Field; a bloody Field! where fell Rebellion, I hope, never to rise again. To point out the Conduct, to celebrate the Courage of his Royal Highness, to paint the Glory of that memorable Day, is an Attempt too bold: The Gratitude of the Nation, the united Thanks of the Parliament, and the Approbation of his Royal Father, shew the Greatness of the Merit by the Richness of the Reward.

My Lords, the particular Circumstances attending the Case of the unfortunate Peer at your Lordships Bar are considerable: High-Treason is an Offence foul and black in itself; it wants no Colouring to make it appear more deformed and hideous: But the Lord *Balmerino* has heightened every Feature of this Deformity: He was, in the Service of the King, a Captain in the Regiment commanded by the Lord *Shannon*; not only therefore by his Oath of Allegiance, as a Subject, but by his Military Oath, as his Majesty's Soldier, as a Soldier trusted by his Sovereign with a Command, he lay under the strongest Obligations to be faithful: But he betrayed this Trust; he deserted his Station, in the which Virtue bid him stand.

As a Reward for his Treachery, the Prisoner, my Lords, was advanced to be the Captain of the Second Troop of Life-Guards attending on the Person of the Pretender's Son: We shall shew, that soon after the City of *Carlisle* surrendered to the Rebels, the Prisoner entered that City at the Head of his Troop, with his Sword drawn, Colours displayed, and Drums beating; he, dressed in the Uniform of the Regiment, with a white Cockade in his Hat: He went the same Progress through the several Places in England with the Rebel Army, an Army of Locusts; as they went, they devoured the Land: Before them was Plenty, behind them Destruction and Desolation: He was present at the several Places and Times when the Pretender was proclaimed; and, on the Return of the Rebels into Scotland, he appeared in all Places at the Head of his Troop: He commanded them at the Battle of *Falkirk*; and with them he was defeated, and made a Prisoner, in the Field of *Culloden*.

To answer for these Treasons is this unfortunate Peer now brought to your Lordships Bar: An awful Tribunal! The illustrious Judges who here preside, are under the strictest Obligation to do impartial Justice; for their only Oath is their Honour: To this Tribunal we submit the Cause of the King, and of our Country: We will endeavour to prove the Fact; and then we shall, with all Deference and Submission, expect your Lordships Judgment.

MR. ATTORNEY-GENERAL.

May it please your Lordships,

YOUR Lordships have heard the Nature of the Charge against the Noble Lord at the Bar, as it is laid in the Indictment; and have likewise heard the Rebellion, in which he was engaged, traced from its Rise to its happy Conclusion. There is little Room, in a Case so notorious, for me to trouble your Lordships in the Opening. But, as the Crime charged on the Noble Lord, is Part of that great Treason which was aimed against his Majesty's Throne and Royal Person, it may be incumbent on me to say something upon this very solemn Occasion.

And however disagreeable it must be, to prosecute and try a noble Person, one of your Lordships high Order, for a Crime of this Nature, public Justice requires it, and it must be submitted to. Even your Lordships, from your great Regard to your King and Country, will be easy in the Discharge of that Part of it, which belongs to your Lordships.

As the Noble Lord has thought proper to plead Not guilty, and thereby put the Proof of his Guilt on the King's Counsel; there are Two Things that will fall under your Lordships Consideration: The one, relating to the Nature of the Crime; the other, to the Proof in Support of it.

As to the former, your Lordships can have no Trouble: It is a Charge of High Treason, in levying War against his Majesty; a Crime declared to be so by the express Words of the Statute of the Twenty-fifth of *Edward* the Third, framed on Purpose for the Ease and Safety of the Subject; to remove that Anxiety which attended the Obscurity of the Law, in a Point of the greatest Importance to themselves and their Posterity; and to reduce the Law of Treasons, which before lay hid in the Breast of the Judges,

Judges, to a Certainty: Or, if that Law had never been made, This is one of those Sorts of Treasons that never did admit of a Doubt; and, if the Noble Prisoner had impartially consulted his own Breast, it must have told him it never could.

As that Act makes it necessary to Conviction, that the Treason should be proved by some Overt Act; it has been usual, in Indictments for this Species of Treason, not only to charge the levying War generally, but to specify those Circumstances of Hostility which usually accompany it, as a kind of Overt Act; such as joining himself to great Numbers of other Traitors, armed and arrayed with various Sorts of Weapons in a warlike Manner, with Colours displayed, Drums beating, and the like: These Circumstances are charged in the present Indictment; to which another more particular Overt Act is added, of entering, possessing, and detaining the City of *Carlisle* against his Majesty.

If these Charges are proved, the Consequence cannot be disputed. This brings me to that which alone will demand your Lordships particular Attention; how this Charge is brought home, in Point of Evidence, to the Prisoner at the Bar.

And in this likewise, I believe I may venture to say, your Lordships will have no Difficulty; but you will have that great Satisfaction, of being perfectly clear in the Judgment you shall give.

The Charge is not of that Nature, which rests principally in the Breast of the Offender, to be discovered and proved by a Variety of Circumstances, set together and connected by Art, to find out the secret Designs of Conspirators. It consists in a great Number of Facts, done in open Day-light, in the Face of the World, avowed and justified, and in which the Noble Lord did not rely on the Secrecy of his Treason, but the Power of the Traitors, for his Defence.

Your Lordships therefore will permit me very shortly to point out some of those Facts, which will be fully proved by the Witnesses: I don't mean to enter into a Detail of what passed during the Course of the Rebellion; but only to touch on those Matters, which will directly affect the Prisoner, and shew the particular Part he acted in this great Scene of Treason and Confusion.

The Noble Prisoner seems to have engaged early in the Rebellion. Whether it was owing to that, or his former Attachments, he soon obtained a Trust about the Person of the Pretender's Son; which could be reposed in none but the most zealously affected to that Cause. He was made the Commander of the Second Troop of Horse, called His Life-Guards.

In this Post, he accompanied the Rebel Army in their First March into *England*, and entered *Carlisle*, at the Head of his Troop, in *November* last. In the same Command, he followed them through the Counties of *Cumberland*, *Lancaster*, *Cheshire*, *Staffordshire*, and Part of *Derbyshire*, till they came to *Derby*; and when they were stopped there by the Approach of his Royal Highness the Duke, and forced to fly before him by the Way they came, he kept with them in their Flight, and entered *Carlisle* a second Time, with his Troop. He did not wait till his Royal Highness came up, but with the rest of the Rebel Army, except the Garrison, continued his Flight into *Scotland*. He went with them to *Glasgow* and *Sterling*, was present at the Battle of *Falkirk*, and, tho' not personally engaged, was drawn up at the Head of his Troop, to support the Rebels that were. He still continued to attend the Rebellion in all its Stages, till the same great Commander, who gave the first Check to its Progress, put a final End to it at *Culloden*.

Your Lordships will see him, by the Evidence, in all the Places I have mentioned, clothed in the Uniform of the Rebel Guards, with a white Cockade, his Sword drawn, heading, commanding, and leading his Troops, guarding the Pretender's Son, proclaiming the Pretender, entering and seizing his Majesty's Towns, and acting as an Enemy in his Majesty's Dominions, in open Defiance of the Laws, and to the infinite Mischief of his Majesty and his Subjects; and all this with a direct View of Dethroning his Majesty, Extirpating his Royal Family, and Setting up a Popish Pretender in his Room.

The several Instances of his Lordship's marching with the Rebels in a hostile Manner, will be so many distinct Proofs of the First Part of the Charge; and the particular Acts of his Entering and Continuing in *Carlisle*, in the same hostile Manner, will fully prove the Second.

I have stated all these Things, not because they are all necessary to the Conviction of the Noble Lord, but for the clearer Manifestation of his Guilt. A very small Part of these Facts would be sufficient, if proved to your Lordships Satisfaction: Nor would it avail his Lordship, if we should fail in the Proof of any Part of the Charge on the very Day it is laid in the Indictment, as the Noble Lord vainly seems to think. The precise Point of Time, as it is, in its own Nature, immaterial to the Guilt, is equally so in the Forms of our Law.

All that remains is to call the Witnesses; which, I doubt not, will fully make out the Facts we have stated.

Sir John Strange. My Lords, we will now proceed to call our Witnesses.

Lord Balmerino. My Lords, may I be heard? I thought, when a Person was indicted, if there was any one Article in the Indictment that was not good against him, that all the rest was good for nothing.

Lord High Steward. You must hear the Evidence. This cannot now be determined, till the Evidence is heard.

Lord Bal. Will your Lordships please to examine them as to the Time of my being at *Carlisle*?

Lord H. S. The King's Counsel must proceed in their own Method, provided they proceed according to Law.

Lord Bal. My Lords, I humbly thank you for your Advice.

L. H. S. Would your Lordship have Counsel assigned you?

Lord Bal. No, my Lords; I don't want any.

Sir John Strange. Call William McGhie.

William McGhie sworn.

Sir John Strange. Look at the Noble Lord at the Bar. Do you know him?—McGhie. Yes; I know him very well.

Sir J. Strange. Pray, will you acquaint my Lords, whether you saw him at any time, and where, in the Rebel Army?

McGhie. I saw the Noble Lord at *Carlisle*, going and coming.

Sir J. Strange. Do you mean the Noble Lord at the Bar?

McGhie. Yes, I do.

Sir J. Strange. Pray, do you recollect the First Time of your seeing him?

McGhie. It was some time in *November* last; but the Day I am not very sure of.

L. H. S. The Witness's Voice is so low, that some of my Lords desire, That a Clerk may repeat what he says. Is it your Lordships Pleasure, that one of your Clerks be appointed to stand by the Witness, and report to your Lordships what he says?

Lords. Ay, ay.

Then One of the Clerks was sworn, truly to report what the Witness should say; and stood within the Bar, near the Witness, and repeated his Answers.

Sir J. Strange. If it is your Lordships Pleasure, I will begin the Examination again.

L. H. S. I desire he may repeat again what he has said.

Sir J. Strange. I ask you, if you know the Noble Lord at the Bar?

McGhie. Yes; I do know the Noble Lord at the Bar.

Sir J. Strange. Will you please to acquaint their Lordships, at what time, and where, you saw his Lordship with the Rebel Army?

McGhie. I saw him at *Carlisle*, going and coming. The First time I saw his Lordship there was in *November* last.

Sir J. Strange. Did not you see him before you came to *Carlisle*?

McGhie. I saw him before we came to *Carlisle*; I also saw him coming into *Carlisle*, and in *Carlisle*.

Sir J. Strange. What Company was he in then?

McGhie. He was in Company with the Rebels.

Sir J. Strange. How did he appear, and what Command had he then?

McGhie. I don't know whether he had a Command; but he was heading a Troop of Horse.

Sir J. Strange. What Horse were they called?—McGhie. I don't know.

Sir J. Strange. Were they Part of the Rebel Army?—McGhie. Yes.

Sir J. Strange. Did you see them enter into the City of *Carlisle*?

McGhie. Yes.

Sir J. Strange. Fix the Time as near as you can.

McGhie. It was about the Eighteenth of *November*, as near as I can guess.

Sir J. Strange. Can you tell what Number there was of them?

McGhie. I cannot really.

Sir J. Strange. Will you acquaint the Lords, whether the Noble Lord at the Bar had any Arms?

McGhie. He had Pistols, and a Sword.

Sir J. Strange. Was his Sword drawn, or undrawn?

McGhie. I do not mind to have seen it drawn.

Sir J. Strange. Did you observe, whether he had any thing in his Bonnet or Hat, by way of Distinction?

McGhie. I do not mind that.

Sir J. Strange. Did you observe in what Manner the Noble Lord was dressed?—McGhie. In a common Dress.

Sir J. Strange. When you call it a common Dress, do you mean the Dress that the Officers wore, or his own Habit?

McGhie. I mean his own former Habit.

Sir J. Strange. Was there any thing particular in the Form of the Habit that the Officers of that Regiment wore?

McGhie. I do not mind any body, but himself.

Sir J. Strange. You saw him march at the Head of that Body going to *Carlisle*, after it was in Possession of the Rebels?

McGhie. Yes; and I saw him in the Going back from *Derby*.

Sir J. Strange. I ask you, Whether you observed the Noble Lord in *Carlisle*, after it was in Possession of the Rebels, and after the Marching you talk of, and before the Rebels left *Carlisle*, to come Southwards?

McGhie. Yes; I saw him in *Carlisle* when the Rebels were there.

Sir J. Strange. Did you observe what he was doing then?

McGhie. Nothing, but riding on Horseback.

Sir J. Strange. Was that with the Troop, or without?

McGhie. It was with the Troop.

Sir J. Strange. Did you observe whether his Sword was drawn?

McGhie. I did not.

Sir J. Strange. How long did the Rebels stay in *Carlisle*, before they marched Southwards?—McGhie. About Two Days.

Sir J. Strange. Did you observe the Noble Lord to go out of *Carlisle*?

McGhie. No; I was not South.

Sir J. Strange. Did you observe him then?

McGhie. I was in the Hospital; but when I came back again, I saw this Lord.

Sir J. Strange. Did you observe him to march out of *Carlisle*?

McGhie. Yes.

Sir J. Strange. What time was that?—McGhie. It was in *November*.

Sir J. Strange. What Distance of Time was there between their going and coming back? You can tell us when they marched back again?

McGhie. It was about *Christmas*, or a Day or Two before it.

Sir J. Strange. Did you observe the Noble Lord coming into *Carlisle* upon the Return? Or do you only speak of seeing him there?

McGhie. I saw him coming back again from *Derby* to *Carlisle*.

Sir J. Strange. Will you acquaint my Lords, whether you saw him at the Head of his Troop, or in what Manner?

McGhie. I saw him at the Head of a Troop of Horse in *Carlisle*.

Sir J. Strange. What were they? Were they Part of the Rebel Army?

McGhie. Yes.

Sir J. Strange. Had they any Drums, Colours, and Musick?

McGhie. They had both Colours and Drums, and Pipes playing.

Sir J. Strange. How long did my Lord stay at *Carlisle* upon his Return?

McGhie. Only one Night.—I am very sure of it.

Sir J. Strange. Did the Noble Lord go out of *Carlisle* in the Manner you have mentioned, at the Head of his Troop?

McGhie. In the same Manner, riding at the Head of a Troop of Horse.

Sir J. Strange. Will you acquaint my Lords, Whether, at the Time the Noble Lord was there, the Young Pretender was in *Carlisle*?

McGhie. Yes, he was there.

Sir

Sir J. Strange. Was he there when they first went into Carlisle, before they came Southward?

M^cGhie. No; he did not come till the next Day.

Sir J. Strange. Did you see the Pretender's Son the next Day?

M^cGhie. Yes.

Sir J. Strange. In what Manner did he enter Carlisle?

M^cGhie. He came in with Horse Life-Guards.

Sir J. Strange. Whose Life-Guards were they?

M^cGhie. The Young Pretender's.

Sir J. Strange. Who commanded those Guards at that Time, or any Part of them?

M^cGhie. I don't well know, there were so many commanded.

Sir J. Strange. Did you observe the Noble Lord at the Bar to command any?—M^cGhie. No, I did not.

Sir J. Strange. When they marched away from Carlisle for Scotland, did the Young Pretender go along with them?—M^cGhie. Yes.

Sir J. Strange. And did the greatest Part of the Rebel Army go with him?

M^cGhie. All, except those that were left at Carlisle, and those that were upon the Road.

Sir J. Strange. Was there a Garrison left at Carlisle?—M^cGhie. Yes.

Sir J. Strange. By whose Order?

M^cGhie. By Order of the Young Pretender.

Att. Gen. My Lords, we have done with this Witness: Will the Noble Lord ask him any Questions?

L. H. St. My Lord, if you would ask this Witness any Questions, now is your Time.

Lord Bal. I think, my Lords, he has contradicted himself: He says first it was in November, and then in December, and then in January.

L. H. St. If you want him to explain himself as to the Time, you may ask him any Question.

Lord Bal. What was done in November?

M^cGhie. The Rebels came first to Carlisle in November; and, when they came back, on their Return, it was December, about Christmas.

L. H. St. He applies November to your first coming to Carlisle, and December to your returning thither.

Lord Bal. I can't tell the time myself, unless I was at home to look at my Notes.

L. H. St. Will your Lordship ask him any more Questions?

Lord Bal. No, my Lords.

Sir J. Strange. I would beg Leave to ask the Witness one Question. He says there was a Garrison left in the City of Carlisle; I would ask him, Who that Garrison was to defend the Place against?

M^cGhie. Against his Majesty King George.

Hugh Douglas sworn.

Mr. Solicitor General. Look at the Noble Lord at the Bar, and see whether you know him.

Douglas. Yes, I know him.

Sol. Gen. Then give my Lords an Account, Whether you saw him in the Rebel Army at any Time; and when, and where, and what he did: And give your Account, as near as you can, in Order of Time.

Doug. I saw him at Diddeston, before the Pretender marched out of Edinburgh.

Sol. Gen. Now, go on: Where did you see him next?

Doug. I saw him at Kelfo.

Sol. Gen. Where next?—Doug. At Carlisle.

Sol. Gen. In what Manner did he march along with them from these several Places to Carlisle?

Doug. He was Colonel of the Second Troop of the Pretender's Life-Guards.

Sol. Gen. Did he, during this March, command this Second Troop, or ride at the Head of them?

Doug. He commanded them, and rode at the Head of them.

Sol. Gen. How were they armed?

Doug. They had each a Carbine, a Brace of Pistols, and a Broad Sword.

Sol. Gen. Did you see him at Carlisle?

Doug. He marched from Penrith to Carlisle, and back again into Scotland, at the Head of the Troop of Life-Guards. I saw him all the Way.

Sol. Gen. What did you see him do at Carlisle?

Doug. I saw him at the Head of his Troop of Horse in the Street, when they were drawn up, upon coming in there.

Sol. Gen. Where did you see him else? Did you see him in the Return?

Doug. I saw at Derby, and at Manchester, in returning.

Sol. Gen. Did you see him any where else?

Doug. I saw him at Falkirk, and saw him march all the Way from Penrith to Carlisle, in returning.

Sol. Gen. Did you see him at Carlisle, on his Return?—Doug. Yes.

Sol. Gen. When you saw him at Carlisle, was he with the Rebel Army?

Doug. Yes.

Sol. Gen. Did you see him at the Head of his Troop?

Doug. Yes; I saw him at the Head of his Troop of Horse march from Penrith to Carlisle.

Sol. Gen. Did you see him, at any Time in that March, act as an Officer?

Doug. Yes, he acted so far as an Officer, that he rode at the Head of his Troop all the Way.

Sol. Gen. Did you afterwards see him?

Doug. Yes, I saw him at Diddeston.

Sol. Gen. Do you speak of your seeing him in Going, or in the Return?

Doug. I speak of the Return. I saw him at Carlisle, and at the Battle of Falkirk.

Sol. Gen. Did you see him engaged in that Battle?

Doug. No, he was not engaged; none of the Horse were engaged.

Sol. Gen. Did you see him with his Sword drawn?

Doug. All the Men had their Swords drawn; but I don't remember particularly as to him, whether I saw him with his Sword drawn, or not.

Sol. Gen. Did you see him there at the Head of any Troop of Horse?

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Sol. Gen. Did you see him there at the Head

Sir Rich. Lloyd. What Distinction had he in his Hat?
Gray. Nothing but a white Cockade.
Sir Rich. Lloyd. Was that any Mark of Distinction?
Gray. No, it was no Mark of Distinction at all; for they all wore it.
Sir Rich. Lloyd. You say you saw his Lordship march Southward: Did you see him afterwards on his March Northward?

Gray. I saw him march from Elgin of Murray towards Inverness, a little before the Battle of Culloden.

Sir Rich. Lloyd. Was he then armed?—Gray. Yes.

Sir Rich. Lloyd. How was he armed?

Gray. In the same Form as he was before.

Sir Rich. Lloyd. How was he dressed?

Gray. In the same Cloaths he was before.

Sir Rich. Lloyd. Was he then at the Head of his Troop?

Gray. Yes, he was.

Sir Rich. Lloyd. Do you speak of the same Life-Guards?—Gray. Yes.

Sir Rich. Lloyd. How long was it before the Battle of Culloden that you saw him at the Head of his Troop?—Gray. About ten Days.

Mr. Attorney General. I desire he may explain who he meant, when he said, they all wore a white Cockade.

Gray. The Rebel Army.

Lord Bal. I observe, that none of the Witnesses who have been called, have made good the Charge against me, that I was at Carlisle on the 10th of November, nor for some time afterwards. I believe it will be to little Purpose to go any further; and am sorry I have taken up so much of your Lordships Time; for I was of Opinion, that, if any Article in the Indictment was not good against me, all the Indictment fell.

Lord High Steward. What does your Lordship insist upon? Do you insist on the Day being mistaken in the Indictment, or that you were not present at the actual Taking either of the Town or Castle of Carlisle by the Rebels?

Lord Bal. That I was not at Carlisle, either at the Taking of the Town or the Castle.

Mr. Serjeant Skinner. I beg Leave to call another Witness.

James Paterson sworn.

Serj. Skin. Look at the Noble Lord there: Do you know the Noble Lord?—Pater. Yes, I know the Noble Lord very well.

Serj. Skin. How long have you known him?

Pater. Ever since we marched from Lauder.

Serj. Skin. What Time was that?

Pater. I remember it was the first Night we marched from Dalkeith.

Serj. Skin. What Time was that you marched from Dalkeith?

Pater. I don't remember the Time particularly.

Serj. Skin. How long before Christmas was it?

Pater. I can't say I remember how long it was before Christmas.

Serj. Skin. Where was it this Noble Lord lodged?

Pater. He lodged at the same House I happened to be in.

Serj. Skin. What Command had he at that Time?

Pater. I did not know that he had any Command then.

Serj. Skin. Do you remember his coming to England?—Pater. Yes.

Serj. Skin. Do you remember what Month that was?

Pater. No; I don't remember the Time exactly.

Serj. Skin. Do you remember being at Long Town?—Pater. Yes.

Serj. Skin. Was the Pretender's Son at Long Town?—Pater. Yes.

Serj. Skin. Was Lord Balmerino there?

Pater. He was there as a Witness to the proclaiming the Pretender.

Serj. Skin. Was you present when the Pretender was proclaimed? And was he there?—Pater. Yes.

Serj. Skin. In what Manner did the Noble Lord attend there, when the Pretender was proclaimed?

Pater. My Lord only appeared as one of the Volunteers with the Pretender's Life-Guards.

Serj. Skin. Was that Lord at the Bar with them?—Pater. Yes.

Serj. Skin. Was he at the Head of them then?

Pater. No; he stood only among the rest.

Serj. Skin. What Dress had he on?

Pater. A blue Coat with red Facings.

Serj. Skin. What was the uniform Dress of those Guards?

Pater. A blue Coat with red Facings.

Serj. Skin. Had he any Thing in his Hat?

Pater. Yes; he wore a Cockade.

Serj. Skin. What Colour was his Cockade?—Pater. White.

Serj. Skin. Was that wore by all the Pretender's Forces?—Pater. Yes.

Serj. Skin. Where did you see my Lord next?—Pater. At Lancaster.

Serj. Skin. What was he doing there?

Pater. He was Witness to the proclaiming the Pretender there.

Serj. Skin. Were there any Guards there?

Pater. I remember very well all the Life-Guards were present there, and the Prisoner was with them.

Serj. Skin. How did the Prisoner at the Bar appear there?

Pater. He was at the Head of his Troop there.

Serj. Skin. How was he armed?

Pater. With a Brace of Pistols and a Sword.

Serj. Skin. What Sort of a Sword was it?—Pater. A Highland Sword.

Serj. Skin. Was it drawn?—Pater. Yes.

Serj. Skin. Where did you see him next?

Pater. I remember to have seen him at the Battle of Falkirk.

Serj. Skin. Was he at the Head of any Forces there?

Pater. Yes; he was at the Head of his Corps there.

Serj. Skin. Was his Sword drawn then?—Pater. Yes.

Serj. Skin. Was the Troop engaged?—Pater. No; I think it was not.

Serj. Skin. Do you know what became of him afterwards?

Pater. I saw him frequently afterwards; but I can't tell any particular Place, but at the Battle of Culloden.

Serj. Skin. Where did you see him then?

Pater. I remember to have seen him drawn up at the Head of his Corps at the Battle of Culloden.

Serj. Skinner. Was his Sword drawn?

Pater. Yes, his Sword was drawn.

Serj. Skin. Did you see him any where afterwards?

Pater. I saw him afterwards at Castle Gram; I saw him come in there after the Battle of Culloden.

Serj. Skin. Was he taken Prisoner there?

Pater. As far as I can tell, my Lord surrendered there.

Mr. At. Gen. Do you remember to have seen the Noble Lord at Carlisle?

Pater. Yes, I remember to have seen my Lord march into Carlisle on their Retreat, at the Head of his own Corps.

Mr. At. Gen. We have done with this Witness: Will the Noble Lord ask him any Questions?

Lord Bal. He might see me at Long Town, but not at Carlisle at the proclaiming the Pretender; for I was not there till a Fortnight after.

Mr. At. Gen. Did you see the Prisoner at Carlisle?

Pater. As far as I remember any thing in the World, I saw my Lord there.

Lord Bal. What was this Witness there?

Pater. My Lord, I was a Gentleman's Servant.

Lord Bal. I don't remember him: I want to know what Regiment this Man was in; or what he was; and what was his Business?

L. H. S. You hear what his Lordship says: What was you there?

Pater. I was a Gentleman's Servant in the First Troop of Life-Guards.

L. H. S. Whose Life-Guards?

Pater. The Pretender's Guards: I was Servant to Mr. Hume.

Lord Bal. I was at Long Town then.

Roger McDonald sworn.

Mr. At. Gen. Give an Account, whether you saw the Prisoner march with the Rebel Army, at the Time of their first Setting-out, either in Scotland or England, and where.

McDon. The first Time I saw him was at Holyrood-House.

At. Gen. What did you see him do there?

McDon. The only Thing that I observed was, That I saw the Prisoner with the Guards; but he was in no Place of Distinction.

At. Gen. What Guards?—McDon. The Pretender's Guards.

At. Gen. Where did you see him with them?

McDon. In the Court of Holyrood-House.

At. Gen. Was the Pretender's Son at Holyrood-House at that Time?

McDon. He was at Edinburgh at that Time.

At. Gen. Where did you see him the next Time?

McDon. The second Time that I remember to have seen the Prisoner, was on the Retreat, coming from Derby, entering into the Town of Manchester, when the Horse were formed at the Outside of the Town of Manchester.

At. Gen. How did the Prisoner appear there?

McDon. With his Sword drawn at the Head of his Squadron.

At. Gen. Was the Prisoner at the Bar at the Head of those Rebels that were drawn up?

McDon. Yes; I remember to have seen the Prisoner in particular.

At. Gen. Did he command any Part of the Rebel Army?

McDon. Not to my Knowledge; but I remember to have seen him there.

At. Gen. Do you remember seeing him any where else?

McDon. The next Time I particularly remember was, that I saw him at the Battle of Falkirk, after the Squadron was formed, and Lord Elche's Horse were drawn up there.

At. Gen. Did you see the Prisoner command any Horse there?

McDon. The Squadron was not fully formed when I saw him; but I remember to have seen the Prisoner at the Bar at the Head of a Squadron of Horse there.

At. Gen. Did you, at any Time see him marching out of Elgin of Murray to Inverness, at the Head of the same Squadron?

McDon. I remember to have seen the Prisoner at the Head of the same Squadron at Inverness.

At. Gen. Did you see him in any particular Dress at that Time?

McDon. I don't remember his Dress then; but at Manchester I remember it was a Suit of Blue turned up with red Cuffs.

At. Gen. Was it the Uniform Dress of any Part of the Pretender's Army?

McDon. It was the Uniform Dress of the Pretender's Guards.

At. Gen. Was there any particular distinguishing Mark that he wore?

McDon. I can't say I do remember any.

At. Gen. Had he a white Cockade?—McDon. Yes; he had.

At. Gen. Was that the common distinguishing Mark of the Rebel Army?

McDon. Yes; it was the distinguishing Mark. They all wore white Cockades; that was the general Thing that was worn.

At. Gen. We will trouble your Lordships with no more Witnesses.

L. H. S. Will your Lordship ask this Witness any Questions?

Lord Bal. No, my Lords; I am sorry I have taken up so much of your Lordships Time.

L. H. S. The King's Counsel having gone through their Evidence, now is your Lordship's Time to make your Defence.

Lord Bal. My Lords, I have said all that I have to say. I observe, that none of the Witnesses have agreed upon the Day charged in the Indictment; and I have nothing else to say.

L. H. S. You say the Witnesses have not proved, That your Lordship was at Carlisle on the particular Day laid in the Indictment: But the Witnesses have proved, That they saw you in Arms at the Head of your Troop of Rebels at Carlisle. If your Lordship can disprove that Fact, this is your Time to do it. Have you any Thing to say in Support of what you have observed, about the particular Day not being proved, as laid in the Indictment? I should be glad to know upon what your Lordship would put your Defence. They have proved you to be in Arms at Carlisle in November.

Lord Bal. But not at the Taking of Carlisle; and I can prove, I was not there at the Time Carlisle was taken; but was twelve Miles off.

Mr. Serj. Skinner. The Witnesses don't say he was at the Surrender of the Town; but he was in the Town after it was taken by the Rebels; and that he marched into the Town at the Head of his Troop. He was with them, on their March, at Long Town and Lancaster, and several other Places; and, if we have made out any one Fact laid in the Indictment.

ment, it is sufficient, and, I hope, your Lordships will think the Treason is proved.

Mr. At. Gen. I beg your Lordships would spare me a few Words upon this Occasion: And, if I am right, I take the Prisoner's Objection to be this, That the Witnesses for the Crown have not proved the Facts to be committed on the precise Day laid in the Indictment.

Lord Bal. That is not the Case: You mistake it intirely.

L. H. S. My Lord *Balmerino* objects, That it is not proved he was at *Carlisle*, when it was actually taken by the Rebels.

At. Gen. Then I apprehend the Objection to be only this, That he was not there at the Taking of *Carlisle*.

Lord Bal. That is the Objection.

L. H. S. What have the King's Counsel to say to that Objection?

Mr. Serj. Skinner. My Lords, the Objection made by the Noble Peer at your Lordships Bar, is, That on the tenth Day of *November*, the Day laid in the Indictment, he was not at *Carlisle*; and that he was not at the Taking of that City and Castle.

My Lords, The Day laid in an Indictment is merely Matter of Form. Some Days, previous to the Indictment, must be laid; but the Proof is not tied up to that Time: Any Proof, before or after the Day, may be admitted; and it is sufficient, if it be before the Time of preferring the Indictment.

And suppose the Noble Lord was not present at the Time that the City and Castle of *Carlisle* were actually taken; yet it is proved, that he marched into the City armed, and at the Head of his Troop, the second Day after the Castle was taken; so that he was in the Possession of the City and Castle. And the Detainer of the King's Town or Castle is High Treason: And where many Acts of Treason are laid in an Indictment of High Treason, if any one Charge be made good the Person must be convicted.

I therefore submit, That there is no Weight in the Objection made by this Noble Lord.

At. Gen. My Lords, The Objection, if it can be of any Use to the Noble Lord, must be to shew, that the Evidence is not sufficient to induce your Lordships to find him guilty. The Indictment consists of a general Charge of levying War, together with the Circumstances of being arrayed and assembled in a warlike Manner against his Majesty, and the particular Fact of entering, possessing, taking, and defending the City and Castle of *Carlisle* against his Majesty. The former is fully proved; for every one of the Witnesses prove, he marched in the Rebel Army, arrayed in a hostile Manner, riding at the Head of the second Troop of the Pretender's Son's Horse-Guards. As to the other Fact, of his entering and taking of *Carlisle*; it is proved by three Witnesses, That the Prisoner came into *Carlisle*, at the Head of his Troop, when the Rebels were in Possession of it, and held it for the Pretender: Which is a full, positive Proof of that Fact.

But the Noble Lord objects, That he was not present at the Taking.

There are two clear Answers to this: One, That neither the Law, nor the Charge in the Indictment makes that necessary, if it appears that he did enter it, and was in Possession of it, in a hostile Manner.

Another is, That if that particular Fact was not at all proved, it could be of no Service to his Lordship, while there is another Act of Treason charged and proved.

By the Law, every Entry and Possession of the King's Town or Fortrefs in a hostile Manner, against the King, is High Treason; nor does the Law distinguish how that Entry and Possession is obtained, if it is done by Rebels, and in Opposition to the Royal Authority. His Lordship neither denies his Entry and holding the Possession for the Pretender, nor disputes the Weight of the Evidence that proves it: And it can do him no good, if it appeared never so clearly, that the Time of his personal Entry was not till after the Rebel Army had made themselves Masters of it.

But if this Fact was as doubtful as it is clear, the Evidence of the other Part of the Charge is certain and unobjected to; and there is nothing plainer, in Point of Law, than that the Proof of any one Overt Act, laid in the Indictment, is sufficient, though no Evidence is given of any others that are charged.

The Noble Lord, though he now seems to give it up, did object at first, That the Evidence did not prove the Treason on the Tenth of *November*, the Day charged in the Indictment. Lest that should have any Weight, I would only say, That it has been frequently adjudged, that, though a precise Day must be charged, the Day is immaterial in Point of Proof: So it was particularly in the Case of *Sir Henry Vane*, in the Time of King *Charles the Second*: He was indicted for High Treason; and it was laid in the Indictment, That the Facts were committed on a certain Day, in the Eleventh Year of King *Charles the Second*. It was only proved, that they were committed in the First Year of his Reign, and yet held it was sufficient to support the Indictment.

The Question, therefore, on the Whole, will only be, Whether treasonable Acts of Hostility have been proved upon the Noble Lord? And, as that can admit of no Doubt, neither can his being guilty of the Treason, charged on him by this Indictment, admit of any.

Sir John Strange. My Lords, I don't know whether it is necessary for all of us to speak in this Case. For my Part, I shall say but a Word or two. Here are several Acts of Treason that are alleged in the Indictment; and whoever hath given the Noble Lord, who is the Prisoner, to understand, that every particular Act must be proved (if any such Advice can have been given him) hath been mistaken; because it is clear and certain, in Point of Law, that though ever so many Facts are laid in the Indictment, yet, if there is legal Proof of any one of those Facts, which is High Treason, it is sufficient to found your Lordships Judgment, that the Person so proved guilty of any particular Fact, is to be adjudged guilty of High Treason.

Your Lordships, however, will be pleased to observe, how many particular Acts are laid in the Indictment, and whether they are not all proved. First, It is laid, That the Noble Lord at the Bar did, with many others, arm, array, and dispose himself in a warlike and hostile Manner against the King. This, my Lords, is clearly proved; for the Witnesses have told your Lordships, That he had the Command of the second Troop of the Pretender's Life-Guard, which was Part of the

Rebel Army: That he marched at the Head of this Troop, with Drums beating, and Colours displayed: That he wore a particular Habit, which was Blue turned up with Red, a laced Hat, and a white Cockade, being the Uniform Dress of the Troop: And the being thus arrayed in this hostile Manner, my Lord *Hale*, in his first Volume, *H. P. C.* 150, 152, says, is levying War against the King; and this has been fully proved to your Lordships against this Noble Lord, the Prisoner at the Bar, by more than two Witnesses. His being present at several Places at the Proclaiming of the Pretender has been likewise proved to your Lordships: And we use it as a Circumstance to lead your Lordships Judgment, with what Intent he was thus armed and arrayed in a hostile Manner, which was plainly in order to dethrone his Majesty, and place a Pretender upon the Throne. This has been proved against the Noble Lord at the Bar to have occurred at two Places, where this Proclamation was made.

Another Circumstance which has been proved, is, his being drawn up and formed at the Battle of *Falkirk*; and though the Witnesses do not say, that that Party of the Pretender's Life-Guards was actually engaged upon this Occasion, yet, I humbly apprehend, that is not material. There can be no Doubt, in Point of Law, but that every body, who is so drawn up in a warlike and hostile Manner, is waging War, though every Party is not engaged. He was there drawn up with his Forces, with his Broad Sword drawn, and ready to engage at that Time. And, my Lords, we trace him from thence to the glorious Field of *Calloden*; and your Lordships observe, he was there an Officer, leading his Squadron, and commanding the second Troop of Life-Guards of the Pretender; and after the Disaster which befel them that Day, and for which we have great Reason to be thankful, the Noble Lord at the Bar surrendered himself to the King's Forces, as one of those engaged against the King at that Battle. My Lords, lay all these Things together, and your Lordships will see, it is no way necessary to prove, whether this Noble Lord was present at the first Taking of *Carlisle*, or not: Which seems to be the only Point on which the Noble Lord has rested his Defence.

But, my Lords, if it was necessary to shew that, I apprehend it is proved. The Taking of a Town or a City is not the Act of a single Man, but the Act of a great Number of Persons, got together for that Purpose; therefore, as to any Man, who was a Part of the Rebel Army, and went into the City of *Carlisle*, after it surrendered to the Rebels, and joined with them, it is an actual Taking of that City: For it was the Force and Terror without the City, and the appearing in the hostile Manner, already described, which occasioned the Surrender of the Place. Every one, therefore, who joined in this Force and Terror, is instrumental in the Taking of the Town. It is proved, that he entered into *Carlisle*, and was in Possession of the Town; it is proved, by more than one Witness, that he did it at the Head of the Pretender's Life-Guards: He lay there one Night, while the Rebels were in Possession of the Town, and then he marched out Southward. Then there is his returning back to *Carlisle*; taking Possession of it the second Time; his being there with the Young Pretender; his going away with him and the Rebel Army, and leaving a Garrison in the Town, to defend it against the King's Forces, when they should come up. My Lords, this, with Submission to your Lordships, is a strong and clear Proof, that he entered and took Possession of *Carlisle*, and kept it against the King, as laid in the Indictment; and whether he remained there a longer or a shorter Time, whether he lay one Night or twenty Nights in it, makes no Difference in Point of Law.

I don't observe, the Noble Lord lays much Strefs upon the Tenth of *November*'s being laid in the Indictment, as the Day on which the Treason was committed; and therefore I forbear to trouble your Lordships upon it; for, to be sure, it does not signify, whether the Facts committed were on the Tenth of *November*, or any other Day.

My Lords, I apprehend every particular Act of Treason laid in the Indictment, against the Noble Lord at the Bar, is fully proved; and therefore I submit the Whole to your Lordships Judgment.

Mr. Sol. Gen. My Lords, —

Lord Bal. I am satisfied I was mistaken; and ask your Lordships Pardon, for taking up so much of your Time.

Mr. Sol. Gen. I was going to have said, That I did not apprehend it necessary for me to speak upon this Point from any Difficulty in the Objection. But as the Answer to the Objection depended not upon natural, but legal Reasoning, and established Forms, and as the Noble Lord had chose not to have the Assistance of Counsel in stating and enforcing his Objection, I would, for his Satisfaction, have said a Word or Two, not only to shew that the Matter is settled by the uniform Authority of all our Books, and many adjudged Cases; but to have explained why it has been settled, that the Treason must be laid in the Indictment to have been committed on a particular Day, and yet, at the Trial, need not be proved to have been committed on that precise Day. As he has declared himself satisfied, there is no Occasion to say any thing.

Then the Lord High-Steward returned back to his Chair.

Lord Pres. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

The Lords and others returned to the Chamber of Parliament, in the same Order they came down: And after some Time, the House was adjourned again into *Westminster-Hall*; and the Peers being there seated, the Lord High Steward in his Chair, and the House resumed, the Serjeant-at-Arms made Proclamation for Silence, as usual.

L. H. S. Your Lordships were pleased, in the Chamber of Parliament, to come to a Resolution, That the Opinion of the learned and reverend Judges should be taken upon the following Question, viz. Whether it is necessary, that an Overt Act of High-Treason should be proved to have been committed on the particular Day laid in the Indictment? Is it your Lordships Pleasure, that the Judges do now give their Opinions on that Question?

Lords.

Lords. Ay, ay.

L. H. S. My Lord Chief-Justice.

L. C. J. Lee. The Question proposed by your Lordships is, Whether it be necessary, that an Overt Act of High-Treason should be proved to be committed on the particular Day laid in the Indictment?

We are all of Opinion, that it is not necessary to prove the Overt Act to be committed on the particular Day laid in the Indictment: But as Evidence may be given of an Overt Act before the Day, so it may be after the Day specified in the Indictment; for the Day laid is Circumstance and Form only, and not material in Point of Proof: And this is the known, constant Course of Proceeding in Trials.

L. H. S. Lieutenant of the Tower, take my Lord Balmerino from the Bar.

Lord Bal. Will your Lordships be pleased to allow me to speak two Words?

L. H. S. If you think fit, my Lord.

Lord Bal. Your Lordships may think I have had very bad Advice in this Case: But to do Justice to my Solicitor, Mr. Ross, he laid my Case before Counsel; and he told me, they were of the same Opinion with what the King's Counsel have offered: But I myself had a Notion, that not being at Carlisle, at the Time it was taken, I was not within the Indictment; and I thought there was something in the Objection; and that was the Reason of my giving your Lordships so much Trouble. I am very sorry for it; and ask your Lordships Pardon.

L. H. S. Has your Lordship any thing further to offer?

Lord Bal. No, my Lords.

L. H. S. Lieutenant of the Tower, take my Lord Balmerino from the Bar.

Which was done accordingly.

L. H. S. Your Lordships have heard the Evidence, and every thing that has been alledged on both Sides; and you have also heard the Opinions of the learned and reverend Judges on a particular Question stated to them. The Solemnity of your Proceedings requires, that your Lordships Opinions on the Question of Guilty or Not Guilty, should be delivered severally in the Absence of the Prisoner, beginning with the Junior Baron; and that the Prisoner should afterwards be acquainted with the Result of those Opinions by me. Is it your Lordships Pleasure to proceed now to give your Opinions on the Question of Guilty, or Not Guilty?

Lords. Ay, ay.

Then the Lord High Steward stood up uncovered; and beginning with the youngest Peer, said,

L. H. S. Henry Arthur Lord Herbert of Chisbury, what says your Lordship? Is Arthur Lord Balmerino Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Whereupon Henry Arthur Lord Herbert of Chisbury, standing up in his Place uncovered, and laying his right Hand upon his Breast, answered, Guilty, upon my Honour.

In like Manner the several Lords aftermentioned, being all that were present, answered as followeth:

Samuel Lord Sandys. Guilty, upon my Honour.

Richard Lord Edgumbe. Guilty, upon my Honour.

William Lord Fitz William. Guilty, upon my Honour.

John Lord Chedworth. Guilty, upon my Honour.

Stephen Lord Ilchester. Guilty, upon my Honour.

Henry Lord Monfort. Guilty, upon my Honour.

William Lord Talbot. Guilty, upon my Honour.

Robert Lord Raymond. Guilty, upon my Honour.

John Lord Monson. Guilty, upon my Honour.

John Lord Hobart. Guilty, upon my Honour.

Peter Lord King. Guilty, upon my Honour.

Matthew Lord Ducie. Guilty, upon my Honour.

Charles Lord Cadogan. Guilty, upon my Honour.

Robert Lord Romney. Guilty, upon my Honour.

Richard Lord Onslow. Guilty, upon my Honour.

Allen Lord Bathurst. Guilty, upon my Honour.

Samuel Lord Masham. Guilty, upon my Honour.

Thomas Lord Trevor. Guilty, upon my Honour.

Buffy Lord Mansell. Guilty, upon my Honour.

Herbert Lord Montjoy. Guilty, upon my Honour.

George Lord Hay. Guilty, upon my Honour.

James Lord Somerville. Guilty, upon my Honour.

George William Lord Hervey. Guilty, upon my Honour.

Francis Lord Conway. Guilty, upon my Honour.

Charles Lord Butler of Weston. Guilty upon my Honour.

Fulwar Lord Craven. Guilty, upon my Honour.

Charles Lord Cornwallis. Guilty, upon my Honour.

John Lord Berkeley of Stratton. Guilty, upon my Honour.

John Lord Ward. Guilty, upon my Honour.

William Lord Byron. Guilty, upon my Honour.

James Lord Strange. Guilty, upon my Honour.

Edward Lord Clifton. Guilty, upon my Honour.

John Lord St. John of Bletsee. Guilty, upon my Honour.

Francis Lord North and Guilford. Guilty, upon my Honour.

Hugh Lord Willoughby of Parham. Guilty, upon my Honour.

Edward Lord Wentworth of Netlested. Guilty, upon my Honour.

Richard Lord Willoughby de Broke. Guilty, upon my Honour.

Ferdinando Dudley Lord Dudley. Guilty, upon my Honour.

John Lord Delawarr. Guilty, upon my Honour.

Pattee Viscount Torrington. Guilty, upon my Honour.

Simon Viscount Harcourt. Guilty, upon my Honour.

Hugh Viscount Falmouth. Guilty, upon my Honour.

Richard Viscount Cobham. Guilty, upon my Honour.

John Viscount St. John. Guilty, upon my Honour.

Henry Viscount Lonsdale. Guilty, upon my Honour.

William Viscount Hatton. Guilty, upon my Honour.

Thomas Viscount Weymouth. Guilty, upon my Honour.

Charles Viscount Townshend. Guilty, upon my Honour.

Thomas Viscount Falkenberg. Guilty, upon my Honour.

Richard Viscount Say and Seale. Guilty, upon my Honour.

Price Viscount Hereford. Guilty, upon my Honour.

Francis Earl Brooks. Guilty, upon my Honour.

Hugh Earl Clinton. Guilty, upon my Honour.

Thomas Earl of Leicester. Guilty, upon my Honour.

William Earl of Bath. Guilty, upon my Honour.

William Earl of Harrington. Guilty, upon my Honour.

Robert Earl of Orford. Guilty, upon my Honour.

Thomas Earl of Effingham. Guilty, upon my Honour.

Benjamin Earl Fitzwalter. Guilty, upon my Honour.

James Earl Waldegrave. Guilty, upon my Honour.

Robert Earl Ker. Guilty, upon my Honour.

William Earl Graham. Guilty, upon my Honour.

Thomas Earl of Pomfret. Guilty, upon my Honour.

George Earl of Macclesfield. Guilty, upon my Honour.

Philip Earl of Harborough. Guilty, upon my Honour.

Philip Earl Stanhope. Guilty, upon my Honour.

William Earl Cowper. Guilty, upon my Honour.

George Earl of Halifax. Guilty, upon my Honour.

John Earl Granville. Guilty, upon my Honour.

Charles Earl of Tankerville. Guilty, upon my Honour.

William Earl of Dartmouth. Guilty, upon my Honour.

William Earl of Stafford. Guilty, upon my Honour.

Robert Earl Ferrers. Guilty, upon my Honour.

Charles Earl of Portmore. Guilty, upon my Honour.

John Earl of Dunmore. Guilty, upon my Honour.

James Earl of Findlater. Guilty upon my Honour.

William Earl of Home. Guilty, upon my Honour.

William Earl of Sutherland. Guilty, upon my Honour.

George Earl of Cholmondeley. Guilty, upon my Honour.

Francis Earl Godolphin. Guilty, upon my Honour.

John Earl Poulett. Guilty, upon my Honour.

Henry Earl of Grantham. Guilty, upon my Honour.

William Earl of Jersey. Guilty, upon my Honour.

William Henry Earl of Rochfort. Guilty, upon my Honour.

George Earl of Warrington. Guilty, upon my Honour.

Thomas Earl of Scarborough. Guilty, upon my Honour.

Baptist Earl of Gainsborough. Guilty, upon my Honour.

Willoughby Earl of Abingdon. Guilty, upon my Honour.

Augustus Earl of Berkeley. Guilty, upon my Honour.

John Earl of Radnor. Guilty, upon my Honour.

George Henry Earl of Litchfield. Guilty, upon my Honour.

Anthony Ashley Earl of Shaftesbury. Guilty, upon my Honour.

Richard Earl of Burlington. Guilty, upon my Honour.

Charles Earl of Ailesbury. Guilty, upon my Honour.

Francis Earl of Doncaster. Guilty, upon my Honour.

Richard Earl of Anglesey. Guilty, upon my Honour.

John Earl of Sandwich. Guilty, upon my Honour.

Sackville Earl of Thanet. Guilty, upon my Honour.

Philip Dormer Earl of Chesterfield. Guilty, upon my Honour.

Daniel Earl of Winchelsea and Nottingham. Guilty, upon my Honour.

Harry Earl of Stamford. Guilty, upon my Honour.

Charles Earl of Peterborough and Monmouth. Guilty, upon my Honour.

John Earl of Westmorland. Guilty, upon my Honour.

Edward Earl of Warwick and Holland. Guilty, upon my Honour.

James Earl of Northampton. Guilty, upon my Honour.

Brownlow Earl of Exeter. Guilty, upon my Honour.

James Earl of Salisbury. Guilty, upon my Honour.

Henry Bowes Earl of Suffolk and Berkshire. Guilty, upon my Honour.

Henry Earl of Lincoln. Guilty, upon my Honour.

Henry Earl of Pembroke and Montgomery. Guilty, upon my Honour.

Edward Earl of Derby. Guilty, upon my Honour.

Thomas Marquis of Rockingham. Guilty, upon my Honour.

William Marquis of Lothian. Guilty, upon my Honour.

John Marquis of Tweeddale. Guilty, upon my Honour.

Henry Duke of Chandos. Guilty, upon my Honour.

Robert Duke of Manchester. Guilty, upon my Honour.

William Duke of Portland. Guilty, upon my Honour.

Thomas Holles Duke of Newcastle. Guilty, upon my Honour.

Evelyn Duke of Kingston. Guilty, upon my Honour.

Peregrine Duke of Ancaster and Kesteven, Lord Great Chamberlain. Guilty, upon my Honour.

Archibald Duke of Argyll. Guilty, upon my Honour.

John Duke of Montagu. Guilty, upon my Honour.

John Duke of Rutland. Guilty, upon my Honour.

Charles Duke of Marlborough. Guilty, upon my Honour.

John Duke of Bedford. Guilty, upon my Honour.

Thomas Duke of Leeds. Guilty, upon my Honour.

Charles Duke of Bolton. Guilty, upon my Honour.

Charles Duke of St. Alban's. Guilty, upon my Honour.

Charles Noel Duke of Beaufort. Guilty, upon my Honour.

Charles Duke of Richmond. Guilty, upon my Honour.

Charles Duke of Grafton, Lord Chamberlain of his Majesty's Household. Guilty, upon my Honour.

William Duke of Devonshire, Lord Steward of his Majesty's Household. Guilty, upon my Honour.

John Earl Gower, Lord Privy Seal. Guilty, upon my Honour.

Lionel Cranfield Duke of Dorset, Lord President of the Council. Guilty, upon my Honour.

Then the Lord High Steward, laying his Right Hand upon his Breast, said;

Lord High Steward. My Lords, I am of Opinion, that Arthur Lord Balmerino is guilty of the High-Treason whereof he stands indicted, upon my Honour.

L. H. S. Your Lordships have unanimously found, that Arthur Lord Balmerino is guilty of the High-Treason whereof he stands indicted. Is it your Lordships Pleasure, that he should be called in, and acquainted therewith?—Lords. Ay, Ay.

Proclamation was then made for the Lieutenant of the Tower to bring the Prisoner to the Bar: Which was done in the same Order as before; and afterwards Proclamation made for Silence, as usual.

L. H. S. Arthur Lord Balmerino, The Lords have considered of the Charge of High-Treason which has been brought against you; they have likewise considered the Evidence, and every thing which your Lordship has alledged in your Defence; and, upon the whole Matter, their Lordships have unanimously found, that you are Guilty of the High-Treason, whereof you stand indicted.

Lord President, My Lords, I move your Lordships to adjourn to the Chamber of Parliament: Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords, Ay, Ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

Then the Lords returned, in the Order before mentioned, to the Chamber of Parliament: And the House being there resumed;

Ordered, That the said Earls of *Kilmarnock* and *Cromartie*, and Lord *Balmerino*, should be remanded Prisoners to his Majesty's Tower of London, there to be kept in safe Custody; and that they should be brought to the Bar of the House in *Westminster-Hall* on *Wednesday* next, at Eleven of the Clock in the Forenoon, that their Lordships might proceed in order to Giving of Judgment upon them.

Wednesday, July 30, 1746. The Second Day.

THE Lords and others came from the Chamber of Parliament into *Westminster-Hall*, in the same Order as on *Monday* last; and the Peers were there seated, and the Lord High Steward in his Chair.

L. H. S. The House is resumed. Is it your Lordships Pleasure, that the Judges may be covered?

Then the Serjeant at Arms made Proclamation for Silence, as usual; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, bring forth your Prisoners, *William Earl of Kilmarnock*, *George Earl of Cromartie*, and *Arthur Lord Balmerino*, to the Bar, pursuant to the Order of the House of Lords.

The Deputy Governor of the Tower brought the Prisoners to the Bar in the like Form as before; and then they kneeled down.

L. H. S. Your Lordships may rise.

The Serjeant at Arms made Proclamation for Silence, as usual.

Mr. Att. Gen. My Lords, it appears, That the Three Noble Lords at the Bar have been severally indicted for High-Treason, in levying War against his Majesty. They have severally been arraigned; and, to their Indictments, Two of the Noble Lords, the Earls of *Kilmarnock* and *Cromartie*, have pleaded Guilty; and the other, my Lord *Balmerino*, has pleaded Not guilty, and put himself upon his Trial by his Peers. As to the Two Noble Lords, who have pleaded Guilty, I pray your Lordships Judgment against them, according to that Confession; and, as to the Lord *Balmerino*, who hath pleaded Not guilty, and put himself upon his Trial by his Peers, your Lordships, upon hearing the Evidence, having found him Guilty, I also pray your Lordships Judgment accordingly against him.

L. H. S. William Earl of Kilmarnock, you stand indicted of High-Treason, in levying War against his Majesty; to which you have pleaded Guilty, and are thereby convicted: What has your Lordship to say, Why Judgment of Death should not pass upon you, according to Law?

Here the Lord High Steward asked Leave to go down to the Table: Which being done; Proclamation was made for Silence, as usual.

EARL of KILMARNOCK.

My Lords,

I SHALL not attempt to say any thing in Justification of a Crime, which is of too heinous a Nature to be vindicated; and which any Endeavour to excuse would rather aggravate than diminish. With unfeigned Humility I am ready to submit to the Sentence I am too conscious I have deserved. I have already owned myself guilty; and, covered with Confusion and Grief, I throw myself at his Majesty's Feet for Mercy.

I shall plead no Excuse for my Behaviour, in a Circumstance which makes me so much the more unhappy, as it has effaced my former Character, and blotted out the Memory of my constant Attachment to his Majesty's Interest all the preceding Part of my Life.

But, if a Man's former uniform Conduct can be any Evidence of his Principles, and Way of Thinking, I may appeal to mine. My Lords, I appeal to the World, if ever any Sentiment, of the Nature of the Crime I am now arraigned for, ever appeared in it; or if the contrary was not very conspicuous through my whole Life and Conversation.

My Sphere of Action, indeed was narrow; but, as much as I could in that Sphere, it is well known, I always exerted myself to the utmost in every Part of his Majesty's Service I had an Opportunity to act in, from my first Appearance in the World, to the Time I was drawn into this Crime, for which I now appear before your Lordships; in which I did not engage till very late, not till many Weeks after the Battle of *Preston*.

While I was engaged, it was my constant Care, as far as it lay in my Power, to protect and prevent any Injuries to his Majesty's faithful Subjects in their Persons, Houses, or Estates: For the Truth of which I can appeal to every Town and Country, through which I passed, or at any time halted in.

I had the same Regard for the Prisoners that were taken: And, I believe, Officers, private Men, and others, will vouch for me, That they had better Usage, and their Condition was rendered more supportable, through my Means, though I never had any particular Charge of them. I must at the same time own, that all I did, or could do, in this Way, for the Service of particular Persons, is no Atonement for the Blood I have been accessory to the Spilling of; nor do I plead it as such, or at all in Defence of my Crime.

I have a Son, my Lords, who has the Honour to carry his Majesty's

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Commission; whose Behaviour, I believe, will sufficiently evince, that he has been educated in the firmest Revolution Principles, and brought up with the warmest Attachment to his Majesty's Interest, and the highest Zeal for his most Sacred Person, and the Title of his Illustrious House to the Crown of these Realms.

That he was impressed with a firm and settled Opinion, That the Revolution was just and necessary; and that Civil and Religious Liberty and Property cannot be secured to the Nation, otherwise than by the strictest Adherence to these Principles, and maintaining and supporting the Succession to the Crown, as it is by Law established in the Person of his most Sacred Majesty, and his Illustrious House.

It was my chief Care to instruct him in these Principles from his earliest Youth; and to confirm him, as he grew up, in the Justice and Necessity of them to the Good and Welfare of the Nation. And, I thank God, I have succeeded: For his Father's Example did not shake his Loyalty; the Ties of Nature yielded to those of Duty: He adhered to the Principles of his Family, and nobly exposed his Life at the Battle of *Culloden*, in Defence of his King, and the Liberties of *Britain*; which I, his unfortunate Father, was in Arms to destroy.

I was instructed in the same Principles myself from my Infancy, by the best of Fathers, who distinguished himself early on his late Majesty's Accession, by his Zeal and Activity in suppressing the Rebellion in 1715 (in which he contracted his Death, that followed soon after), as was well known then, and may still be remembered by some of your Lordships. I then had the Honour to serve under him, as far as my Years would admit of, in the same Cause which my Family had always been remarkable for supporting, and which I have ever since strictly adhered to, both in my Heart and Practice, till this unhappy Period.

My Lords, I am not one of those dangerous Persons, who can raise a Number of Men when they will, and command them on any Enterprize they please: My Interests lie on the South Side of *Forth*, in the well inhabited and well affected Counties of *Kilmarnock* and *Falkirk*, in the Shires of *Ayr* and *Stirling*. I have the Honour to speak to those who know the Map, the Situations of these Countries, and the Dispositions of their People: These Places are so well affected (and, perhaps, partly through my Means), that any Influence I, or any other, could have on them to the contrary, would be very small; and if I could have had any, I did not use it on this Occasion. Though I was, in the Months of *December* and *January* last, some Weeks at *Falkirk*, I did not raise a single Man out of it; and though, immediately before that, I was a Week at *Glasgow*, a few Miles from *Kilmarnock*, I brought Nobody from thence. These last, indeed, were much strengthened in their loyal Principles by my Father's long Residence, and by my being much among them; and I used my Endeavours, with Success, to confirm them in those Sentiments, in a Visit I made them last *September*; when I passed some Days with them, about the Time of, and after the Battle of *Preston*: At that time I got them put in as much Readiness to act for his Majesty's Service, as the Law would then admit of; and procured their settling a Correspondence with their neighbouring Boroughs of *Ayr* and *Irvine*, for their common Defence: which had so good an Effect, that the Town of *Kilmarnock* alone had soon a good Body of Militia on Foot, which marched into *Glasgow* the Beginning of Winter.

I cannot omit to inform your Lordships, That, at the Battle of *Culloden*, I not only surrendered myself, but I surrendered when it was very easy for me to have escaped, as all that Body did with whom I was when they gave Way. Lord *Ancrum*, to whom I made my Surrender, can acquaint your Lordships, That, when I came up to him, I was quite alone, at a very great Distance from those I had left; and that I neither was running, nor pursued by any Enemy. But though I could have escaped, I did not choose it; because the Consequences, in an Instant, appeared to me more terrible, more shocking, than the most painful or ignominious Death. To throw myself into the Hands of a Foreign Power, the natural Enemy to my Country, with whom to have Merit, I must persist in continued Acts of Violence to my Principles, and of Treason and Rebellion against my King and Country; I had already been too far engaged with those, who were encouraged by that Power, to think of continuing in so criminal an Error; and therefore I chose to surrender, and commit myself to his Majesty's Mercy.

I beg leave to repeat what I said before, That I did not mean to advance any thing in Excuse, or even in Mitigation of my Crime: I only pray to be looked on, by your Lordships, as an Object of his Majesty's Compassion; and, if I am so happy, I beg leave to implore your Lordships Intercession with his Majesty for Mercy, in my Behalf. It is your Lordships Intercession, and that of my Countrymen alone, that I implore. I heard there was an Offer of Mediation made by a Foreign Prince at War with his Majesty; and I heard it with an Indignation that ought to fire the Heart of every Briton, when a *French* King dares attempt to direct, or in any respect influence, the Counsels or Determinations of a King of *Britain*; or presume to interpose between his Majesty and his offending Subjects. I was but too far drawn in, and unhappily engaged, with those who were assisted and influenced by that Prince; and I never can sufficiently testify my Sorrow and Repentance for it: But I would look on it as the highest Aggravation of my Crime, to hope, or even to wish for Favour through his Office, by whose Means chiefly, I believe, they were misled, with whom I was accessory to the disturbing the Peace of these Nations, and swerving from my Duty and Allegiance to his Majesty, which all the former Part of my Life I had kept inviolable.

It is by Britons only, that I pray to be recommended to a *British* Monarch. If his Majesty shall be pleased, from the steady Loyalty of my Family, from my Father's past Services, from my own constant Adherence to his Majesty's Interest, from my present Anguish for having ever been concerned in this unnatural Rebellion, and from my undissembled Sorrow and Remorse for it, which must attend me to my last Moments: If from these, but much more from his own unbounded Mercy, my Royal Master shall incline to spare that Life which I have justly forfeited, let me owe it to his Majesty through the Intercession of your Lordships, who are Witnesses to my Grief and Repentance.

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But if Justice will not allow of Mercy, my Lords, I will lay down my Life with Patience and Resignation: My last Breath shall be employed in the most fervent Prayers for the Preservation and Prosperity of his Majesty, and his August House, and to beg his Forgiveness, and the Forgiveness of my Country.

Lord High Steward. George Earl of Cromartie, You stand indicted of High Treason, in levying War against his Majesty; to which you have pleaded Guilty, and are thereby convicted: What has your Lordship to say, Why Judgment of Death should not pass upon you, according to Law?

EARL OF CROMARTIE.

I HAVE now the Misfortune to appear before your Lordships, guilty of an Offence of such a Nature, as justly merits the highest Indignation of his Majesty, your Lordships, and the Publick: And it was from a Conviction of my Guilt, that I did not presume to trouble your Lordships with any Defence. As I have committed Treason, it is the last Thing I would mean to justify it: My only Plea shall be, your Lordships Compassion; my only Refuge, his Majesty's Clemency.

Under this heavy Load of Affliction, I have still the Satisfaction, my Lords, of hoping, that my past Conduct, before the Breaking out of the Rebellion, was irreproachable, as to my Attachment to the present happy Establishment, both in Church and State: And, in Evidence of my Affection to the Government, upon the Breaking out of the Rebellion, I can appeal to the then Commander in Chief of his Majesty's Forces at *Inverness*, and to the Lord President of the Court of Session in *Scotland*, who, I am sure, will do Justice to my Conduct upon that Occasion.

But, my Lords, notwithstanding my determined Resolution in Favour of the Government, I was most unhappily seduced from that Loyalty in an unguarded Moment, by the Arts of desperate and designing Men: And it is notorious, my Lords, that no sooner did I awake from that Delusion, than I felt a Remorse for my Departure from my Duty; but it was too late.

Nothing now, my Lords, remains, but to throw myself, my Life, and Fortune upon your Lordships Compassion; but those, my Lords, as to myself, are the least Part of my Misery.

I have involved an innocent Wife (no Party to my Guilt), and, with her, an unborn Infant, to share its Penalty: I have involved my eldest Son, whose Infancy, and Regard to his Parent, hurried him down the Stream of Rebellion: I have involved also Eight innocent Children, who must feel their Parent's Punishment, before they know his Guilt.

Let them, my Lords, be Pledges to his Majesty; let them be Pledges to your Lordships; let them be Pledges to my Country, for Mercy: Let the silent Eloquence of their Grief and Tears, let the powerful Language of innocent Nature, supply my Want of Eloquence and Persuasion: Let me enjoy Mercy no longer than I deserve it; and let me no longer enjoy Life, than I shall endeavour to efface the Crimes I have been guilty of. Whilst I thus intercede for your Lordships Recommendation to his Majesty for Mercy, let my Remorse for my Guilt, as a Subject; let the Sorrows of my Heart, as a Husband; let the Anguish of my Mind, as a Father, speak the rest of my Misery! Your Lordships are Men, you feel as Men; but may none of you ever suffer the smallest Part of what I suffer!

But, after all, if my Safety shall be found inconsistent with that of the Publick, and nothing but my Blood thought necessary to atone for my unhappy Crimes; if the Sacrifice of my Life, my Fortune, and Family, are judged indispensable for stopping the loud Demands of publick Justice; if, notwithstanding all the Allegations that can be urged in my Favour, the bitter Cup is not to pass from me; not mine, but thy Will, O God, be done!

Lord High Steward. Arthur Lord Balmerino, When you were last at this Bar, I acquainted your Lordship, That upon your Trial, your Peers had unanimously found you guilty of the High Treason of which you stand indicted, whereby you are convicted: What have you to say, why Judgment of Death should not pass upon you, according to Law?

Lord Bal. My Lords, I have here a Paper in my Hand, which says, There are some Reasons, why Judgment should not pass against me. I desire your Lordships will let it be read.

L. H. S. Will your Lordship please to read it yourself?

Lord Bal. I desire your Lordships would let it be read.

L. H. S. My Lords, This Paper, which is offered by my Lord Balmerino, cannot be read at the Table; but your Lordships may give Leave, that a Clerk may go down to the Bar, and read it for the Prisoner.

Lords. Ay, ay.

Clerk of the Crown reads the Paper; viz.

July 29th, 1746.

IT is conceived, that the late Act of Parliament, empowering his Majesty to transport such as are taken in Arms from one County to another, where they may be tried by the Course of the Common Law, did not take place, till after the Time that the Facts, implying Treason, were actually committed by the accused Prisoners; and, if so, the Grand Jury of *Surry*, or of any other County whatsoever, where these Acts of Treason are not alledged to have been committed, could not, agreeable to Law, find Bills against such Prisoners: And it may, on that score, be prayed, That the Indictment be quashed, or that an Arrest of Judgment be thereupon granted.

Nat. Williamson.

If the Bill, found by the Grand Jury, has any Flaw, so as to make it illegal, all the Superstructure falls of Course.

Nat. Williamson.

L. H. S. What has your Lordship to offer upon this Paper?

Lord Bal. I say, my Lords, if the Grand Jury of the County of *Surry* had not Power to find a Bill of Indictment against me, I can't have Judgment pass against me; for I can't see, how the Indictment can be good.

L. H. S. Has your Lordship any thing more to offer?

Lord Bal. No, my Lords.

Lord High Steward. Your Lordships hear what is alledged by my Lord Balmerino.

Earl of Bath. I desire, my Lord Balmerino may be asked, Whether he knows, that he is intitled to have Counsel, if he thinks fit?

L. H. S. Has not your Lordship been acquainted, before this Time, that you were intitled to have Counsel, if you thought fit to apply for it?

Lord Bal. Yes, my Lords; I was acquainted some Time ago, that I might have Counsel; but I have not had Time to speak to any on this Paper. I received this Paper but within this half Hour from the Constable of the Tower.

L. H. S. If you were told, that you might have Counsel, why did not your Lordship apply for Counsel before?

Lord Bal. I told your Lordships the other Day, That I did not know I should have Occasion for Counsel. I have had no Counsel to advise me on this Paper. Do your Lordships think fit to allow me Counsel now?

L. H. S. Doth your Lordship now move for Counsel?

Lord Bal. Yes, my Lords, I do, upon this Point only.

The Lord High Steward went back to his Chair.

L. H. S. My Lords, By the Statute of the Seventh of King William the Third, for regulating Trials in Cases of High-Treason, my Lord Balmerino might have had Counsel assigned him by your Lordships to make his full Defence, if he had thought fit to apply for that Purpose: And as he had long ago, by your Order, a Solicitor assigned him, with Liberty of Access to him at all seasonable Times, he admits, that he was rightly informed concerning that Matter. It seems his Lordship did not think it proper to apply for Counsel before now, though he admitted, on Monday last, that he had had the Advice of Counsel upon his Case; but he has now moved your Lordships to assign him Counsel, to speak to one particular Point offered by him in Arrest of Judgment. As this is the State of the Proceeding, it is proper for your Lordships Consideration, Whether before you appoint Counsel to argue a particular Point, you will not have that Point so far opened, as to see, whether there is any Colour in it, or not. This will best appear, by hearing one of the King's Counsel state the Matter upon the Act of this Session of Parliament, referred to by the Paper which was just now read; and then possibly my Lord himself may be so well satisfied, as not to insist on having Counsel assigned to argue it.

Duke of Newcastle. As the Prisoner at the Bar has made his Objection, and moved an Arrest of Judgment, I think one of the King's Counsel ought to have Liberty to be heard to that Matter: Your Lordships will then see, what Weight there is in the Objection insisted on by the Prisoner, and be the better able to determine about assigning Counsel to argue it. I am therefore of Opinion, that the King's Counsel should be heard in the Manner proposed by my Lord High Steward.

Earl Granville. By the known Rules and Usage of Parliament, there can be no Debate in this Place; and therefore I move your Lordships to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

The Lords, and others, returned to the Chamber of Parliament in the same Order they came down; and, after some time, the House was adjourned again into *Westminster-Hall*; and the Peers being there seated, the Lord High Steward in his Chair, and the House resumed, the Serjeant at Arms made Proclamation for Silence, as usual.

L. H. S. My Lord Balmerino, The Lords have, in their House above, unanimously come to this Resolution, That I should ask your Lordship, Whether you do now desire that Counsel should be assigned you; and that I should acquaint you, that in case you do desire it, their Lordships will assign you such Counsel as you think fit to propose.

Lord Bal. Yes, my Lords, I do.

L. H. S. What Counsel does your Lordship desire should be assigned you?

Lord Bal. Mr. Wilbraham and Mr. Forrester, my Lords.

Lord President. I move, that your Lordships will adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

Then the Lords went back, in the Order beforementioned, to the Chamber of Parliament.

And the House being there resumed;

Ordered, That Mr. Wilbraham and Mr. Forrester be assigned Counsel for the Lord Balmerino, as desired; and that they may have Access to him at all seasonable Times.

Ordered, That the Earls of Kilmarnock and Cromartie, and the Lord Balmerino, be remanded Prisoners to his Majesty's Tower of London, and there kept in safe Custody, until the further Order of this House.

Ordered, That this House will proceed further, in order to the giving Judgment against the said Lords on Friday next, at eleven of the Clock; and that they be then brought to the Bar of this House, in *Westminster-Hall*, for that Purpose.

Friday, August 1st, 1746.

THE Lords, and others, came from the Chamber of Parliament into *Westminster Hall*, in the same Order as on Monday last; and the Peers were there seated, and the Lord High Steward in his Chair.

Lord High Steward. My Lords, the House is resumed.

Is it your Lordships Pleasure, that the Judges have Leave to be covered?

The Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, bring forth your Prisoners, William Earl of Kilmarnock, George Earl of Cromartie, and Arthur Lord Balmerino, to the Bar, pursuant to the Order of the House of Lords.

The Deputy-Governor of the Tower brought the Prisoners to the Bar, in the like Form as before; and then they kneeled down.

Lord

Lord High Steward. Your Lordships may rise.

Mr. W. Graham and Mr. Forrester, the Counsel assigned to the Lord Balmerino, attended.

L. H. S. My Lord Balmerino, when you were last at this Bar, you thought fit to move in Arrest of Judgment; and desired, that Counsel might be assigned you: Whereupon the Lords have been pleased to assign you such Counsel as you proposed. Does your Lordship now desire that your Counsel may be heard?

Lord Bal. As your Lordships have been pleased to allow me Counsel, I have advised with them; and my Counsel tell me, there is nothing in that Paper, which I delivered in on Wednesday last, that will be of any Use to me: So I will not give your Lordships any further Trouble about it.

L. H. S. If I understand your Lordship right, you do not desire your Counsel should speak to that Matter.

Lord Bal. No, my Lords.

L. H. S. Do you desire your Counsel should be heard?

Lord Bal. I desire they should not plead.

L. H. S. My Lords, though the Prisoners have already been asked what they had to say, why Judgment should not pass upon them according to Law; yet as they are now brought up at a subsequent Day, it is the regular Course to ask them the same Question over again; because something material may possibly have arisen or occurred since the former Day.

William Earl of Kilmarnock, Has your Lordship any thing further to say, why Judgment of Death should not pass upon you, according to Law?

Earl of Kilmarnock. No, my Lords, I have nothing farther to offer.

L. H. S. George Earl of Cromartie, Has your Lordship any thing further to say, why Judgment of Death should not pass upon you, according to Law?

Earl of Cromartie. No, my Lords, I have nothing further to trouble your Lordships with.

L. H. S. Arthur Lord Balmerino, Has your Lordship any thing further to say, why Judgment of Death should not pass upon you, according to Law?

Lord Balmerino. No, my Lords; I only desire to be heard a Moment. My Lords, I am very heartily sorry, that I should take up so much of your Lordships Time, and give you so much Trouble: It was not to delay Time, or to gain a few Days; but only as I believed there was something in the Objection that would do me Service; and I beg your Lordships Pardon for the Trouble I have given you.

My Lords, I acknowledge my Crime, and I beg your Lordships will intercede with his Majesty for me.

L. H. S. Make Proclamation for Silence whilst Judgment is giving.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King doth strictly charge and command all manner of Persons to keep Silence whilst Judgment is giving, upon Pain of Imprisonment!

Lord High Steward,

William Earl of Kilmarnock, George Earl of Cromartie, Arthur Lord Balmerino,

IN the Course of this solemn Proceeding, you have already been acquainted, That you stand convicted of the High-Treason charged upon you by the several Indictments on which you have been arraigned.

By this Conviction it is now finally determined, That your Lordships are guilty of that Crime, which not only the Laws of Great Britain, but of all other Countries, for the wisest Reasons, adjudge to be the highest.

As it gives the deepest Concern to every one of my Lords your Peers, to find Persons of your Birth and Quality stained with so foul an Offence, so it must give them some Satisfaction, that all of you, in effect, have confessed it; two of your Lordships by expressly pleading Guilty upon your Arraignment; and the other, by openly declaring himself satisfied with the Determination of this House, upon the only Point on which his Defence was rested. Charity makes one hope, that this is an Indication of some Disposition to that Repentance which your Guilt so loudly calls for.

You, my Lord Balmerino, have since moved in Arrest of Judgment; and their Lordships were pleased to assign the Counsel you desired, to support that Motion: But, upon advising with your Counsel, you have now voluntarily at the Bar withdrawn it, as being wholly without Foundation.

To attempt to aggravate Crimes of so deep a Dye, and in themselves so incapable of Aggravation, against Persons in your unhappy Circumstances, would be a vain, as well as a most disagreeable Task. And yet the Duty of that Place, in which I have the Honour to sit, requires that I should offer some Things to your Consideration, to explain more fully the Necessity of that Justice which is this Day to be administered, and to awaken in your Minds a due Sense of your own Condition.

If any Rebellion can be heightened by the Circumstances attending it, it is that in which your Lordships have been engaged: A Rebellion against a King celebrated through the World for his mild and gracious Government; the whole Series of whose Reign has been distinguished by the strictest Adherence to the Laws, and the most indulgent Care of the Rights of his People, unblemished with any single Instance of an Attempt or Design to violate either.

To overturn the Government of such a King, you took Arms; and, in Consequence of this, to destroy the purest Religion, and subvert the best Constitution, formed and established upon the justest Balance of Prerogative in the Crown, and Liberty in the Subject, for the Preservation of the Whole.

What did your Lordships, who profess the Protestant Religion, and claim the Benefits of this Constitution, seek to introduce in the Room of these invaluable Blessings? In Religion, Popery, attended with its Train of Superstitions, and inhuman Principles of Persecution; in Government, Despotism and Tyranny; and to cement and support this horrid System, an abjured Pretender, deriving his Principles of Religion and Civil Policy from Rome and France.

When I name France, I find myself obliged to remind your Lordships of one Circumstance, which it will become you to reflect upon in your most serious Moments. The Time you chose to arm against your Country, was, whilst it stood engaged in a just and necessary War against that Crown, and Spain; a War, to preserve its own Commerce and Independ-

dency, and its ancient natural Allies. Though some of your Lordships have thought it proper, at this Bar, to disclaim that Connexion, or any Advantage from it; yet, with that ambitious and incroaching Power, you avowedly joined yourselves; by this Aid, you endeavoured to effect the dreadful Change you meditated; and, to such a Matter, to enslave this free Nation.

Nor were the other Countries of Europe, which have united themselves against the pernicious Views of France, less essentially, though more remotely, interested in the Event. From Great Britain they derived their chief Assistance in this War: In her centered their Hopes of Support: But the Contrivers of this Scheme laid the Ax to the Root of the Tree; and, by endeavouring to deliver up this Kingdom a Province to France, strove to cut off that Resource, without which the Cause of publick Liberty must have sunk for ever.

Thus widely spread were the Calamities, which this Rebellion was formed to introduce. By calling off the Arms of Great Britain to her necessary Self-defence, some Progress was made towards effectuating one Part of the intended Mischief. How far it may be retrieved, and in what Manner, is still in the Womb of Time, and in the Hands of Providence: But is it not astonishing that Men, who call themselves Britons and Protestants, should become the Dupes and Abettors of so execrable a Design? A Design to erase the very Foundations of true Religion and Freedom, and to turn the Riches and Strength of this Kingdom, through a Course of Ages so differently employed, into Instruments of the common Slavery?

After all this, to mention the Plundering and Devastation of particular Towns and Counties; the Miseries brought upon private Persons and Families; or the many Murders committed (for the Death of every loyal Subject killed in this Rebellion was a Murder); to mention these Things, though most important and moving in themselves, after the other more extensive Considerations, would make them appear of less Weight.

Some of your Lordships, in what you have been pleased to offer for yourselves, have urged several Topics to excite Mercy and Compassion. Those, if of any Moment, are only proper for that Place, where the Seat of Mercy must be acknowledged to be fixed. But, when Arguments of Compassion have been urged in Behalf of the Guilty, let us balance those Arguments with a becoming Compassion for our Country, for those who have suffered innocently by the Miseries which this Rebellion brought upon it, and for those who died gloriously in its Defence.

Give me Leave to urge this a little further. Even the Sufferings of those, who so far forgot their Allegiance, as to adhere to, or favour, this impious Cause, are in Justice to be charged only to the Account of such as fomented and supported it. They who take Arms against a lawful established Government, create the Necessity of all Acts requisite to be done on the Side of that Government, in order to repel and subdue them; or which, in the Nature of Things, become unavoidable in the Course of suppressing them.

Upon such a Subject it is more difficult to stop than to enlarge. But, whilst I am endeavouring to raise in your Minds a just Sense of the many Evils involved in your Crimes, permit me to intreat your Lordships to deal impartially with yourselves, and to consider seriously, what could be your Temptation to commit them.

Every one of you enjoyed the common Benefits of that legal and mild Government, which, in Violation of the most solemn Oaths, you sought to destroy; and some of you had received particular Advantages from it. You, my Lord Kilmarnock, and my Lord Cromartie, have thought fit to appeal to your former Conduct as a Proof of your good Principles for the Support of the Revolution, and of our present happy Establishment. With real Grief I lament that you ever deviated from those Sentiments. If, as your Lordships would have us believe, they were sincere, and proceeded from the Heart, What could possibly be your Inducement to this sudden Apostacy? Your Lordships have left that a Blank in your Apologies; and I choose rather to leave it to be filled up by the Constructions of others, than to supply it myself.

Thus much I am warranted to say: No glittering Prospect of Success in the Beginnings of this Rebellion could tempt you. On the one hand, those Beginnings were so weak and unpromising, as to be capable of seducing none, but the most infected and willing Minds, to join in so desperate an Enterprize. On the other hand, it was impossible, even for the Party of the Rebels, to be so inconsiderate or vain, as to imagine that the Body of this free People, blest in the Enjoyment of all their Rights both Civil and Religious under his Majesty's Protection; secure in the Prospect of transmitting them safe to their Posterity, under the Protestant Succession in his Royal House (of which they see so many illustrious Branches); I say, it was impossible that they could imagine, the Body of this free People, under these Circumstances, would not rise up, as one Man, to oppose and crush so flagitious, so destructive, and so unprovoked an Attempt.

Happy is it for ourselves, happy for our Posterity, that this was verified by the Event. The Rebels soon saw his Majesty's faithful Subjects, conscious both of their Duty and Interest, contending to outdo one another in Demonstrations of their Zeal and Vigour in his Service. The Merchants and Trading Part of this great Metropolis, one of the most useful and respectable Branches of the Community, to their lasting Honour, associated themselves, at the Risk of their private Fortunes, to support the publick Credit of their Country. Men of Property, of all Ranks and Orders, crowded in with liberal Subscriptions, of their own Motion, beyond the Examples of former Times, and uncompelled by any Law; and yet in the most legal and warrantable Manner, notwithstanding what has been ignorantly and presumptuously suggested to the contrary. The Clergy, with a Zeal becoming their holy Function, regulated by Christian Charity, instructed their Hearers by their Doctrine, and led them by their Example, in Defence of the Crown, and of our common Liberties; of this Reformed Church, and consequently of the Reformation itself.

The Rebels soon saw many of the Nobility and Gentry, from amongst the first Families, the greatest Estates, and the best Blood in the Kingdom, surrounding the Throne, soliciting to be permitted to hazard their Lives in this glorious Cause, and to be authorized, at their own Expence, to raise Forces for the Support of it.

But,

But, above all, they saw both Houses of Parliament, the great Council of the Nation, the Representative Body of this People, warmed with a truly British Spirit, and treading in the Steps of their Ancestors, overcoming all Difficulties, and unanimously concurring in every Measure to strengthen the King's Hands, and to maintain that Government, on which the very Being of Parliaments, and the Preservation of this limited Monarchy, depend.

If these Enemies of our Peace had formed to themselves any false Hopes of contrary Appearances, it must be owing to the highest Degree of Infatuation, that they were not soon convinced of their Mistake. Great Reason have we to offer up our Thanks to Heaven, that they have been effectually disappointed. Even your Lordships, if you will allow yourselves to weigh your own Case in the just Balance of Religion and Conscience, will find Cause to be thankful that the Measure of your Guilt was not suffered to be filled up and enhanced by the final direful Success of it.

If, from any unforeseen Accidents, not uncommon in military Operations, these delusive Hopes were for some time kept alive, it seems to have been judicially designed by Providence to render the more signal that Vengeance, which was reserved for them at the Battle of Culloden. How much was owing, on that memorable Day, to the Bravery and Discipline of his Majesty's Troops, to the animating Example, the intrepid Valour, and the wise Conduct of a Prince descended from him, is so deeply engraven on the Heart of every Member of this Great Assembly, that I could only repeat what their own grateful Minds have already suggested to themselves, and represented to the Throne.

Then was experienced how much that Courage, which Virtue, true Loyalty, and the Love of our Country, inspire, is superior to the Rashness and false Fire of Rebellion, accompanied with the Terrors of Guilt.

I will add no more. It has been his Majesty's Justice to bring your Lordships to a legal Trial; and it has been his Wisdom to shew, that, as a small Part of his National Forces was sufficient to subdue the Rebel Army in the Field, so the ordinary Course of his Laws is strong enough to bring even their Chiefs to Justice.

What remains for me, is a very painful, though a necessary Part. It is, To pronounce that Sentence, which the Law has appointed for Crimes of this Magnitude;—a Sentence full of Horror! such as the Wisdom of our Ancestors has ordained, as One Guard about the Sacred Person of the

King, and as a Fence about this excellent Constitution, to be a Terror to Evil-doers, and a Security to them that do well.

The Judgment of the Law is, and this High Court doth award;

"That You, *William Earl of Kilmarnock, George Earl of Cromartie, and Arthur Lord Balmorino*, and every of you, return to the Prison of the Tower, from whence you came; from thence you must be drawn to the Place of Execution; when you come there, you must be hanged by the Neck, but not till you are dead; for you must be cut down alive; then your Bowels must be taken out, and burnt before your Faces; then your Heads must be severed from your Bodies, and your Bodies must be divided each into Four Quarters; and these must be at the King's Disposal.

"And God Almighty be merciful to your Souls!"

L. H. S. Lieutenant of the Tower, Take the Prisoners from the Bar. Which being done, Proclamation was made for Silence, as usual.

L. H. S. My Lords, This Proceeding being at an End, nothing remains to be done here, but to determine the Commission.

Lords. Ay, Ay.

L. H. S. Let Proclamation be made for dissolving the Commission of High Steward.

Serj. at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King does strictly charge and command all manner of Persons here present, and that have here attended, to depart hence in the Peace of God, and of our Sovereign Lord the King; for his Grace my Lord High Steward of Great Britain intends now to dissolve his Commission.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Usher of the Black Rod, upon his Knee, his Grace stood up uncovered; and holding the Staff in both his Hands, broke it in two, and declared the Commission to be dissolved; and then leaving the Chair, came down to the Wool-Pack, and said, Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, Ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

Then the Lords and others returned in the same Order they came down.

And the Prisoners were carried back to the Tower of London.

XLII. The Whole Proceedings in the HOUSE of PEERS, upon the Impeachment exhibited by the *Knights, Citizens, and Burgeses*, in Parliament assembled, in the Names of Themselves, and of all the Commons of *Great Britain*, against *SIMON LORD LOVAT*, for High-Treason: The Proceeding in *Westminster-Hall* being begun on *Monday* the 9th Day of *March*, and continued on *Tuesday* the 10th, *Wednesday* the 11th, *Friday* the 13th, *Monday* the 16th, *Wednesday* the 18th, and *Thursday* the 19th Days of *March*, 1746-7.

Die Jovis, 11^o Decembris, 1746.

A Message was brought from the House of Commons, by Sir *William Yonge*, and others, to acquaint this House, That they, having Matters to communicate to their Lordships, of great Importance to the King and Kingdom, do desire that their Lordships will continue sitting for some Time.

To which the House agreed.

And the Messengers were called in again; and acquainted by the Lord Chancellor, That the Lords will continue sitting for some Time, as desired. The House was adjourned during Pleasure.

The House was resumed.

A Message was brought from the House of Commons, by Sir *William Yonge*, and others, as follows:

My Lords,

THE Commons of *Great Britain*, in Parliament assembled, having received Information of divers Treasons committed by a Peer of this Realm, *Simon Lord Lovat*, have commanded me to impeach the said *Simon Lord Lovat* of High-Treason: And I do here, in their Names, and in the Names of all the Commons of *Great Britain*, impeach the said *Simon Lord Lovat* of High-Treason: And I am further commanded to acquaint your Lordships, That they will, with all convenient Speed, exhibit Articles to make good the Charge against him.

Die Mercurii, 17^o Decembris, 1746.

A MESSAGE was brought from the House of Commons, by Sir *William Yonge*, and others, who said, he was commanded by the House of Commons to deliver to this House Articles of Impeachment of High-Treason against *Simon Lord Lovat*.—He said, He was also commanded by the Commons to acquaint their Lordships, That they are ready to maintain their Charge: And he delivered in the said Articles.

Which Articles being read:

The Duke of *Newcastle* acquainted the House, That the said Lord *Lovat* is already under Commitment for High-Treason in his Majesty's Tower of London.

Then the following Order was made:

Whereas the Commons, assembled in Parliament, have this Day exhibited to this House Articles of Impeachment of High-Treason against *Simon Lord Lovat*; It is Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, That the said Lord *Lovat* be brought to the Bar of this House To-morrow at Two of the Clock in the Afternoon, to hear the said Articles read; and to abide such further Order, as this House shall think fit to make concerning him.

To *Charles Lord Cornwallis*, Constable of his Majesty's Tower of London, and, in his Absence, to the Lieutenant of the said Tower, or his Deputy.

Die Jovis, 18^o Decembris, 1746.

THE Order being read, for bringing *Simon Lord Lovat* to the Bar of this House, to hear the Articles of Impeachment of High-Treason, exhibited against him Yesterday by the House of Commons, read unto him;

The said Lord *Lovat* was accordingly brought to the Bar, by the Deputy-Gentleman-Usher of the Black Rod: Where he kneeled until the Lord Chancellor directed him to rise.—Then

The said Articles of Impeachment were read unto him: Which done, the Lord Chancellor asked him, What he had to say thereunto; and informed him, That, if he had any Thing to request of the House, this was his proper Time.

Whereupon he acquainted the House with his Infirmities occasioned by old Age, and particularly alledged his Deafness, that he could not hear what the Contents of the said Articles were: Wherefore, having a Petition prepared to make known to the House his Requests, he desired the same might be read: Which being delivered in, was read by the Clerk, and is as follows; viz.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled,

The Humble Petition of *SIMON LORD FRASER of LOVAT*,

Sheweth,

THAT your Petitioner, by reason of his great Age, labours under many Infirmities and Weakness; and, being intirely ignorant of the Forms of Law, and Method of Proceedings in this August Court, is unable to make any Defence, or give in a proper Answer to the Articles of Impeachment exhibited against him, without the Assistance of able Counsel and Solicitors.

That your Petitioner, during his close Confinement in the Tower of London, for now near Five Months, has not been able to obtain One Shilling either out of his Estate or otherwise; which has been occasioned, as your Petitioner has been informed, by some Grants of a very extraordinary Nature, and which your Petitioner hopes, shall never again, in this Island, be drawn into Precedent; authorizing and empowering other Persons, Strangers to your Petitioner, to take Possession of his Estate, and to levy the Rents thereof; while such as had in their Hands any Money or Effects of your Petitioner's, were prohibited and restrained from paying any Part thereof to your Petitioner, or his Order.

That your Petitioner applied several Times to one of His Majesty's Principal Secretaries of State, complaining of the Hardships your Petitioner suffered by Means of such Proceedings; and your Petitioner is informed, that Two several Orders were made thereupon, in order to remove the said Prohibitions and Restraints, and to recal the said Powers so granted as above: But notwithstanding thereof, your Petitioner is still

in the same deplorable Circumstances, without any Money even to procure him the common Necessaries of Life, and is wholly indebted to General *Williamson* for his Support.

That your Petitioner, when he was apprehended by a Party of his Majesty's Troops in *Scotland*, had, in his Strong-Box, Money and Jewels to the Amount of Seven hundred Pounds and upwards, which they seized, and retain; insisting the same is lawful Prize.

Your Petitioner therefore humbly prays, that your Lordships, moved by your innate Goodness, may be pleased to assign your Petitioner such and so many Counsel and Solicitors as your Lordships shall think proper: That your Petitioner may have a Copy of the Articles of Impeachment; and may not be ordered by your Lordships to begin and enter upon his Defence, while he remains stripped and deprived of all the necessary Means which the Law allows him for his Defence and Support; but that such a reasonable Time may be allowed your Petitioner to prepare and put in his Answer, that he may be enabled to receive Money sufficient to retain and fee his Counsel and Solicitors; without which, your Petitioner apprehends, he cannot have their Assistance and Advice: And that, for that Purpose, the Money and Jewels contained in the Strong-Box, and unjustly taken as above, may be immediately restored to your Petitioner, by your Lordships Order.

And your Petitioner shall ever pray, &c.

L O V A T.

The Counsel that Lord *Levat* desires may be assigned are, Mr. *Starkie*, Mr. *Forrester*, Mr. *Ford*, and Mr. *Wilmott*: And the Solicitors are, Mr. *George Ross*, Mr. *Hugh Fraser*, and Mr. *Goostrey*.

The Petition being read, the said Lord *Levat* was asked by the Lord Chancellor, If he had any Thing further to offer.

To which he answering in the Negative;

He was directed to withdraw.

And the House taking the Requests of the said Petition into Consideration;

Ordered, That the said Lord *Levat* may have a Copy of the said Articles of Impeachment exhibited against him: And that he do put in his Answer thereunto, in Writing, on or before *Tuesday*, the 13th Day of *January* next: And that Mr. *Starkie*, Mr. *Forrester*, Mr. *Ford*, and Mr. *Wilmott*, the Counsel mentioned in the said Petition, be assigned to assist him in preparing his Answer, and likewise in his Defence, in Matters of Law: And that Mr. *George Ross*, Mr. *Hugh Fraser*, and Mr. *Goostrey*, be also assigned Solicitors for him: And that such Counsel and Solicitors may have Access to him at all seasonable Times: And that the said Lord *Levat* have Liberty to cause Search to be made, and Copies of Records and Journals to be taken out, in order to his Defence: And that he shall have Summons issued for such Witnesses as he shall send in the Names of, to be by him made use of at his Trial; which Witnesses shall have the Protection of this House for their safe Coming and Going, during the Time of the said Trial.

Ordered, That the Lord Chancellor do acquaint the Lord *Levat*, That it is expected by their Lordships, that he would send in the Names of such Witnesses as he shall desire to be summoned, as soon as conveniently he can; and that, in Case he do not, he must not expect to be indulged with any further Delay on that Account.

Ordered likewise, That the said Lord *Levat* be permitted to receive the Rents and Profits of his Estate, by his Factors or Agents, in like Manner as if he was not under an Accusation of High Treason: And that his Majesty's Advocate for *Scotland* do take the proper Methods to carry this Order into Execution.

Then the said Lord *Levat* was called in again: And the Lord Chancellor acquainted him with what the House had ordered.

And then he was a second Time directed to withdraw.

Ordered, That Lord *Levat* do stand committed to his Majesty's Tower of *London*, to be there safely kept, in order to his Trial, till he shall be thence delivered by due Course of Law: And that no Person shall have Access to him without the special Leave of the House.

Ordered, That the Lord Chancellor do write Letters to all the Lords who have not been present in the House either this Day or Yesterday, in the usual Manner, requiring their Attendance on the Service of this House (all Excuses set apart), on *Wednesday*, the 21st Day of *January* next, on Occasion of the Proceedings now depending in this House against *Simon Lord Levat*, who stands impeached by the House of Commons of High Treason.

Die Martis, 23^o Decembris, 1746.

A PETITION of *Simon Lord Fraser of Levat* was presented, and read; praying, That he may be allowed to the 1st Day of *February* for answering the Articles of Impeachment exhibited by the House of Commons against him; within which Time he hopes, that the Care and Diligence of his Agents in *Scotland* will, notwithstanding the Season of the Year, furnish him with the Papers and Materials necessary for that End.

And thereupon Mr. *George Ross*, one of the Petitioner's Solicitors, being called in, and heard at the Bar, touching the Contents of the said Petition;

He was directed to withdraw.

Ordered, That the said Petition be rejected.

Ordered, That the Lieutenant of the Tower of *London*, or his Deputy, do bring the said Lord *Levat* to the Bar of this House, on *Tuesday*, the 13th Day of *January* next, at Two of the Clock in the Afternoon, in order to the putting in his Answer to the Articles of Impeachment of High Treason, exhibited against him by the House of Commons.

Die Martis, 13^o Januarii, 1746.

THE Order of the Day being read, for bringing *Simon Lord Levat* to the Bar of this House, in order to the putting in his Answer to the Articles of Impeachment of High Treason, exhibited against him by the House of Commons, he was brought to the Bar accordingly: Where he kneeled, till the Lord Chancellor acquainted him he might rise. He then delivered in his Answer to the said Articles: And the same was read.

Then the Lord *Levat* was asked by the Lord Chancellor, If he had any Thing further to offer. Whereupon he acquainted the House, He had caused to be prepared two Petitions to their Lordships, which he conceived

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did concern the Justice as well as the Honour of the House. And his Lordship delivering in the said Petitions, the same were severally read;

The first complaining, That the Order of this House of the 18th of *December* last, relating to the Factory or Receivership of the Petitioner's Rents, had not been obeyed, so as to be made effectual to him; nor had the Contents of the Strong-Box taken from him, and now in Captain *Ferguson's* Possession, been delivered to his Agent, as had been promised him: And praying, that Obedience to the said Order might be compelled; and an immediate Restitution of the Money taken out of the said Box; or that such Order might be made concerning this Matter, as to the House should seem meet.

The other Petition setting forth, That Mr. *William Fraser*, Writer to the Signet, who for many Years had acted as his chief Agent, and had the Management of his Estate in *Scotland*, was by his Direction come to *Town*; but could not have Access to him without the Permission of this House: And praying, That the said *Fraser* might have Liberty to come to the Petitioner at all seasonable Times.

Then the Lord *Levat* was directed to be taken from the Bar.

Which done; The first Petition was again read: And, after Debate, and reading the said Order, relating to the Receipt of the Rents and Profits of the said Lord *Levat's* Estate,

Ordered, That the said Petition be rejected.

Then the other Petition being likewise read;

Ordered, That the said *William Fraser* be permitted to have Access to the Petitioner at all seasonable Times, between the Hours of Ten of the Clock in the Forenoon, and Two of the Clock in the Afternoon, in the Presence of such Officer belonging to the Tower of *London*, as the Constable thereof shall appoint.

Ordered, That a Copy of the Answer of the said Lord *Levat* to the Articles of Impeachment of High Treason, exhibited against him by the House of Commons, be prepared: And that, when the same has been carefully examined by the Clerk, it be sent by a Message to the House of Commons, and left with that House.

Ordered, That the said Lord *Levat* be conveyed back to the Tower of *London*, by the Lieutenant of the same, or his Deputy, to be there kept in safe Custody, until he shall be thence delivered by due Course of Law.

Die Veneris, 16^o Januarii, 1746.

A MESSAGE was brought from the House of Commons by Sir *William Yonge*, and others, to acquaint this House, That they have considered the Answer of *Simon Lord Levat* to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses, assembled in Parliament; and do aver their Charge against the said *Simon Lord Levat* for High Treason, to be true; and that the said *Simon Lord Levat* is guilty in such Manner as he stands impeached: And that the Commons will be ready to prove their Charge against him at such convenient Time as shall be appointed for that Purpose.

Die Jovis, 22^o Januarii, 1746.

A PETITION of *Simon Lord Levat*, styling himself *Simon Lord Fraser of Levat*, was presented, and read; praying, That Mr. *William Fraser* may be appointed one of his Solicitors, in the Room of Mr. *Hugh Fraser*, he being necessarily required to go into the Country.

Ordered, That the said Mr. *William Fraser* be assigned the Petitioner's Solicitor, in the Room of the said Mr. *Hugh Fraser*, as desired: And that the said Mr. *William Fraser* may have Access to the Petitioner at all seasonable Times.

Ordered, That *Monday*, the 23d Day of *February* next be, and is hereby appointed for, the Trial of *Simon Lord Levat*, in *Westminster-Hall*, upon the Articles of Impeachment exhibited against him by the House of Commons for High Treason.

And a Message was sent to the House of Commons, by Mr. *Spicer* and Mr. *Edwards*, to acquaint them therewith.

Then the House appointed a Committee to inspect the Journals of this House, relating to former Cases of Impeachments; and to consider of the proper Methods of proceeding on the Impeachment against *Simon Lord Levat*; and to report to the House what they shall think proper thereupon.

Die Lunæ, 2^o Februarii, 1746.

THE Earl of *Warwick* reported from the Lords Committees appointed to inspect the Journals of this House, relating to former Cases of Impeachments; and to consider of the proper Methods of Proceeding on the Impeachment against *Simon Lord Levat*; and to report to the House what they shall think proper thereupon;

That the Committee had met, and inspected the Journals of this House, in former Cases of Impeachments; and had considered the Matters to them referred; and had come to several Resolutions: Which his Lordship reported. And thereupon several Orders were made, touching the Course of Proceeding to, and at the ensuing Trial, and for preserving the Peace; and amongst them as follows; viz.

Ordered, That an humble Address be presented to his Majesty, to acquaint his Majesty, That this House hath appointed the Trial of *Simon Lord Levat*, upon the Articles of Impeachment of High Treason exhibited against him by the House of Commons, to begin in *Westminster-Hall* on *Monday*, the 23d Day of this Instant *February*: And humbly desire, That his Majesty will be pleased to appoint a Lord High Steward, to continue during the said Trial.

Ordered, That the said Address be presented to his Majesty by the Lords with White Staves.

Ordered, That the Counsel assigned the said Lord *Levat* may be present when he is at the Bar, in order to be heard touching any Point or Matter of Law, if any such shall arise during the said Trial.

Ordered, That the Witnesses, which shall be produced by the Lord *Levat* to be examined in his Defence, shall be examined upon Oath; which Oath shall be administered in the like Form as an Oath was directed by this House to be administered to any Witnesses, who should be produced by the Earl of *Wintoun* at his Trial.

Ordered, That the Lord Great Chamberlain be desired to take Care and give Order, that Accommodations be made in the Scaffold already erected in *Westminster-Hall* for the Commons, as hath been used in Trials in *Westminster-Hall* upon Impeachments.

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Die Mercurii, 4^o Februarii, 1746.

THE Lord Steward reported, That the Lords with White Staves had (according to Order) presented to his Majesty the Address of this House of Monday last, for the Appointment of a Lord High Steward, to continue during the Trial of *Simon Lord Lovat*; and that his Majesty had been pleased to give Orders accordingly.

Ordered, That the said Commission for appointing a Lord High Steward shall be in the like Form as that for the Trial of the Lord Viscount *Stafford*, as entered in the Journal of this House the 30th of November, 1680, except that the same be in the *English* Language.

Die Mercurii, 18^o Februarii, 1746.

A PETITION of *Simon Lord Fraser of Lovat* was presented and read; setting forth, That upon the Appointment of his Trial, he immediately dispatched one of his Solicitors to summon the Petitioner's material Witnesses, who are at great Distances from each other, inhabiting in the Counties of *Inverness* and *Ross*; but by reason of the Inclemency of the Weather, the Badness of the Roads, and other unavoidable Accidents, none of them are yet arrived, nor can possibly be got to *London* by the Time of Trial; and praying, That this House will appoint some more distant Time for that Purpose.

And thereupon *William Fraser* and *William Goostrey*, two of the Petitioner's Solicitors, were called in, and heard at the Bar, to verify the Truth of the Allegations of the said Petition: And being withdrawn,

Ordered, That the Time appointed for the Petitioner's Trial be, and is hereby, enlarged till To-morrow Fortnight, the 5th Day of *March* next.

Ordered, That a Message be sent to the House of Commons, to acquaint them, That upon the humble Petition of *Simon Lord Lovat*, for putting off his Trial to a further Day, for the Reasons therein alledged, the Lords have enlarged the Time appointed for the Trial of the said Lord *Lovat* till *Thursday* the 5th Day of *March* next.

And a Message was accordingly sent to the House of Commons, by Mr. *Holford* and Mr. *Bennet*, to acquaint them therewith.

Die Lune, 2^o Martii, 1746.

A PETITION of *Simon Lord Fraser of Lovat*, with an Affidavit of *Hugh Fraser* thereto annexed, were presented to the House, and read, as follows:

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled;

The Humble Petition of *Simon Lord Fraser of Lovat*,

Sheweth,

THAT your Lordships having appointed your Petitioner's Trial for the 23d of *February*, your Petitioner did lately take the Liberty humbly to represent the Impossibility he was under to prepare so soon for Trial, in respect his Witnesses, from the Badness of the Road, were not then arrived; and your Lordships were pleased to indulge your Petitioner with a Delay till *Thursday* next.

That *Hugh Fraser*, whom your Petitioner had directed to serve your Lordships Summons upon your Petitioner's Witnesses, arrived in Town, with sundry of them, late on *Friday* Night, having duly served your Lordships said Order upon several other Persons, who were all material Witnesses for your Petitioner.

That *Thomas Fraser of Struy*, and *Donald Fraser*, alias *Down*, two of the Witnesses, served as aforesaid, were prevented, by Sickness, from setting out as early as some of the rest; but had declared to the said *Hugh Fraser* their Willingness to obey your Lordships Summons as soon as they were able to travel; which your Petitioner hopes may soon be the Case.

That *William Fraser of Belloan*, *Alexander Fraser of Belnain*, *Thomas Fraser of Garthmore*, *Alexander Fraser of Belohyne*, and the Reverend Mr. *Donald Fraser*, Minister at *Killlearnan*, who are all material Witnesses for your Petitioner, and without whose Testimony your Petitioner cannot safely proceed to Trial, have absolutely refused to attend, though regularly served with your Lordships Summons, as by Affidavit annexed appears; and that the Persons, named as aforesaid, are material and necessary Witnesses, your Petitioner is ready to make Affidavit of; but being strictly confined in the *Tower*, and no Person having Access to him without your Lordships Order, he has no Opportunity so to do.

That under these Circumstances, and that your Petitioner, without your Lordships Interposition, cannot compel the said Persons to attend his Trial, he is under a Necessity to apply to your Lordships for Relief, without which he must, as to the Charge in some of the aforesaid Articles, remain defenceless, should your Lordships in the Interim proceed to Trial.

Your Petitioner therefore humbly prays, your Lordships would be pleased to appoint a more distant Day for his Trial; and that your Lordships would be pleased to compel the said *William*, *Alexander*, *Thomas*, *Donald*, and *Alexander Frasers*, to attend your Petitioner's Trial at such Time as your Lordships shall think fit; or to grant him such other Relief, as to your Lordships, in your great Wisdom, shall seem meet.

And your Petitioner shall ever pray.

LOVAT.

In the House of Lords.

Upon an Impeachment for High-Treason against *Simon Lord Lovat*.

HUGH FRASER, of *Grays-Inn*, in the County of *Middlesex*, Gentleman, maketh Oath, That he this Deponent did, on the Tenth Day of *February* last, personally serve *Thomas Fraser of Struy*, and on the twelfth Day of the said Month of *February*, did also personally serve *William Fraser of Belloan*, *Alexander Fraser of Belnain*, *Thomas Fraser of Garthmore*, *Alexander Fraser of Belohyne*, and *Donald Down*, alias *Fraser*, with an Order of this Honourable House, bearing Date the Sixteenth of *Janu-*

ary last past; whereby it was ordered, That the said several Persons, and others named in such Order, should attend this House as Witnesses for the said *Simon Lord Lovat*, who stands impeached of High-Treason by the House of Commons, by delivering to each of them a true Copy of the said Order, and, at the same Time, shewing to each of them the said original Order. And this Deponent further saith, That the said *William Fraser of Belloan*, *Alexander Fraser of Belnain*, *Thomas Fraser of Garthmore*, and *Alexander Fraser of Belohyne*, though served with the said Order as aforesaid, absolutely refused to obey the said Order; and this Deponent verily believes will not attend the said Trial: And the said *Thomas Fraser of Struy*, and *Donald Down*, alias *Fraser*, were both at the Time of such Service sick, and unable to travel; and declared themselves incapable of complying with the said Order.

HUGH FRASER.

Sworn the 2d Day of *March*, 1746. before me, at the Court of Requests.

M. THURSTON.

Afterwards the said *Hugh Fraser*, and Mr. *Goostrey*, one of the Prisoner's Solicitors, were called in, and examined at the Bar: And being withdrawn,

Ordered, That the said Petition be rejected.

Ordered, That the Lieutenant of the *Tower of London*, or his Deputy, do bring to the Bar of this House, in *Westminster-Hall*, on *Thursday* next, at Ten of the Clock in the Forenoon, *Simon Lord Lovat*, in order to his Trial upon the Impeachment of High-Treason exhibited by the House of Commons against him.—Then

A Message was sent to the House of Commons by the former Messengers, to acquaint them that the Lords will be ready to go down into *Westminster-Hall*, at the Time above-mentioned, in order to the Trial of the said Lord *Lovat*.

Die Martis, 3^o Martii, 1746.

A PETITION of *Simon Lord Fraser of Lovat*, with the Affidavits of Mr. *George Ross*, and Mr. *William Fraser*, thereto annexed, were presented and read as follows:

To the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled;

The Humble Petition of *Simon Lord Fraser of Lovat*,

Sheweth,

THAT nothing but the utter Impossibility the Petitioner and his Agents are under, of preparing his Defence against *Thursday* the Fifth of this Instant *March*, could have induced him to trouble your Lordships with this second Application for some Days further Time.

But none of your Petitioner's Witnesses coming to Town till late on *Friday* Night last; and one of your Petitioner's Agents having received an Account by last Night's Post, that two other Persons, who were summoned as Witnesses for your Petitioner, set out from *Edinburgh* on the 24th and 25th of last Month, and are not yet arrived in *London*, but expected here by the End of this Week, your Petitioner cannot possibly be prepared to take his Trial before *Monday* next.

The Petitioner begs Leave further to represent to your Lordships, that in the present unhappy Situation of his Affairs, he has no Means of furnishing himself with Money, either for applying to Counsel, bearing the Charge of his Witnesses, or other necessary Expence, but from the Supply afforded him by his Agents, who have already advanced him considerable Sums for the above Purposes, which are already expended: That the Solemnity, and unavoidable Length of the Proceedings, making further Sums of Money still necessary, the Petitioner is afraid that his Defence may suffer on that account, unless your Lordships are pleased, in Compassion to his present Difficulty, to give some kind of Encouragement to his Agents, to hope they shall be repaid what they already have, or may hereafter disburse on the Petitioner's Account; it being, by the Loss of the Petitioner's Moveables, out of his own Power to give them any kind of Indemnification.

The Petitioner also prays your Lordships to assign Mr. *Charles Hamilton Gordon* to be one of his Counsel, in place of Mr. *Starkey*, who, on account of the bad State of his Health, has declined giving the Petitioner his Assistance.

May it therefore please your Lordships, in Consideration of the Premises, to put off the Petitioner's Trial until the next *Monday*; and to make such other Order upon this Application as to your Lordships shall seem meet.

And your Petitioner shall ever pray, &c.

LOVAT.

In the Impeachment of the Commons of Great-Britain against *Simon Lord Fraser of Lovat*.

GEORGE ROSS, one of the Solicitors assigned by the Right Honourable the House of Lords to the said *Simon Lord Fraser of Lovat*, maketh Oath, That since his Appointment, he has at different Times laid out and expended upwards of Six Hundred Pounds, out of his own Pocket, in Feeing of his Lordship's Counsel, bringing up his Witnesses, and other Charges attending the several Steps already taken, towards preparing for the said Lord's Defence, without receiving any Money or Security whatsoever for his Indemnification.

GEORGE ROSS.

Sworn at the publick Office, 2d *March*, before W. KINASTON.

In the Impeachment of the Commons of Great-Britain, against *Simon Lord Lovat*.

In the House of Lords.

WILLIAM FRASER, Writer to his Majesty's Signet, maketh Oath, That last Night he received Advice from *Edinburgh*, that *Thomas Fraser of Struy*, and Mr. *Donald Fraser*, two of the Witnesses summoned

on the Behalf of Lord Lovat, are now upon the Road, and will be here by Saturday or Sunday next: Which Information this Deponent believes to be true.

WILL. FRASER.

Sworn at the publick Office, 3d March 1746, before
THO. BENNET.

Ordered, That the Trial of the Petitioner be put off to Monday next, as desired.

A Message was sent to the Commons, by Mr. Burroughs and Mr. Allen, to acquaint them, that this House, upon the Petition of the said Lord Lovat, for the Reasons therein contained, hath enlarged the Time of his Trial upon the Impeachment of High-Treason exhibited against him by the House of Commons, to Monday next, at Eleven of the Clock in the Forenoon; and that their Lordships will be ready to go down into Westminster-Hall at the Time above-mentioned, in order to his Trial.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do bring the said Lord Lovat to the Bar of this House in Westminster-Hall, at Ten of the Clock in the Forenoon, on Monday next, in order to his Trial upon the said Impeachment.

Monday, the 9th Day of March, 1746.

THE Lords met in the House of Lords in their Robes; and, after Prayers, adjourned into Westminster-Hall.

The First Day, in Westminster-Hall.

ABOUT Eleven of the Clock, the Lords came from their own House into the Court erected in Westminster-Hall, in the Manner following:

The Lord High-Steward's Gentlemen Attendants, Two and Two.

The Clerks Assistant to the House of Lords, and the Clerk of the Parliament, with the Clerk of the Crown in the Court of Chancery, bearing the King's Commission to the Lord High Steward.

The Masters in Chancery, Two and Two.

The Judges, Two and Two.

The Peers eldest Sons, Two and Two.

Peers Minors, Two and Two.

York and Windsor Heralds.

Four Serjeants at Arms, with their Maces, Two and Two.

The Yeoman Usher of the House.

Then the Peers, Two and Two, beginning with the youngest Baron.

Then Four Serjeant at Arms, with their Maces, Two and Two.

The Serjeants at Arms attending the Great Seal, and Purse-Bearer.

Then Garter King at Arms, and the Gentleman Usher of the Black Rod, carrying the White Staff before the Lord High Steward.

Philip Lord Hardwicke, Lord High Chancellor of Great-Britain, Lord High Steward, alone, his Train borne.

The Lords having taken their Places in the Court, according to their Degrees, the Lord High Steward being upon the uppermost Woolpack; and the Commons, and their Managers, being also in the Seats respectively prepared for them;

The Clerk of the Crown in Chancery, having his Majesty's Commission to the Lord High Steward in his Hand, standing before the Clerk's Table, with his Face towards the State, made Three Reverences, the First at the Table, the Second in the Midway, and the Third near the Woolpack; then kneeled down, and, on his Knee, presented the Commission to the Lord High Steward; who delivered the same back to him; who, rising, made Three Reverences, and returned with it to the Table: And then Proclamation was made for Silence in this Manner:

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. His Majesty's Commission is about to be read: Your Lordships are desired to attend to it in the usual Manner; and all others are likewise to stand up, uncovered, while the Commission is reading.

All the Peers uncovered themselves; and they, and all others, stood up, uncovered, while the Commission was read; which is as follows: viz.

GEORGE R.

GEORGE the Second, by the Grace of GOD, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth, To Our right trusty and well-beloved Councillor Philip Lord Hardwicke, Baron of Hardwicke in Our County of Gloucester, Our Chancellor of Great Britain, greeting. Whereas Simon Lord Lovat, before Us in Parliament, by the Knights, Citizens, and Burgesses, in Our Parliament assembled, in the Name of the said Knights, Citizens, and Burgesses, and in the Name of all the Commons of Our Kingdom of Great Britain, is and stands impeached and accused of High-Treason, by him the said Simon Lord Lovat committed and perpetrated; We, considering that Justice is an excellent Virtue, and pleasing to the Most High, and being willing, that the said Simon Lord Lovat should, before Us in our present Parliament, according to the Law and Custom of this our Kingdom of Great Britain, and according to the Custom of Parliament, be heard, sentenced, and adjudged, touching and concerning the said High-Treason whereof he stands impeached and accused, as aforesaid, and that all other Things, which are necessary in this Behalf, should be in due Manner done and executed; and forasmuch as the Lords Spiritual and Temporal in our present Parliament assembled, have most humbly besought Us, that We would vouchsafe to appoint a Steward of Great Britain for this Time; We, very much confiding in your Fidelity, Prudence, provident Circumspection, and Industry, have, for this Cause, ordained and constituted you Steward of Great Britain, to bear, execute, and exercise, for this Time, the said Office, with all Things to the same Office in this Behalf due and belonging: And therefore We command you, that you diligently set about the Premises, and, for this Time, do exercise and execute, with Effect, all those Things, which belong to the Office of Steward of Great Britain, and which are required in this Behalf. In Witness whereof, We have caused these Our Letters to be made patent.

Witness Ourself at Westminster, the Ninth Day of March, in the Twentieth Year of Our Reign.

By the King Himself, signed with his own Hand.

YORKE and YORKE.

Serjeant at Arms. God save the King!

Then Garter, and the Gentleman Usher of the Black Rod, after Three Reverences, kneeling, jointly presented the White Staff to his Grace the Lord High Steward: And then his Grace, attended by Garter, Black-Rod, and the Purse-Bearer (making his proper Reverences towards the Throne), removed from the Woolpack to an armed Chair, which was placed on the uppermost Step but one of the Throne, as it was prepared for that Purpose; and then seated himself in the Chair, and delivered the Staff to the Gentleman Usher of the Black Rod on his Right Hand, the Purse-Bearer holding the Purse on the Left.

Clerk of the Crown. Serjeant at Arms, Make Proclamation.

Serjeant at Arms. Oyes, Oyes, Oyes! Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Lord High Steward. It is your Lordships Pleasure, that the Judges have Leave to be covered?—Lords. Ay.

Then another Proclamation was made, as follows:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, bring forth your Prisoner to the Bar, according to the Order of the House of Lords to you directed.

Then Simon Lord Lovat was brought to the Bar by the Deputy-Governor of the Tower, having the Ax carried before him by the Gentleman Gaoler, who stood with it on the Left-Hand of the Prisoner, with the Edge turned from him. The Prisoner when he approached the Bar, made Three Reverences, and then fell upon his Knees at the Bar.

Lord High Steward. Your Lordship may rise.

Then the Prisoner rose up, and bowed to his Grace the Lord High Steward, and to the House of Peers: Which Compliment was returned him by his Grace, and the Lords.

And Proclamation being again made for keeping Silence,

The Lord High Steward spake to the Prisoner as follows:

Lord High Steward.

SIMON Lord Lovat, You stand impeached of High-Treason by the Knights, Citizens, and Burgesses in Parliament assembled, in the Names of themselves, and of all the Commons of Great-Britain; and your Lordship is now brought to the Bar of this House to receive your Trial upon that Impeachment.

The Weight of this Accusation, the solemn Manner of exhibiting and prosecuting it, and the Awfulness of this supreme Judicature, the most illustrious in the World, are Circumstances, that may naturally strike your Mind with anxious and alarming Apprehensions. Reasonable and well-grounded must those Apprehensions be, if they proceed from that greatest of all Terrors, a Consciousness of Guilt. But if your Lordship is innocent; if you have really preserved yourself untainted with the heinous Crimes laid to your Charge, as you have averred by your Answer; these very awful Circumstances, when duly considered, ought to have a contrary Effect, and to afford you Support and Consolation.

Your Lordship can never doubt of the greatest Fairness and Candour in the Management of a Prosecution carried on by the House of Commons, intrusted and highly concerned to preserve the Rights and Liberties of their Fellow-Subjects. Neither can you entertain the least Doubt of a just and impartial Trial, where the Law of the Land, and the Custom and Usage of Parliament (an essential Part of that Law), constitute the Rule of Proceeding; and the Decision and Judgment rest in the Breasts of these noble Lords your Peers, who are to try you upon that Honour, which is inseparable from them, and to judge you by that Law, which is the great Security of themselves and their Posterity.

It is my Duty to put your Lordship in mind of some Things, which may be of Use to you in the Conduct of your Defence; but in this I shall be the shorter, since, at your own Request, Counsel have been already assigned you, with whom you must be presumed to have advised.

Your Lordship must give due and patient Attention to the Reading of the Articles of Impeachment, and what shall be said by the Managers for the House of Commons, or offered in Evidence against you, without giving any Interruption: But when the Managers shall have finished the Examination, on their Part, of any Witness produced by them, you will have Liberty to cross-examine that Witness.

When the Managers for the Commons shall have gone through their Evidence, and closed what they shall think fit to offer by way of Charge, then will be your Lordship's Time to make your Defence. In doing this, you and your Witnesses will be heard with the greatest Attention and Equity.

But your Lordship must take Notice, that your Counsel are not to examine or cross-examine any Witness, nor to give you any Assistance, while Matter of Fact only is in question; but, if any Point or Matter of Law shall arise during this Proceeding, they will, according to the known Rules in such Cases, be heard to it in your Behalf; and, for that Purpose, are permitted to be present whilst your Lordship is at the Bar.

The Witnesses produced in your Defence, must be examined upon Oath, pursuant to a very just and wise Provision made by Act of Parliament in the First Year of the late Queen Anne, and according to the Form established by their Lordships in former Cases of Impeachments.

By Command of their Lordships, I am further to acquaint you, and all other Persons, who shall have occasion to speak to this Court, that they are to address themselves to the Lords in general, and not to any Lord in particular.

Before I conclude, I must beg the Indulgence of the House to add one Thing more. If your Lordship shall desire to have the Use of Pen, Ink, and Paper, to take Notes in order to your Defence, I presume it will be permitted; and if, in the Course of your Trial, you should happen to omit any Advantage which in Law and Justice ought to be allowed to you for your Defence, such is the Candour of my Lords your Judges, that I trust I shall meet with their Approbation in giving you Notice of it.

The

The Articles of Impeachment, and the Lord Lovat's Answer thereunto, as also the Replication of the Commons to the said Answer, were (by Command of the Lord High Steward) read, and the same are as follow.

Articles of Impeachment of High-Treason against Simon Lord Lovat.

Whereas the Imperial Crown and Government of these Kingdoms have been long, duly, and happily established, in the Royal Family of his present most Sacred Majesty, upon Principles equally conducive to the Honour and Safety of the Crown, and to the Protection and Liberty of the Subject; whereby settled Laws are made the common Measure of Justice to both, and a Prerogative wisely calculated to promote the greater Good of the People, and answer the Exigencies of Government, has been ascertained and secured:

And whereas the Reigns of his present Majesty, and his Royal Father, have given the strongest and most illustrious Proofs of the happy Effects of those Principles, in the Exercise of their legal, mild, and equal Administration, under which every Subject, from the highest to the lowest, has had his Religion, his Person, and his Property, fully protected by the most inviolable Observance of the Laws, which have had their free Course, without the least Interruption on the Part of his Majesty, or of his Royal Father:

Notwithstanding which, there have been found many wicked and ungrateful Persons, who have themselves enjoyed all these Blessings in common with the rest of their Fellow-Subjects, and yet have been weak and desperate enough, from time to time, to contrive the Subversion of this happy Establishment, in order to introduce Popish Bigotry and Superstition, instead of the Protestant Religion, and an Arbitrary, Tyrannical Power, instead of a Free Government; and as the only Means of establishing and perpetuating those great Evils, to place the Pretender to his Majesty's Crown upon the Throne of this Kingdom; and, the more easily to obtain these Ends, have, from time to time, taken Advantage of the Distresses, which, in the Course of human Affairs, have happened to their Native Country, to set on foot and prosecute their traitorous Designs:

And whereas divers of the said Traitors to his Majesty have laid hold of the Opportunity arising from the just and unavoidable, but difficult and expensive Wars, in which this Nation has been for some time engaged, to renew their Treasonable Conspiracies, for the bringing their wicked Purposes to Effect, by the Assistance of Troops and Money from his Majesty's Enemies Abroad, and by raising a Rebellion at Home:

And whereas, by the Instigation of, and in Concert with the said Traitors, a great Number of French Troops, accompanied by the Eldest Son of the said Pretender, were ready, and had in part embarked, and actually set sail, to invade this Kingdom, in the Year One thousand Seven hundred and Forty-three; but were then prevented from accomplishing their Design by the wise Precautions of His Majesty, and the good Providence of Almighty God:

And whereas the same Traitors, restless and indefatigable in the Prosecution of their said wicked and traitorous Purposes, hoping that the French, by the great Superiority of their Numbers in Flanders, might be able to invade this Kingdom, and, at the same time, to prevent the Return of his Majesty's Troops from abroad, for the Defence of the Nation, did, in the Year One thousand Seven hundred and Forty-five, encourage the said Eldest Son of the Pretender to his Majesty's Crown, to land, at that critical Juncture, in this Kingdom, who, in pursuance of such Encouragement, did actually land in Scotland, and put himself at the Head of a large Body of armed Traitors, and commence and carry on, for a considerable Time, a cruel, unnatural, and bloody War against his Majesty, within this Realm, which has at last been happily suppressed:

ARTICLE I.

SIMON Lord Lovat, being a Subject of his said Majesty, one of the said Traitors and Rebels, and conspiring and joining with them in their said traitorous Designs, and having withdrawn that due Obedience, Fidelity, and Allegiance, which, as a loyal Subject, he owed, and of right ought to bear, to his said present Most Sacred Majesty, the only true, lawful, and undoubted Sovereign of this Kingdom, his true and natural Lord, did, upon the 31st Day of December, in the Year of our Lord 1743, in the Shire of Inverness, and, on the 28th Day of October, in the Year 1745, in the same Shire, and at divers other Days, Times, and Places, wickedly, maliciously, falsely, and traitorously, compass and imagine the Death of his said Majesty.

ARTICLE II.

AND for accomplishing his said wicked and traitorous Purpose, he, the said Simon Lord Lovat, upon the said 31st Day of December, in the said Year 1743, in the Shire of Inverness aforesaid, did traitorously correspond with the said Pretender, obtain and accept a Commission from the said Pretender, to be a Lieutenant General of his Forces, and another Commission from the said Pretender, to be General of the Highlanders; and did also accept from the said Pretender, a Patent or Grant, importing to create him the said Simon Lord Lovat Duke of Fraser; and then and there did traitorously conspire and enter into an Association with many other Traitors, in order to raise a War and Rebellion against his Majesty, within this Realm, and to obtain Troops, Money, and Succours from France, for that Purpose.

ARTICLE III.

AND the said Simon Lord Lovat did further falsely and traitorously, at the Times and Place before particularly mentioned, and at divers other Times and Places, assemble himself, with divers other false Traitors and Rebels, against our said Sovereign Lord the King, being armed and arrayed in a warlike Manner, and did raise, and caused to be raised and assembled, great Numbers of armed Men, his Majesty's Subjects, for the Service of the said Pretender, and his said Son; and arrayed, and caused them to be arrayed, in a warlike Manner against his Majesty, and did traitorously levy, and cause to be levied, a cruel and unnatural War against his Majesty, within this Realm, at the Times and Place aforesaid, in Favour of the said Pretender.

ARTICLE IV.

AND for the more effectual bringing his said Treasons and traitorous Designs to Effect, he the said Simon Lord Lovat did, in the Month of November, in the said Year 1745, traitorously compose, write, and send, and cause to be composed, written, and sent, a treasonable Letter to the said Eldest Son of the said Pretender, then in Arms within this Kingdom, and joined by, and at the Head of, great Numbers of his Majesty's Subjects, false Traitors and Rebels against his Majesty, then also in Arms and Rebellion against his Majesty within this Kingdom; in which Letter he the said Simon Lord Lovat, among other Things, expressed the great Pleasure it would give him to end his Days in the Service of the said Pretender's said Son; That he was resolved to send to him his the said Lord Lovat's Eldest Son, to venture his Life in his Service, and deliver up his Clan to him; and further expressed and represented his own great Zeal and Attachment to the said Pretender, and his said Son, and their Cause and Interest, and the Service he had done, was doing, and intended to do, for the said Pretender and his said Son, with Intent and in order to confirm, animate, and encourage him the said Pretender, his said Son, his Adherents, and all the other said Traitors, in the Prosecution of their said Treasons, and traitorous Designs.

ARTICLE V.

AND the said Simon Lord Lovat, in further Prosecution of his said Treasons, did, at the Times and Place before-mentioned, and at divers other Times and Places, after the said War and Rebellion began, and while the same was carrying on, traitorously compose, write, and send, and cause to be composed, written, and sent, divers other treasonable Letters and Papers to divers false Traitors, then openly in Arms in this Kingdom against his said Majesty, and to divers others of his Majesty's Subjects, and other Persons, to assure them of his own Zeal and firm Attachment to the Cause and Interest of the said Pretender, and his said Son, and to confirm, solicit, excite, and persuade them to engage in, continue, and prosecute the said War and Rebellion, and to promise and assure them of his Assistance therein.

ARTICLE VI.

AND the more effectually to attain the End of his said Treasons, and treasonable Designs, the said Simon Lord Lovat did, at the said Times and Place, and at divers other Times and Places, traitorously aid and assist the said Pretender's said Son, and the said other false Traitors and Rebels, in the carrying on the said Treasons, War, and Rebellion, and furnish and provide them with great Quantities of Arms, Ammunition, Implements of War, Cloaths, and other Things useful and necessary for that Purpose; and also sent his eldest Son, and many of his Name, Family, and Dependents, to the Assistance of the said Pretender's eldest Son, and the said other Rebels; and also gave them Advice, Directions, and Instructions, in the Prosecution of the said Rebellion.

ARTICLE VII.

AND the said Simon Lord Lovat further, at the Times and Place aforesaid, and at divers other Times and Places, did unlawfully and traitorously hold, entertain, and keep Intelligence and Correspondence, both in Person and by Letters and otherwise, with the said eldest Son of the said Pretender, well knowing him to be so; and also with divers other Persons, who were employed by the said Pretender's said Son; and particularly with John Murray of Broughton, Esq. Donald Cameron the elder, of Lochiel, Donald Cameron the younger, of Lochiel, Alexander MacLeod, Advocate, of Edinburgh, John Roy Stuart, Doctor Archibald Cameron, and divers others: All which Persons were employed by the said eldest Son of the said Pretender in this Kingdom, in the said Rebellion, the said Simon Lord Lovat well knowing they were severally employed.

All which said Treasons and Crimes above-mentioned were contrived, committed, perpetrated, acted, and done, by the said Simon Lord Lovat, against our said present Sovereign Lord the King, his Peace, Crown, and Dignity, contrary to the Duty of his Allegiance, and against the Laws and Statutes of this Kingdom.

Of all which said Treasons and Crimes, the Knights, Citizens, and Burgesses, in Parliament assembled, do, in the Name of themselves, and all the Commons of Great Britain, impeach the said Simon Lord Lovat.

And the said Commons, by Protestations, saving to themselves the Liberty of exhibiting, at any time hereafter, any other Accusation of Impeachment against the said Simon Lord Lovat; and also of replying to the Answer which he shall make to the Premises, or any of them, or to any Impeachment or Accusation that shall be by them exhibited, according to the Course and Proceedings of Parliament; do pray, That the said Simon Lord Lovat be put to answer all and every the Premises: And that such Proceedings, Examinations, Tryal, and Judgment thereupon, may be had and used, as shall be agreeable to Law and Justice.

The Answer of Simon Lord Fraser of Lovat, to the Articles of Impeachment of High-Treason exhibited against him, by the Name of Simon Lord Lovat, by the Knights, Citizens, and Burgesses, in Parliament assembled, in the Name of themselves, and all the Commons of Great Britain.

THE said Lord, saving and reserving to himself all Benefit and Advantage of Exception to the Uncertainties and Insufficiencies in the said Articles contained, and also all Advantages and Privileges belonging to him as a Peer of this Realm, in Answer to the afore-mentioned Article says, That being as fully sensible as any British Subject of the many Blessings these Kingdoms have enjoyed under his present and late Majesty's mild and equal Administration; and having, in the Rebellion of 1715, given the strongest Proofs of his Zeal for, and Attachment to, his late Majesty, and the Succession of the Crown in his illustrious Family, against such as had undertaken the Destruction of both; he cannot but lament his Misfortune, to have his Fidelity questioned at the End of his Days; and himself, when near worn out with Age and Infirmities, charged with

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intending the Subversion of a Government he had, in the Strength and Vigour of his Age, exerted his utmost Power and Address to support. Under this heavy Pressure, attended with many other Calamities and Misfortunes, particularly his own Inability to manage his Defence, his only Resource is in your Lordships Justice, who will, he is well assured, regard only plain Facts, not as aggravated by Skill and Oratory, but as clearly and manifestly proved by the Testimony of credible and unexceptionable Witnesses.

Under this firm Persuasion, therefore, the said Lord, in Answer to the First and Second Articles, denies that he did wickedly, maliciously, falsely, and traitorously, compass or imagine the Death of his said present Majesty, or correspond with the Pretender, obtain or accept any Commission or Commissions, Grant, or Letters Patent, from the said Pretender, or traitorously conspire, or enter into any Association whatsoever, for raising a War or Rebellion against his said Majesty, within this Realm, or for obtaining Troops, Money, or Succours, from France, for that Purpose, in Manner and Form as by the said Articles is alledged.

To the Third Article, the said Lord denies, That he did assemble himself with any Traitors or Rebels; or raise, or cause to be raised or assembled, any armed Men, for the Service of the said Pretender, or his eldest Son; or array, or cause to be arrayed, any Person or Persons whatsoever against his said Majesty; or levy, or cause to be levied, any War against his said Majesty, in this Realm, in Manner and Form as in this Article is charged.

To the Fourth Article, the said Lord denies, That he did compose, write, or send, or cause to be composed, written, or sent, any Letter, Paper, or Writing whatsoever, to the said Pretender's eldest Son, to any such Purport or Effect as by the said Article is supposed, or to any other Purport or Effect whatsoever.

To the Fifth Article, he denies, That he did compose; write, or send, or cause to be composed, written, or sent, any Letter or Letters, Paper or Papers, to any Person or Persons, to such Purport or Effect as by the said Article is alledged.

To the Sixth Article, he denies, That he ever did furnish or provide the said Pretender's eldest Son, or any Traitors or Rebels, with any Arms, Ammunition, Implements of War, or other Things useful or necessary, for the Purpose in the said Article mentioned: Nor did he send his eldest Son, or any of his Name, Family, or Dependents, to the Assistance of the said Pretender's eldest Son, or any Rebels whatsoever; nor encourage, advise, direct, or instruct any of them, in the Prosecution of the said Rebellion.

To the Seventh Article, the said Lord denies, That he ever did hold, entertain, or keep, any Intelligence or Correspondence with the said Pretender's eldest Son, either in Person or otherwise; nor did he entertain or keep any Correspondence with any other of the Persons mentioned in the said Article, or with any other Person employed by the said eldest Son of the Pretender, in the said Rebellion, knowing any thing of them to be so employed.

And as to all other Matters and Things in the said Articles contained, and which is not herein particularly answered (if any such there be), the said Lord avers, That he is not guilty of them, or any of them, in Manner and Form as laid in the said Articles, or in any other Manner or Form whatsoever: And humbly submits himself to your Lordships Judgment.

Replication of the Commons to Lord Lovat's Answer.

Die Veneris, 16^o Januarii, 1746.

A MESSAGE was brought from the House of Commons, by Sir William Yonge, and others, to acquaint this House, that they have considered the Answer of Simon Lord Lovat to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses, assembled in Parliament: And do aver their Charge against the said Simon Lord Lovat for High-Treason, to be true: And that the said Simon Lord Lovat is guilty, in such Manner as he stands impeached: And that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.

Lord High Steward. The Distance of this Place from the Bar is so great, that I am obliged to ask your Lordships Leave to come down to the Table, for the Convenience of Hearing.

Lords. Ay, Ay.

Which was done accordingly.

L. H. S. Gentlemen of the House of Commons, You will be pleased now to proceed.

Sir WILLIAM YONGE.

My Lords,

AS I was commanded by the House of Commons to lay before your Lordships the Articles of Impeachment of High Treason against the noble Lord at the Bar, which have been just read,

So it now becomes my Duty to open the general Charge to your Lordships, together with some of the Inducements which prevailed with the Commons to think this Accusation necessary.

In the first Place, my Lords, I cannot omit observing, That as every Impeachment is said to be in the Name of all the Commons of the Land, so this may most emphatically be declared to be so, as I am confident there is not a single Subject of the United Kingdom of Great Britain, who has not demanded Justice against this notorious Offender; excepting a few Miscreants, who may still be intestine Enemies to his Sacred Majesty on the Throne, his Royal Family, and by necessary Consequence, to the Religion and Liberties of their native Country.

The Crime of High-Treason has at all times been considered, in the most civilized and in the most free Countries, as an Offence of the blackest Dye; and as such, the severest Punishments have been inflicted on such Offenders; and this, my Lords, with the greatest Reason and Justice.

Government was instituted for the Happiness and Security of Mankind, to rescue them from the Rapine and Disorder,

The Murders and Destructions, which must be the Consequences of Anarchy and Confusion.

Treason tends to destroy all Government, whether Monarchical, or

that of a Commonwealth of any Denomination; to introduce Confusion and Bloodshed: And if he that murders one Man, is by the Laws of God and Man to be punished with Death, how much more every Rebel, every Fomentor and Abettor of Rebellion, who is a Murderer of Thousands?

By our Law, He that but imagines the Death of the King (in whose Person all the Bands of Society are united), and discovers his wicked Imagination by any Overt Act, is a Traitor: If this be proved against the Prisoner (as I doubt not it will be to your Lordships full Satisfaction), the noble Lord at the Bar is then a Traitor.

Raising Rebellion, and levying War, is another Species of Treason by our Law, or rather the plainest and most notorious Overt Act of imagining the Death of the King: And we doubt not to prove the noble Lord at the Bar to be a Rebel.

It is High-Treason by Statute, to correspond with the Pretender to his Majesty's Crown, or with the Sons of the Pretender, or those employed by them.

But we shall amply prove it to your Lordships, That the noble Lord at the Bar has boasted, that he received a Patent as Duke from the Pretender; an Authority as Commander in Chief of the Highlands; is a General Officer in the Pretender's Service; and that he has openly corresponded with the Son of the Pretender, and his Followers, then in open War against his Majesty within this Realm, and given them Harbour, Encouragement, and Assistance.

Your Lordships have, I am persuaded, given due Attention to the Preamble, as well as to the Articles that have been read.

The Commons have there asserted, That, most unfortunately for this Nation, we have amongst us an obstinate, bigotted, restless Faction, who are not, and will not be, contented with the Enjoyments of Liberty, Peace, and Prosperity:

But who are perpetually watching for every favourable Opportunity to overturn our Constitution, and the present happy Establishment.

This is not only their Principle, but has been their constant Endeavour, at different times, from the late glorious Revolution to the present Hour,

By Plots and Conspiracies, by fomenting frequent Rebellions, by inviting our Enemies to invade us, and by that detestable Crime of Assassination.

These Facts require no Proof. Our Annals will afford, and your Lordships Memories will furnish, numerous Instances of some or other of these Attempts.

But, my Lords, we shall, in the Course of our Proceedings, make it appear, That the noble Lord at the Bar, so long as Seven or Eight Years ago, joined in an Association with other Traitors, under their Hands and Seals, for dethroning his present Majesty, and placing the Pretender in his Stead.

Not contented with this, the Association is signed and sealed was transmitted by a faithful Hand to the Cardinal, then Prime Minister of France,

In order to excite those our natural Enemies to give their Assistance, and to invade this Country with a foreign Force, even at a time when we were in actual Peace with that Kingdom;

His Lordship, and the other Conspirators, justly imagining, That this might be a favourable Conjunction, a War with Spain at that Time being commenced;

Wisely concluding, That when we were engaged with one Branch of the House of Bourbon, the other would not long be neuter.

So early was his Lordship in fomenting a Rebellion at home, and inviting an Invasion from abroad.

Nor was he only early in promoting, and active in supporting, but zealous in endeavouring to prevent the Extinction of the late Rebellion;

For, when the Rebels were broken, and their Chiefs Fugitives from the Victory at Culloden, his Lordship found Means to be present at a Sort of Council of War held by those Chiefs;

Where he earnestly encouraged them to reassemble the Remains of their scattered Troops, and to revive the War:

Which was resolved on, and might have happened, had not the Vigilance of his Royal Highness the Duke prevented its taking Effect, thereby shewing his own superior Abilities in using, as eminently as his Courage and Conduct in obtaining, Victory.

The noble Lord at the Bar was, at the Time of this Victory, within Fourteen Miles of Inverness.

What would have been the Conduct of any loyal Subject on this Occasion? Would he not have hastened thither, to congratulate his Royal Highness on the Success of that glorious Day?

What was the Conduct of the Prisoner at the Bar?

He received the Young Pretender, flying from his Defeat; embraced him with open Arms; assisted him in his Flight.

And the next News we hear of his Lordship is, that he fled from Justice himself, and appeared at the Meeting of the Rebel Chiefs I have just now mentioned.

This is the Substance of our Charge. And when I have said thus much, your Lordships will not be at a Loss for the strongest Inducements to the Commons to impeach. But, my Lords, there are other Inducements.

The Commons look upon it not only as their Duty, but as a Duty of the greatest Importance to this Nation, to take this Opportunity to let the World know, by the unanimous Voice of the Representatives of all the Commons of Great-Britain, their sincere and hearty Abhorrence of every Attempt to disturb his Majesty's auspicious Government, either from abroad, or at home:

To convince all the World, That we are determined to be a Free People, under our own King:

That we are determined to continue a Protestant Nation;

And that we never will suffer an arbitrary Government, or Popish Superstition, to be imposed on us by any Power whatsoever:

That we will give convincing Proof to all Europe, that we are not that dissatisfied, disaffected, turbulent People, they have been vainly made to believe,

By having adopted as Truths, all the seditious, discontented, and traitorous

traitorous Libels, which have at different Times, and on various Occasions, been industriously scattered through the Nation;

And that our Enemies did foolishly and ignorantly imagine these Libels and Calumnies to be the general Sense of the People.

Permit me, my Lords, to put you in mind, that That scandalous Declaration of the Young Pretender published at *Edinburgh*, which your Lordships, with the hearty Concurrence of the Commons, ordered to be burnt by the common Hangman, was but a short Abstract of those very Libels.

This Belief of our Enemies was their Folly. The relying on it has proved, Thanks be to God, their Destruction.

Had they not been thus infatuated, would such a Nation as *France* have attempted, or thought it possible, to over-run, much more to conquer, a brave and warlike People, with a Handful of Men, so poorly provided at first, and throughout so weakly supported?

To convince Mankind of these false and vain Imaginations, was one of the Inducements which prevailed with the Commons to vindicate the People they represent from these vile Aspersions, in the most solemn Manner, in Presence of your Lordships and this great Assembly.

But, my Lords, the Body of the People themselves, from the highest to the lowest, have vindicated their own Loyalty and Honour.

After a small Body of the regular Troops had received a Check, when it was apprehended the Rebels would venture to march Southward, what a noble Spirit immediately arose throughout the Nation!

Not an artificial, false Clamour for Liberty, but the true old *British* Spirit of Liberty, the true REVOLUTION SPIRIT, that exerted and signalized itself, out of Hatred to Popery and arbitrary Power.

And, Thanks be to God, it still remains in its full Vigour amongst us; it cries aloud in our Streets for Justice against those that would have made them Slaves and Papists; it cries aloud for Justice against the Prisoner at the Bar.

Calumnies of the like Nature preceded the great Rebellion in the Year 1715; and most justly may our present gracious King now say, in the Words of his Royal Father, of glorious Memory, to both Houses of Parliament:

"My greatest Comfort is, That I cannot reproach myself with having given the least Provocation to that Spirit of Discontent and Calumny that has been let loose against me, or the least Pretence for kindling the Flame of this Rebellion. Let those whose fatal Counsels laid the Foundation of all those Mischiefs, and those whose private Discontents and Disappointments, disguised under false Pretences, have betrayed great Numbers of deluded People into their own Destruction, answer for the Miseries in which they have involved their Fellow-Subjects."

I have chosen to make this Quotation, because it will appear to your Lordships, that the noble Lord at the Bar, since his being taken, has frequently declared,

That one of the Causes of his late Behaviour, was Revenge to the Ministry, for having taken from him the Command of an Independent Company, which he enjoyed.

Now, my Lords, if there is such a Principle, that Men must be paid for being loyal, and hired to live free and happy,

Whom no Sense of Religion, or Love to their Country, can engage, Whom no Ties of Conscience, Oaths, or Abjurations, can bind:

If there is such a Principle, it is the lowest, the basest, and the meanest, as well as the most mischievous and wicked, that can enter into the Heart of Man.

My Lords, the Commons have still further Inducements for impeaching this particular Criminal.

Your Lordships have already done national Justice on some of the principal Traitors, who appeared in open Arms against his Majesty, by the ordinary Course of Law.

But this noble Lord, who, in the whole Course of his Life, has boasted of his superior Cunning in Wickedness, and his Ability to commit frequent Treasons with Impunity,

Vainly imagined, that he might possibly be a Traitor in private, and a Rebel only in his Heart,

By sending his Son, and his Followers, to join the Pretender, and remaining at home himself, to endeavour to deceive his Majesty's faithful Subjects:

Hoping, he might be rewarded for his Son's Services, if successful; or his Son alone be the Sufferer for his Offences, if the Undertaking failed. Diabolical Cunning! Monstrous Impiety!

My Lords, Secret Criminals of this Sort, and of all others, it is the peculiar Business of the Commons to explore, and to bring to Justice.

This is the first and great Offender: But should hereafter other concealed Criminals appear, who encouraged and supported the late Rebellion; but who, either through the Cowardice of their Hearts, or Fondness for their Estates and Riches, durst not join the Rebels,

I make no doubt, but the Zeal and Loyalty of the Commons will prompt them with equal Ardour, to bring them to condign Punishment.

Having thus opened to your Lordships the Nature of the Crimes of which the noble Lord at the Bar is accused, and several Inducements the Commons had for this Accusation, it is needless for me to awaken your Lordships Attention, by enumerating the Miseries which the late Rebellion occasioned, or the utter Ruin which must have attended its Success.

It is too fresh in your Lordships Memories to need any Aggravation: And I pray to God, that your Lordships, this Great Assembly, and the whole Nation, may for ever remember it.

It has too often been the Misfortune of this Country to have been involved in Civil Wars: A Calamity of all others the most to be dreaded.

In antient Times these unhappy Divisions have arisen from Contests between Princes and great Men, without the least View to the Liberties, or the Benefit, of the People:

Let who would be Victors, they were sure to be Slaves, and only fought for different Masters.

The Power and Imperiousness of *Rome* they were sure to submit to, while each Contender exerted his Interest there, for the Confirmation of his Title.

Henry the Seventh united the Two Branches of the contending Fa-

milies: During his Reign, and those that followed, the Commons began to grow rich, and consequently powerful; they became jealous of their Liberties, and of their Property.

When they had something of their own to lose, they were too wise to risk their Fortunes, or their Lives, in vain Quarrels of the Powerful and the Great: They shook off the Yoke of *Rome*; Laws were enacted to limit the Power of the Crown, and the Days of Freedom began to dawn.

Still there was another Struggle, when the Crown began to inroach upon those Laws, and exert despotic Power: These virtuous Struggles at first soon degenerated into Faction; Civil War and Anarchy ensued, and ended (as it always will) in the most absolute Tyranny.

The Restoration re-established the Form of our Government; and new Privileges were gained for the People.

But, in the next Reign, the impatient Lust of Power, and the abject Bigotry of the Prince, produced the happy Revolution. The glorious Prince of *Orange* came to our Rescue: The People received him with open Arms; and then, and not till then, was established our present free Constitution.

Pardon, my Lords, this short Deduction, and be pleased to reflect, how odious and detestable the late unprovoked Rebellion must appear.

A Rebellion calculated to overturn this Constitution, so hardly acquired, and so carefully preserved, by all the succeeding Princes to this very Hour!

A Rebellion against our present indulgent Sovereign, whose Study has been the Happiness of his People; under whom the boldest Rebel cannot complain of the least Violence or Oppression!

The Laws of the Land have had their full and free Course, except where their Rigour has been restrained by the Royal Mercy.

Under such a Prince, and for the Destruction of such a Constitution, has the noble Lord at the Bar conspired and rebelled.

Be pleased then to remember the Depredations, the Bloodshed, that spoiled and stained those Countries through which the Rebels passed.

Let us remember the Distress of Public Credit, the Stagnation of Trade, the Loss of our Manufacturers, the reasonable, yet dangerous Apprehensions, which seized on the Minds of all the loyal Inhabitants of these great and opulent Cities of *London* and *Westminster*.

Let us remember the Loss of the Lives, the Blood, and the Limbs, of those gallant and brave Officers and Soldiers, who conquered, for our Sakes, in the famous Battle of *Culloden*. They are, and will be, a perpetual Memorial for whom, and by whom, they suffered.

Let us all remember these Calamities, and endeavour, as it is our Duty, to prevent the like Evils for the future, by doing Justice on Criminals; by putting a Stop to the Growth of Popery, that bloody Religion; by preventing the Education of our Youth in those Principles, which the Prisoner at the Bar has instilled into his Son; and by lessening the Power in those Hands, which have ever been ready to disturb this Government.

These, or such other Provisions, as the Wisdom of the Legislature shall suggest, are necessary to prevent the future Mischiefs which may arise from the frequent Disturbance of Government.

While we are in this State, 'tis in vain for this Country to hope to make the Figure she ought to do, or retain her due Dignity among the States of *Europe*, or to preserve the Peace, or hold the Balance, among foreign Powers.

If, while her Armies are employed abroad to humble the Pride of an assuming Nation, her Fleets to protect our Trade, or to annoy our Enemies,

If then our Troops are to be called Home to preserve domestic Peace, and our Fleets to prevent Invasions invited by these Patricides,

What Ally can depend on our Assistance? or what Pretence can we have to be Umpires in the common Cause of *Europe*?

Britain, united within herself, may, from her Situation, her Wealth, her Naval Power, and the Bravery of her Troops, justly claim that Title;

But divided, torn to Pieces by civil Discord, must fall under the ancient Reproach of this Country, and, while we are contending among ourselves, become an easy Prey to our most inveterate Enemies.

Let us now, my Lords, turn our Thoughts from these gloomy Reflections, which the Time and Circumstances of the late unhappy Rebellion of necessity must furnish: And

Let us then call to Mind, with Thankfulness, the good Providence of God, which put an End to these Calamities, and a glorious Period to our Terrors.

Let us acknowledge, with Duty and Gratitude, all his Majesty's Labours for the Safety and Happiness of his People.

And let us remember, with Honour and Praise, his Royal Offspring, who, by his Courage and Conduct, has secured and established his Majesty's Throne, your Lordships Honours, our Liberties and Privileges, and the Protestant Religion.

Thus ended this wicked and unnatural Rebellion, of which the noble Lord at the Bar will appear to your Lordships to be one of the first Contrivers and Promoters, and a very considerable Support.

All I have said, I know, will avail nothing with your Lordships, unless the Evidence we shall bring against the noble Lord at the Bar be clear and full, as we doubt not it will appear to be.

In Cases where Life is concerned it is painful to be a Judge; it is uneasy to be the Accusers: But there is a Duty incumbent on both.

I know such is the generous Compassion of your Lordships noble Hearts, that you will acquit with Pleasure, but condemn with Reluctance.

And as I am persuaded, from the Fulness of our Proofs, the latter will be your Lordships Judgment, give me Leave to add a few Words to lessen that Concern, which your Lordships may feel as Judges, and we as Accusers.

When I look on his Lordship at the Bar, I pity his Age and Infirmities; but, when I consider that, at his Years, Pride, Vanity, Avarice, or Ambition, are so rooted in his Heart, as to tempt him to risk his Honour and Estate, to sacrifice the Religion and Liberty of his Country to those mean Passions, that Pity is mixed with Indignation.

But

But when I reflect on his having been already pardoned for this very Crime:

That he has been amply rewarded by his Majesty's Royal Father, and intrusted by his present Majesty in preserving the Peace of those *Highlands* where he rebelled; I own I feel the strongest Repentment of such heinous Ingratitude.

The bringing his grey Hairs with Sorrow to the Grave seems to be a Distress to human Nature; but when we consider how different the Distress when that Expression was first used, and that the Prisoner at the Bar is not brought into that wretched Circumstance by the Misfortune or Loss of a darling Child, but by sacrificing his eldest Son to his own Ambition, and by endeavouring to save his own worthless Life by his Son's Destruction, it must almost harden the most tender Breast.

One Word more, and I have done.

When your Lordships look towards the Bar, you will please to reflect, that had the Design of the noble Lord, who stands there, had its Effect, it would probably have happened to many of your Lordships noble Body, who should not have perished in the Defence of your Country, to have stood in that very Place;

While his Lordship, with a Number of mock Peers, had sat in Judgment on your Lordships, for the very Crime for which he is now accused.

Thus far, my Lords, I have gone, in Pursuance of the Trust reposed in me by the Commons. I am now, my Lords, for myself, humbly to implore your Lordships Indulgence for any Errors I may have been guilty of, either in Matter, or in Words. If I have omitted any Thing material, I am sure it will be supplied by the great Abilities of those who are to follow me, and who will lay before your Lordships the particular Evidence to support our Charge.

Lord COKE.

My Lords,

I AM likewise commanded by the House of Commons to assist my Honourable Friend in maintaining the Articles of Impeachment against the noble Lord at the Bar: And, my Lords, if I commit any Errors in what I shall offer to your Lordships, I hope I shall meet with your Lordships Indulgence, and, in Return, I promise you they shall not be wilful. It is a Business, my Lords, to which I am an entire Stranger; nor should I have undertaken it in a Case of so high Importance, if I did not think, that my Duty to my Country, as well as my Allegiance to his Majesty, to which I shall ever be faithful, equally called upon me to be instrumental, if I could, to find out concealed Treasons, and to bring the Contrivers of them to Justice, as to have ventured my Person and Fortune, if necessary, when the Rebels were in the Field. What I shall chiefly endeavour to prove to your Lordships, is, that the last Rebellion was not the Effect of Chance only, entered into by a few rash, inconsiderate Men, without Thought or previous Design, but the Result of long-considered and well-weighed Consultations, and of Schemes not so ill concerted, as to make the Success either impossible, or without some Degree of Probability in them: And, my Lords, the Reason why I choose to mention this general Design to your Lordships is, that, though I am not very old, I have twice seen this Country in very great Danger from the Disbelief of *Jacobitism* prevailing in it. In 1743, I, with Grief, remember, when a Message was sent from the King to a certain Place in this Kingdom, that an Invasion was projected from *France*; what popular Declarations were made to shew, that the Scheme was impracticable, and that it ought to be looked upon only as a Terror thrown out by the Ministry; because, as there was neither the Colour nor Appearance of Truth in it, there could be no Reality. And, in the Beginning of the last Rebellion, there was a Disbelief prevailed even among those who ought to have been more certain of the Truth: But that was not the Case of the Prisoner at your Bar: He did believe it; he sent one of his chief Agents into *Lochaber*, to the Young Pretender, to go and receive his Commands, and ordered him to express the greatest Satisfaction at his being come over. He did not content himself with beginning the Rebellion then; but in 1736, an Association was sent by him to *Rome*, signed and sealed by many of the People of that Country, to invite the Pretender then to come over; and that was afterwards carried to *Paris*, and shewed to the Cardinal; and, I believe, met with Approbation at both those Places.

My Lords, I say nothing to aggravate the Case of the Prisoner at your Bar: He is already oppressed with Misfortunes enough, and it is not in my Nature, I hope, to add to them. Nor should I, my Lords, make the following Observation, did I not think myself obliged, in Justice to an unfortunate young Man, whom this noble Lord has forced into the Rebellion: He did write a Letter, that he was afraid the disobedient Behaviour of his Son, would bring down his grey Hairs with Sorrow to the Grave; and therefore it will not appear astonishing to you, that when he had forgot that tenderest Tie of human Nature, the Love of a Father to his Child, so far as to desire to save the wretched Remains of a Life almost worn out, by the Destruction of his own Son, that he should forget his Allegiance to the Son of a King who saved his forfeit Life; the Remainder of which he has since employed in endeavouring to overturn and destroy his Family, and the Government established in him. I shall therefore conclude with my Honourable Friend, in saying, that we are ready to make good our Charge against the Prisoner at the Bar.

Mr. Attorney-General (Sir DUDLEY RIDER).

My Lords,

I HAVE likewise the Commands of the House of Commons to assist in the Prosecution of the noble Lord at the Bar.

The Charge hath been fully stated and opened by the Managers who have spoke before me. The Prisoner has denied every Part of it, and thereby put the Proof upon us to be made out; not, as he rightly says in his Answer to the Articles, by Facts aggravated by Skill and Oratory, but by credible and unexceptionable Witnesses, in a plain and legal Way; against which he will have the full Benefit of any just Defence he can make.

I shall therefore avoid dwelling upon those many Circumstances of Aggravation, either in respect to the Rebellion in general, or to the noble Prisoner's own particular Conduct in it, which will necessarily occur in the Progress of this Prosecution: The Honourable Managers, who have

preceded me, have very properly pointed them out to your Lordships. They have had their Effect already; all that Effect which your Lordships Wisdom and Justice would suffer them to have; all that the Commons would wish them to have: They have awakened your Lordships Attention, if that could possibly be wanting in the least Degree on such an Occasion: They have balanced that Compassion, which the Age, Appearance, and Quality of the noble Prisoner, must naturally raise in your Lordships humane Breasts; that is, they have cleared the Way for that Justice which the Nation calls for, and the Commons of *Great-Britain* in Behalf of themselves, and the People whom they represent, now demand at your Lordships Bar.

All therefore that I shall offer for your Lordships Consideration, will be a plain Narrative of Facts, with the Nature of the Evidence to prove them, and some short Observations, to shew the Force of those Facts to maintain the Charge, which the Commons of *Great-Britain* have undertaken to make good.

The Facts will be very numerous, to be proved by a Variety of Witnesses and Writings; and therefore must necessarily, in the Course of the Evidence, lie intermixed. I shall, therefore, in the Opening, endeavour to disentangle them: and, that your Lordships Attention may be the more easily fixed, and the Facts, as they shall arise in the Evidence, be the more readily applied to the several Parts of the Charge, I shall divide them into three distinct Periods of Time.

Those which happened precedent to the Pretender's Son's Landing.

What happened after that Time, and before the Battle of *Culloden*.

What arose since that happy Event.

And within each of these Periods, your Lordships will find many Things, which it will much concern the Prisoner at the Bar to give a satisfactory Answer to.

The First will open to your Lordships a wicked and traitorous Scheme begun and carried on for many Years, for bringing over the Pretender, by the Assistance of a Foreign Force, in which his Lordship will appear to have had a principal Hand.

The Second will include the more immediate Scene of Action in the late wicked Rebellion, and the particular Parts which the Prisoner took in it.

The Third will shew him in the Circumstance of a Defeat, and the Measures he then thought proper to take; and, in every Part of this whole Scene, he will appear plotting, associating, and supporting all the Steps that were taken for subverting this happy Establishment, dethroning his Majesty, and substituting a Popish Pretender in his room.

To begin with the First of these Periods: And here I shall be under a Necessity of going some Years back, in order to lay before your Lordships a View of those traitorous Schemes that have been set on foot, and prosecuted for some Time past, in order to prepare the Way for, and bring on the late Rebellion.

As soon as the War with *Spain* was declared, the Pretender, and his Agents, thought that a favourable Opportunity offered to promote his Interest; and a Project was immediately set on Foot, by several of his Friends in the Northern Parts of *Scotland*, for bringing in the Pretender by the Assistance of *France*; and Seven of the Chiefs of them entered into an Association for that Purpose. The Prisoner at the Bar set himself at the Head of them, and himself, together with the Earl of *Traquair*, Sir *James Campbell* of *Auchinbreck*, *Cameron* of *Lochiel* the younger, *John Stuart*, Brother to Lord *Traquair*, Lord *Perth*, and Lord *John Drummond*, signed and sealed an Association in Writing, in which they engaged to venture their Lives and Fortunes, to restore, as they called it, the Pretender, whom they styled their King, and his Family. They agreed to send one *Drummond*, alias *Mac Gregor*, of *Bochaldie*, a Relation and intimate Friend of the Prisoner's, to *Rome*, in order to have the Scheme for bringing over the Pretender digested there; and from thence carried to *Paris*, for completing the Execution of it. It was there to be delivered to Cardinal *Fleury*, then Prime Minister of *France*, with a Memorial, pressing, in the strongest Terms, for her Assistance.

In order to engage the *French* Court, he was to represent the great Interest and Strength of the Conspirators in the *Highlands*; to assure the Cardinal, that they could raise 20,000 *Highlanders* for the Service, and wanted nothing but a few *French* Troops, and some Money, to secure the Success. The Conspirators, at the same Time, sent over a List of many other Heads of Clans, who, they pretended, would join in the same Design.

Drummond accordingly went over, and carried with him the Association and List; and after he had obtained the Sanction of *Rome*, and the Pretender, he came to *Paris*, where he was introduced to the Cardinal by one *Semple*, whom they called Lord *Semple*, an Agent at that Place for the Pretender. He delivered the Association and List to the Cardinal, with an Assurance, that any of the Seven who had signed the Association would come over, and confirm it in Person, whenever he desired it.

Any Scheme to disturb the Peace of this Nation is but too acceptable to that Court at all Times. The Cardinal received it with great Attention and Encouragement, and promised their Assistance, as soon as the Conspirators could shew a reasonable Prospect of Success. *Drummond* continued at *Paris*, and kept a constant Correspondence with those who had joined in the Association. Nothing, however, appears to have been finally resolved on, till about the latter End of the Year 1742, or the Beginning of 1743, when the Court of *France*, finding how necessary it was to their Views of oppressing *Europe*, to take off the Weight of our Assistance from our Allies upon the Continent, thought it worth their while (though then at Peace with us) to enter seriously into this Design; and *Drummond* was, about that time, sent over hither by the Cardinal, to assure the Conspirators, and the rest of the Pretender's Friends in *Scotland*, that if they could procure Encouragement from *England*, they might depend upon being assisted by *France* with an Invasion the Autumn following.

Drummond came accordingly over to *Edinburgh*, where he had a Meeting with the Earl of *Traquair*, *Lochiel* the younger, and *Cluny*, and gave them an Account of his Negotiations, and particularly of his last Message and Promise from the Cardinal. Upon this it was agreed, that the Earl of *Traquair* should go immediately to *London*, and try what Encouragement

ment he could meet with there. The Earl went accordingly, and Drummond accompanied him. The Earl, after some time spent in England, returned to Edinburgh, and assured his Friends there, that the People here were well inclined to the Pretender, and would join in the Design, provided they could depend upon Assistance from France.

About the same time Drummond went over to Paris, to satisfy the Cardinal of the Success of his Negotiation; and he gave him such Satisfaction, that a Project for an Invasion was soon after agreed on. The Plan was, that the French should send over 3000 Men, under the Command of Earl Marshal, who were to be joined with large Bodies of Highlanders, which the Conspirators had undertaken to raise. 1500 of the French were to go directly to Inverness, where the Prisoner at the Bar was to join them with his Clan of Frasers; the remaining 1500 were to land in the West, near Sir James Campbell's, who was to go to the Isle of Mull, and raise the Clans there, who all together were to march and join the Frasers, and the other Body of French. At the same time 12,000 French, under the Command of Count Saxe, were to march to the Coast of Flanders and France, and from thence embark, and land in England, within two or three Days March of London.

As soon as this Scheme was agreed upon, Drummond, about the Middle of the Summer 1743, wrote Letters to the Earl of Traquair, to inform him of the Resolution that had been taken; to direct him to acquaint his Friends of it; and to assure them, that it would very soon be put in Execution. The Earl communicated this Intelligence to John Murray of Broughton, Lochiel, and several others, who immediately sent the same Mr. Murray to France, in order to settle Matters beforehand for the Execution of it. He went over accordingly; but the Death of the Cardinal, about that time, suspended the Prosecution of it for a little while. As soon as he arrived at Paris, he was assured by Drummond of the Cardinal's good Intentions and Zeal for the Pretender's Cause; and that nothing but his Death could have prevented the immediate Execution of it; and that the Cardinal's first Design was, that the Army under the Command of Maillebois should be employed in it; but that some Persons about the King of France had prevailed upon him to order that Army to march towards Hanover. Murray of Broughton was then introduced to Cardinal Tencin, and afterwards to M. Amelot, who assured him of the late Cardinal's Sincerity in the proposed Invasion; and that the French King had ordered him to acquaint the Gentlemen who had entered into the Association, that he had the Pretender's Interest very much at Heart, and would certainly execute the Scheme which had been settled, as soon as his Affairs would permit. M. Amelot at the same time entered into a Discourse concerning the Number of Highlanders that might be expected to join them.

With these Assurances Murray returned to Edinburgh, and made a Report of his Proceedings to the Earl of Traquair, Lord Perth, and others of the Pretender's Friends. Drummond was sent at the same time with the like Assurances to the Pretender at Rome, in order to engage him to send the Young Pretender to come and put himself at the Head of the Expedition. Drummond soon after came back to Paris, and from thence to London, in order to settle Matters here for the intended Invasion, and returned again to Paris; from whence he acquainted the Earl of Traquair, by Letter, that the French Court had now settled every Thing for the Invasion; that it would be executed immediately; and that the Pretender's Son was come from Rome to accompany it.

This was in January 1743: And in February following an Invasion was attempted by a large Embarkation from Dunkirk, where a great Number of Transports were got ready; many of the Troops actually embarked, with a Design to have come up the River of Thames; and a Fleet of Men of War actually sailed from Brest to support the Descent, or to divert our Fleet, while an Army of 12,000 Men might land without Interruption.

Nobody can have forgot how that Expedition was happily disappointed, by the good Providence of God, and the Vigilance of his Majesty; nor what Terror it struck while it was depending, at a Time that our own Troops were necessarily engaged on the Continent, in the Defence of our own and the Liberties of Europe, and consequently, when we had so few left to defend ourselves at Home.

After this Disappointment, no Letters appear to have come from France for a considerable Time; which made the Conspirators, and their Friends here, very uneasy; and the Earl of Traquair engaged Murray to go again to Paris, in order to know in what Situation their Affairs stood there: But before he was actually gone, a Letter came from Semple, to account for, and excuse the Misfortune of the Invasion, and desiring that fresh Assurances might be sent from the Pretender's Friends both in England and Scotland, in order to engage the French Court in a new one.

This did not prevent Murray's intended Journey; and in June 1744, he went over to Paris, where he was introduced to the Pretender's eldest Son, at the House of one MacDonald a Banker, and had soon after a second Meeting with him. The Young Pretender then assured Murray, That the French had been very serious in the Invasion, which had been disappointed by nothing but Wind and Weather, and other inevitable Accidents: But, however, he had the strongest Promises, both from the French King, and the Ministry, that the Scheme should be put in Execution the then next Summer, in the Year 1745. And as for himself, whether it was or not, he was determined to come over, if he brought but a single Footman with him: And though Murray represented to him the Rashness and Danger of such an Attempt, he was so fully satisfied of Assistance from the Highlands, whenever he appeared in Person, that he would, in all Events, come over at that Time.

Murray returned to Scotland from Paris, and communicated what passed to the Earl of Traquair, Lochiel, Lord Perth, and others of the Pretender's Friends; and at the same time brought along with him several Letters from the Pretender's Son, but with blank Addresses, in order to be delivered to such as it should be thought proper, when Murray came over; and they were accordingly soon after delivered to such as it was apprehended would make the best Use of them.

The Time, however, running out, and no Preparations yet appearing in France for an Invasion, the Pretender's Friends, who were acquainted with the Design, began to fear the French would deceive them; and in June 1745, Murray received a Letter from the Pretender's Son, in which,

without taking Notice of any Invasion from France, he informs Murray, that he was determined himself to come to the Northern Part of Scotland immediately; and desired his Friends might be informed of it, and ready to join him, with all the Forces they could raise. He tells him, That it would be the latter End of that same Month; and appoints the Place where he designed to land, together with the Signals that were to be given and taken.

This Letter was immediately communicated to the Pretender's Friends in the North, and, amongst the rest, to the Noble Lord at the Bar. So unexpected a Resolution, without mentioning any Assistance from France, much surprised them. They thought it, as was natural, rash, precipitate, and dangerous, to come without Force; and therefore determined, most of them, if they could not prevent his Landing, to advise him to return, and wait till he could be better prepared. About a Fortnight after, the Pretender's Son actually arrived, and landed in the North-West Part of Scotland, upon the 25th of July, 1745.

Your Lordships will permit me now to make a little Stand. I have stated these Facts as a short View of the Commencement and Progress of several wicked and treasonable Correspondences, Plots, and Schemes, contrived and carried on from the Year 1740, for bringing over the Pretender, by the Assistance of the Power of France.

I have hitherto, my Lords, but just named the Noble Prisoner at the Bar in the Account I have given of them; and I have avoided it on Purpose, that when your Lordships should have before your Eyes, in one View, the general Plan of that Series of Treasons which have been contriving, and, in Part, executing; for so many Years, I might the more easily point out to your Lordships, as it were in a Map, the particular, precise Parts which the Noble Lord acted in them; which is what I shall now apply myself to.

And in order to do this the more clearly, and agreeable to the Evidence which will be produced, I shall be under the Necessity of going back to some yet earlier Parts of his Life; and which, my Lords, I should not do, if your Lordships would not necessarily, in the Course of the Evidence, see the Prisoner himself taking Pains to connect the early with the latter Parts of his Life, in order to prove the Uniformity and Consistency of his Conduct, all tending to, and uniting in, one great Centre, the overturning the Protestant Succession, excluding or dethroning his Majesty, and his Royal Father, and setting up the Pretender to their Throne in their room.

So long ago as the Reign of Queen Anne, when the Nation was involved in a War with France, and Invasions from thence were continually set on Foot, and it became material for the Pretender's Service to arm his Friends in the Northern Part of the Island, the Prisoner, who had been from his Youth bred to War, accepted of a Commission from the Pretender of a General Officer. It must be owned, that it does not appear, that the Prisoner made any particular Use of it; and the first Time any Opportunity did offer, when the Rebellion broke out on the Death of Queen Anne, the Noble Lord at the Bar did important Services to his late Majesty. He himself will likewise admit, that he was amply rewarded for them. But he seems very soon to have repented of those Services, even while he was in the full Possession of the Reward of them.

In 1719, when a Spanish Invasion was undertaken in Favour of the Pretender, and Spanish Forces were actually landed in the North, the Prisoner thought proper to engage in it; and, while the Earl of Seaforth was raising his Men to assist in it, the Prisoner himself wrote a Letter to that Earl, with a Promise to join him with his Clan; but before he had actually done it, that Attempt was defeated.

From that Time till the Year 1736, the Managers don't take upon themselves to state to your Lordships any Thing concerning his Conduct, but that general Account, which your Lordships will find him giving of himself in his own Letters, That he had, ever since he had the Use of his Reason, been the most faithful and zealous Subject to the Person and Interest of the Pretender.

But in that Year, when one Roy Stewart, who had escaped out of Prison, to which he had been committed for High-Treason, and been afterwards harboured in the Prisoner's House, then High-Sheriff of the County where he had been imprisoned, was going to the Pretender to Rome, the Noble Lord sent by him an Assurance to the Pretender of his constant Fidelity even to Death; and desired a Commission from him to be Lieutenant-General of the Highlands, and to have a Patent of Dukedom, which he had before solicited, expedited, and which he claimed as a Matter of Right for the Services he had done that Cause.

In the Year 1740, when an Invasion was projected, the Noble Lord was not only one of those that signed the Association, and corresponded with the Persons that negotiated it beyond Sea, but himself proposed it, and seems to have been the original Projector.

In the Year 1743, when the Invasion was actually resolved, and a Person of Figure and Interest was necessary to conduct it in the Highlands, the Prisoner was pitched upon as the most proper for that Purpose, and accepted two Commissions from the Pretender at Rome in December 1743; one to be Lord-Lieutenant of all the Counties North of Spey, and the other to make him a Lieutenant-General. He likewise, about the same time, obtained the Patent, which he had been long soliciting, for creating him Duke of Fraser.

And though the Disappointment of that Expedition prevented his immediate Use of those Powers, they did not lie idly by as a private Ornament to his Person, and to gratify his Vanity only: They were made use of by him to propagate the Principles of Treason and Rebellion; to sow the Seeds of Disloyalty to his present Majesty and his Government; to discipline his Dependents in the Service of the Pretender, and make them ready, whenever his Master's Projects were ripe for Execution.

He was, as your Lordships will see him expressing himself in his Letters, always the most zealous and active Partisan that the Pretender had in those Parts. He was, in his own Words, the Life and Spirit of the Pretender's Affairs in that Country: He made it, as he says, his sole Business to keep up the Hearts of his King's Friends, though it was both fatiguing, troublesome, and expensive; and appeals for the Truth of it to the Knowledge of all the Gentlemen in the Pretender's Interest in the North.

North. He did, as he expresses himself in another Letter, more Service to the Pretender's Cause, than any one of his Rank in Britain.

He constantly made it his Business, as he says in another, to promote his Master's Interest, and to engage faithful Subjects to him; so that he had done, as he expresses in a still higher Strain of Language, more against this Government than would hang fifty Lords, and forfeit fifty Estates.

I have now pointed out to your Lordships the particular Share the Noble Lord will appear to have had in the Steps towards the late Rebellion; in which you must have observed him to be a most active Friend to it: I shall now open to your Lordships a State of the Facts that affect the Prisoner, since the Young Pretender's Landing, which was, as I mentioned, upon the 23th of July 1745.

Notice was immediately sent of it to the Chiefs of the Clans known to be in his Interest; and the Prisoner at the Bar was one of the first to whom it was communicated. The Conspirators, who expected an Attempt at the Head of a French Army, were surprised at his coming in a single Ship, without Soldiers, and without any material Friends, or even many Servants accompanying him; and were at first shocked at the Danger of a Design so prematurely executed. However, some of the Clans came in soon; and the Prisoner at the Bar seems to have early determined to have done so too, not indeed at first in Person, which he excused from his Age, and supposed Infirmities, but by sending his Son, at the Head of his Clan.

For that Purpose, he directed the Master of *Lovat* his Son, who was then at, or but just come from, the University of *St. Andrews*, to get ready: He likewise directed the Inferior Heads of the Clan of *Frasers* to send in Lists of their Numbers and Names; with severe Threats on such as neglected, or gave him incorrect ones.

He ordered the Arms which he had in his House to be cleaned and mended, Bell-Tents and Camp-Colours to be made, and the Arms of the *Frasers* Family to be painted on them: He appointed his Son the Colonel, and directed his Tenants and Dependents to follow him, exhorted them to be true to the Pretender's Cause, and encouraged them with an Assurance of Success.

The Men were brought together, and twice rendezvoused; Officers were appointed, who were entertained in his House and at his Table; where he used to call the Pretender's Son by the Name of Royal Prince, and Prince Regent, and drank to his Success. He ordered the Pretender's Declaration to be read; and when the Person whom he had commanded to do it, declined it, he declared it was High-Treason to refuse it. He provided the Men with Arms, Meal, Provisions, and Money; sent for Ribbands to make white Cockades for them; and had Taylors and other Workmen in his House, to make them Caps, Bonnets, and Brogues. He went still further; and, as some of his Dependents were unwilling to engage, he ordered the *Fry Cross*, as it is called, to be sent about his Country to force them. This is the last and most extreme customary, though illegal and cruel Sort of Process, if I may so call it, that the *Highland* Chiefs use, to compel their Dependents to perform their arbitrary Commands; and is a general publick Denunciation of Plunder, Fire, and Sword, on all that do not obey; and several were actually forced into the Rebellion, by taking away their Plaids, Beds, and Cattle, and turning their Wives and Children out of Doors.

While he was using Threats to some, he tempted others, by the Promises of Rewards to their Wives, and Commissions to themselves.

Soon after the last Rendezvous of the Men, the Earl of *Cromartie's* Clan marched near the Prisoner's House, in their Way to the Pretender's Son: The Earl, his Son, and some of the Officers called at the House, where they were entertained as Friends: And the Prisoner told the Earl, that his Clan should follow soon after, laying the Blame at the same time upon his Son, the Master of *Lovat*, that they were not yet ready.

The Prisoner, however, did not think fit, as yet, either by himself, or his Son, actually to join the Pretender. The Rebels were now but beginning to march Southward; the King's Troops were endeavouring to intercept them; and till they met, the Event, he thought, might be doubtful. The Rebels, however, escaped them; and upon the 17th of September, got Possession of the Capital of that Part of the united Kingdom; and in a few Days afterwards, the unfortunate Battle of *Preston-Pans* seemed, in the Opinion of those deluded People, to turn the Scale in their Favour.

At that Time, one *Hugh Fraser*, who had about a Year before been Secretary to the Prisoner, was at *Edinburgh*, where *William Fraser*, a Relation of the Noble Prisoner's, happened then likewise to be: They had both heard of his Design of sending the Master of *Lovat* into the Rebellion, and both were desirous of preventing it: For which Purpose *William Fraser* thought of an Expedient for getting the Master of *Lovat* out of the Way, by sending him to *Holland* to compleat his Education; the Expence of which he was willing to be at. With this Message *Hugh Fraser* went to the Prisoner, and made him the Offer. My Lord *Lovat* at first seemed to yield to it; but at last told him, he was too far engaged; and was resolved, that the Master should go with his Clan to the Young Pretender.

The Prisoner had early Notice of the Battle of *Preston-Pans*, and *Barriisdale*, one of the Heads of the Rebellion, came to his House, and told him, he was going to raise more of the *Highlanders* for the Service. This Battle seems to have determined his Resolution; and when *Hugh Fraser* was to return to *Edinburgh*, he charged him with a verbal Message to the Pretender's Son, to inform him, That his Age and Infirmities would not permit him to travel; and therefore hoped he should be excused attending him in Person; but that he would send his Son, at the Head of his Clan, which would be a much greater Mark of his Loyalty. And the Message was delivered accordingly.

The Rebels continued at *Edinburgh* till the 31st of October, when they were beginning their March towards *England*; but the Prisoner's Son not having yet joined them, it was thought necessary, that *John Murray* of *Broughton*, the Young Pretender's Secretary, should write to the Prisoner to hasten his Men, and meet them at *Carlisle*. The Letter was wrote, and sent, and soon after delivered by *Hugh Fraser*, who at the same time represented to him the bad Condition of the Rebel Army, the State of

his Majesty's Forces, and the Arrival of the Dutch Troops; which he did, in order to prevent the Prisoner's going on with his Engagements: But the Prisoner told him, it was now too late to go back; and forbid him to mention any thing to his Son against it. He besides told him, That he had put his Name down as a Captain-Lieutenant in his Son's Company, and ever after called him by that Title.

His Dilatoriness, however, had made some of the Pretender's Friends uneasy, and apprehensive that he was playing a double Game; and as they thought it would be of great Service to their Cause, if the noble Prisoner would make a public Avowal of his taking Part with them, applied to him for that Purpose; and told him that a great deal depended upon his throwing aside the Mask: Upon which he pulled off his Hat, and threw it on the Ground, saying, There it is then.

In the Month of November he sent a Letter to the Pretender's Son, to assure him of his Fidelity; and about the same time, two others to *Lochiel*, and *Murray* the Secretary, both of them to the same Effect.

Though the two first of these Letters appear by the Dates to have been wrote in November, and the latter probably at the same time, yet as the Rebels were then going into *England*, they don't seem to have been sent till their Return. The Prisoner, in the mean time, went on with raising his Men, till it was universally known in that Country, that the Master of *Lovat* was to go at the Head of them, and join the Rebels.

My Lord *Loudon*, and the President of the Session, were then at *Inverness*, collecting a Body of Men to oppose them; and were then superior to the Rebels in those Parts. The Prisoner well knew, that the Design of the Master of *Lovat's* joining the Rebels could not be unknown to them; and that they must suspect, at least, that he himself was at the Bottom of it. This made him afraid for his own Person, as soon as his Son began to march. These Apprehensions made him suspend the Time of their March, till he could be better informed of the Measures the Lord *Loudon*, and the President, would take in that Event, with respect to himself: And therefore, after he had once ordered them to march, and those of his Country of *Firth* had actually begun it, and proceeded as far as *Strathannan*, in the Way to *Pertb*, which the Rebels were then in Possession of, his Courage began to fail, and he sent Orders for their Return; which they immediately obeyed, excepting Twenty: And he thought it more prudent, before they finally marched, to send *Hugh Fraser* to *Inverness*, to sound the Inclinations of Lord *Loudon*, and the President; and to represent to them, That the intended March of his Son was against his Inclinations, and contrary to his Commands; that his Son was obstinate and disobedient; and that it would be unjust that a Father should suffer for an undutiful Child.

The Lord *Loudon*, and President, took it to be, as it really was, a Pretence only, and the Effect of that double Part which the Prisoner was acting, till he thought it worth his while to throw off the Mask in reality. They knew that a young Man of Nineteen Years old, that had lived at the University, and but just come home, could have no Power over his Father's Tenants and Dependents, but just so far as his Father gave it him; and that the Prisoner was himself the most absolute Superior in all the *Highlands*: They therefore gave *Hugh Fraser* to understand, there could be no Safety for the Father, while the Son was in open Rebellion.

Hugh Fraser returned with this Answer to the Prisoner, and delivered at the same time a Letter from the President to the same Effect. About the same time News came, that Lord *John Drummond*, with French Troops, was landed; which seems to have determined the Prisoner's Resolution: And he told *Hugh Fraser*, that the Threats of the Lord President were but a Bugbear; and immediately gave the Master of *Lovat* his final Orders to march; which he instantly obeyed, and marched accordingly: And Lord *Loudon*, and Lord President, found Means soon after to secure the Prisoner's Person, who was carried a Prisoner to *Inverness*; from whence, however, he soon after made his Escape.

The Master of *Lovat* was now got to *Pertb*, at the Head of the Clan of *Frasers*, whither *Hugh Fraser* attended him, as his Captain-Lieutenant; and upon Notice from the Pretender's Son, who was then come as far as *Glasgow*, in his Return from *England*, was sent thither by the Master of *Lovat* for a Supply of Arms. *Hugh Fraser*, on his Return from *Glasgow*, was charged by *Murray*, the Pretender's Secretary, with a Packet, in which were inclosed three Letters, one from the Pretender's Son to the Prisoner, referring to a second, inclosed from *Murray*, *Lochiel*, and *Clunie*, to him likewise; and a Third to the Master of *Lovat*. There were also three Commissions inclosed, two of which were dated at *Rome*, 23d December 1743, from the Pretender himself; one of which was, to make the Prisoner Lord Lieutenant of all the Countries North of *Spey*, and the other, to make him a Lieutenant-General.

The Rebels, as soon as they had collected all their Parties together, marched towards *Inverness*. His Royal Highness the Duke of *Cumberland* followed them, as fast as the Season of the Year and the Nature of the Country would permit, till he came up with them, and obtained that signal and compleat Victory, at the Battle of *Culloden*, upon the 16th of April 1746; when all the Noble Lord's Schemes of Grandeur and Power, and for a new Revolution, were put an End to at once.

I am now come, my Lords, to that last Period of Time, from the Battle of *Culloden*. The Prisoner was waiting, not very far off, the Event of that important Day. The Night after, the Pretender's Son came to *Gortuleg*, where the Prisoner then was, and had an Interview with him. The Noble Lord did not even then disavow his Cause, but received him as his Prince; excused his not joining him in Person; and after the tenderest Embraces, parted from him, as a faithful Subject to his Royal Master.

The Prisoner, as well as those who had been in open Arms, was now obliged to fly. He knew his Guilt was the same; and therefore deserved the same Treatment. The Rebel Army, and their Chiefs that escaped from the Battle, were now dispersed; but some Correspondence among them was kept up; and upon the 15th of May a Meeting was had, at a Place called *Mortleg*, where there were present the Prisoner, *Lochiel*, his Brother Dr. *Cameron*, *Murray* the Secretary, and several others. The End of the Meeting was, to consider what was proper to be done for their common Safety.

The noble Prisoner met them himself, not as an innocent Person, to advise them to lay down their Arms, confess their Guilt, and beg for Mercy; not as a neutral Person, if Neutrality, in the Cause of our King, Religion, Liberty, and this happy Establishment, can be attended with a less Degree of Guilt; but as one involved in the same common Crime and Calamity, as a Chief whose Age and Experience intitled him to the Lead; and he took it. He advised them to raise a sufficient Number of Men to defend themselves against the King's Troops, till they could make Terms for themselves; and, after computing what each of those present were capable of procuring, he proposed the Number of 3500, of which each was to raise a certain Proportion: And he himself proposed, That his Son should raise 400; and desired *Lochiel*, as he himself had not been in Arms, to answer for his Son. *Lochiel* did so; and all the Company agreed to the Proposal; and there having been then lately come from France, 35,000 *Louidors*, it was likewise agreed, That each should have Ten Days Pay for their Men out of it; which was immediately distributed; and the Share of the Master of *Lovat* was paid to the Prisoner's Servant. In Consequence of this, about 400 Men, in the Whole, only were raised. But the Rebels made no Stand afterwards.

The Master of *Lovat* had afterwards a Meeting with his Father at *Kilbogie*, when the Matter proposed to surrender to his Majesty; but the Prisoner dissuaded him from it, and reflected upon his Son as a Person of mean Spirit to think of so dishonourable an Action; and determined to fly himself, but with a Guard of about Twenty Soldiers, whom he took into Pay for his Defence. However, he was pursued and taken by a Party sent by the Duke, under the Command of Captain *Ferguson*, who treated him with great Humanity. During the Time of his being in his Custody, they had frequent Conversations together concerning the Rebellion. He was asked by the Captain, How he could act as he had done, after all the Favours he had received from the Government? He answered, It was not against the King, but the Ministry, he had acted; that they had taken away his Company: And when he was told, It was a bad Revenge to endanger his own Life and Fortune; his Answer was, Who could have thought but that they, meaning the Rebels, would have carried all before them? And that, if the Young Pretender would have taken his Advice, he might have laughed at the King's Forces; and none but a mad Fool would have fought that Day; that they might have gone into the Mountains, and lived on Butter and Cheese, and given the Duke Twelve Months Work: Besides, that they were in daily Expectation of Assistance and Money from France.

The Prisoner was afterwards brought before Sir *Everard Falkener*. He did not think then of denying his Treason: On the contrary, gave the same Account of the Motive to it, which he had done to Captain *Ferguson*; but with this Addition, That he resented the Loss of his Independent Company so much, that if *Kouli Kan* had come, he should have been for him. He talked much of the King's Mercy, of the former Services he had done to his Royal Family; and that he could still do greater than Twenty such old Heads as his were worth. However, concluded with the following Passage out of *Virgil*,

In utrumque paratus,
Seu versare dolos, seu certæ occumbere morti.

I have now, my Lords, gone through those Three Periods of Time, which I proposed; in which your Lordships have observed many Things of great Moment to the present Cause. The Managers have, with the greatest Care, endeavoured, amongst that great Extent of Evidence which has come to their Knowledge, to discover the Truth; and I have, with the utmost Fidelity, stated to your Lordships no Fact, but what I take to be so. I know, my Lords, how unjust it would be to endeavour to mislead your Lordships: I know how idle and fruitless it would be to attempt it.

I have likewise endeavoured to throw all the Facts together in such an Order that they may serve to give Light to each other, and ease your Lordships in the Attention you will give to the Evidence that will prove them.

I shall now, therefore, endeavour to give your Lordships a short View of that Evidence. It will be of Two Sorts, Parol, and written Evidence. The former will consist of a great Number of Witnesses, concurring in the Account of the secret Preparations towards the Rebellion, the Steps taken in it; and many, in charging the noble Lord as the principal Actor in both. What they say, will be supported, confirmed, and illustrated, by the written Evidence.

As to the First Sort, it will be tedious and unnecessary for me to give your Lordships a Detail of the Names and Characters of each Witness, or the particular Facts they speak to. It will be sufficient to say in general, that I don't know of one Circumstance that I have opened, which will not be fully proved by some or other of them; that some of the Witnesses were principal Actors in the Steps leading to the Rebellion, as well as in the prosecuting of it; that some have been long acquainted with the Prisoner, seen his Life and Conversation, and had, from his own Mouth, the Truth of many of the Facts that preceded their own Time; and have attended his Person, and been Eye and Ear-witnesses of many others; that others of the Witnesses have heard and received his Commands, felt the Weight of his Power, or been employed by him in divers of those Acts of Treason, wherewith he is charged; that all have had full Opportunities of knowing the Facts to which they will be called; and none have any Imputation on their Characters, but that of having some of them been Accomplices in the same Treason.

The written Evidence which the Managers have been able to collect and produce, consists of Letters from and to the noble Lord. The former are of the Hand-writing of *Robert Fraser*, one of his Secretaries, dictated and signed originally by himself, though the Signatures of some appear now torn off.

They were all written during the Rebellion, not at the Beginning, when the Prisoner, surprised by the sudden Appearance of the Son of him, whom he had formerly called his King, might be drawn into Expressions of Affection and Zeal beyond his real Meaning, but after the Rebellion was grown to a great height, and the noble Lord had full Time to look

about him, to foresee, weigh and balance all Consequences to his Country, himself, and his Family; and, upon the Whole, had deliberately chosen the Side he took.

Of this Sort of Letters there will be many produced to your Lordships. One of them written and sent to the Pretender's Son himself, dated November 1745. The Signature, and some Parts of the Body of it, are torn off; but that will be supplied by a Copy under the same Secretary's Hand, taken by his Lordship's own Order.

Two others were written, about the same Time, to Mr. *Murray* the Pretender's Secretary, and to *Lochiel*.

Two of the rest were written to the Prisoner's own Son.

Your Lordships will excuse my mentioning a few Passages out of them, as a Specimen of the Whole. That to the Pretender's Son, which is itself, in the Articles, made a distinct Overt Act of Treason, is addressed to him by the Title of *Most Royal Prince*; and in the Conclusion calls him, *his Royal Highness*. It mentions the Prisoner's having been made a General Officer by the Pretender himself above Forty Years before; excuses his Incapacity of serving him in Person, by his Age and Infirmities; and his Resolution to give him the next Mark of his Zeal, by sending his eldest Son, the Bearer, to venture his Life in his Service, with a great Number of Gentlemen, and Heads of Families, of his Clan, and Eight hundred of his common People.

The Letter to *Murray* is to engage him to become his Son's Patron at the Young Pretender's Court. It boasts of the same Merit in sending his Son and Clan, and sets out his own long Services to the Pretender in the strongest Light.

The Letter to *Lochiel* complains greatly of the Treachery, as he calls it, of an Honourable Person, in engaging on his Majesty's Side, and of the Mischief his Conduct had done to the Cause; and magnifies his own Clan and Services to the Pretender.

His Letters to his Son open the Secrets of his Heart; acquaint him with the Association he had formerly signed to venture his Life and Fortune to restore the Pretender; informs him of the promised Assistance of France, the Commission from the Pretender to make him General of the Highlands, the more favourite Patent for a Dukedom; and sets them all in a Light that would render him, as he says, a Monster of Ingratitude, if he was not attached to the Pretender more than ever.

The rest of his Letters are written in the same Strain, and founded upon the same Principles of Treason and Rebellion.

The Letters written to the Prisoner are, one from the Pretender's Son himself, referring to another written to him by *Lochiel*, *Murray* and *Clunie*; and one from the Prisoner's own Son.

The two former were written by way of Acknowledgment for his Services, and to engage him in an open personal Appearance on that Side, as the best Means to secure the Success of their Cause; and will shew the Pretender's Son's Employment of those Persons, with whom the Prisoner treasonably corresponded.

The Son's Letter is Part of a Correspondence with the Father upon the Subject of the Rebellion, and was the Occasion of the Letters before-mentioned to have been written by him.

My Lords, I have now done with that general View of the Evidence, which I proposed to give your Lordships. I would not anticipate what the noble Lord may say by way of Defence; but as the Evidence, on the Part of the Commons, will necessarily mention One Sort of Defence, which the Prisoner formerly made use of, when he apprehended his Person in immediate Danger from the President and Lord *London*, on account of the *Fraser*s rising to join the Pretender;

I can't help just taking notice of it here. His Pretence to them was, That his Clan was raised by his Son alone, without his Direction, and against his Command; and that the whole Conduct of the Clan of *Fraser* was an Act of Disobedience in his Son to him, as well as of Treason to his Majesty; and that it would be hard, that a peaceable Father should be answerable for the Guilt of his Son.

If this should be any Part of the noble Lord's present Defence, I shall obviate it only so far, as to observe to your Lordships, That it is as false as it is unnatural, and will appear to be so, not only by the Parol Evidence we shall produce, but by every one almost of the Prisoner's own Letters, in which he takes to himself the whole Merit of his Son's Services, and values himself to the Young Pretender, according to the Strength and Zeal of his Clan.

What remains, my Lords, is only to make a few Observations, tending to shew, how the Facts and the Evidence I have been stating will maintain the particular Charges, which the Commons have undertaken to make good: For which Purpose it will be necessary very shortly to point out the precise Nature of the Charge itself.

It contains Three Species of Treason; Compassing the Death of his Majesty:—Levying War against him within the Realm:—And Corresponding with the Pretender's Son, and his Agents.

As to the First of these: The Wisdom of this Constitution, foreseeing that the general Happiness must be most intimately connected with the Safety of that Royal Person, and providing against the remotest Dangers to which it may be exposed, has made the very Imagination of the Heart, when directed to its Destruction, an Act of Treason: But as the Intent, by itself alone, can be known to none but the great Searcher of Hearts, it has, with equal Prudence and Justice, provided, that this Imagination must be discovered by some external Act, which, in the ordinary Language of the Law, is called an Overt Act.

The Commons have pursued, in their Impeachment, the Law in both respects. They have charged the Prisoner with that traitorous Imagination; and they have stated many Facts that manifest it, such as, by the established Rules of Law, have, in all Times, been held sufficient.

The Overt Acts, particularly charged, are, His entering into an Association to raise a War and Rebellion against his Majesty, by the Assistance of French Troops; his Corresponding with a Pretender to his Majesty's Crown; His obtaining two Commissions from the Pretender, one to be General of the Highlands, and the other a Lieutenant-General of his Forces; his sending a treasonable Letter to the Pretender's Son,

with Expressions and Assurances of that Fidelity and Loyalty to his Father, which was due to his Majesty alone; his sending many other treasonable Letters to his Fellow-Subjects, to engage and persuade them to join and continue in that Rebellion, which was then begun and raged in the Northern Parts of this Kingdom; his assisting the Pretender's Son with Arms, and sending his own Son, with his Clan, into the Service of the Pretender.

Your Lordships will be beforehand with me, in distributing the various Matter I have before opened, to these several Heads: I would only observe, that, besides the Evidence arising from the Witnesses, which will appear in Person at your Lordships Bar, the Prisoner's own Letters are not only special Overt Acts of Treason themselves, but will be the clearest Proof of the most material of the others.

When the Prisoner, in the Fulness of his Heart, opens himself to a Son, whose Parts and Proficiency were his own Pride, upon a Subject the most of all interesting to both, to the future as well as present Happiness of his Family, its Honours and Estate, your Lordships can have no possible Doubt of the Reality of that Association, those Honours, those Trusts, and that Attachment to the Pretender, on which he builds and communicates the Resolution he had then taken.

When he writes to the Pretender's Son himself, then in the Capital of one Part of the United Kingdom, at the Head of an Army of Rebels, acting the Part of Royalty, and subduing his Majesty's faithful Subjects, to boast of his former, and promising him future Loyalty, your Lordships must see, in the clearest Manner, what Side he had chosen, and whose Life and Throne he was striking at.

As to the Treason of levying War, the Prisoner seems to have thought, that nothing but an open personal Appearance in Arms would bring him within that Sort of Guilt; and, in Fact, whether out of greater Caution on that account, or from peculiar Views of Management with the Pretender, or more probably from both, he seems studiously to have avoided that particular precise Mark of Treason. But the Law, which, in Words, though not in Punishment, distinguishes, in some Sorts of Crimes, between Principals and Accessories, makes no such Distinction in this of the highest Nature; they are both, in Treason, equally criminal; and the various Acts of Encouragement, Persuasion, and Assistance, given and done by him, to those who were personally engaged, do, in the Eye of the Law, as indeed they do in Reason, make their Guilt his own.

The last Species of Treason charged, is founded on the Breach of a late Act, made in the 17th Year of his Majesty, on occasion of the Invasion attempted from *Dunkirk* in that Year, in Favour of the Pretender, and accompanied by his eldest Son: This Act extends the Treason made by the Act of the 13th of King *William*, of corresponding with the Pretender the Father, and his Agents; to a Correspondence with his Sons, and their Agents.

The Proof of this Treason will be manifest to your Lordships, both from the written and parol Evidence. The same Letters, which afford such conclusive Proof of the other Treasons, are direct and immediate Proofs of this; besides the personal Interview between the Prisoner and the Pretender's Son, and the many more personal Correspondencies with the Pretender's Servants and Officers.

I have now, my Lords, finished all that I proposed to lay before your Lordships. The great Variety of Matter must be my Excuse for the Length of it.

I am not under any Apprehension, that the Evidence will be insufficient to convince your Lordships of the Justice of the Prosecution. I am more afraid, lest your Lordships, and the World, should inquire, Why all this Load of Evidence? when one of those many Facts, fully established, would be enough to convict the noble Lord of this highest of Crimes, and draw down upon him, from your Lordships, that heaviest of Sentences, which is the Consequence of it. If that Question should be asked, the Answer I would give to it should be shortly this:

The Managers did not think it consistent with their Duty to the Commons of *Great Britain*, whose Commands they are to execute; that Regard they owe to your Lordships, at whose Bar they are to execute those Commands; nor to the People of *Great Britain*, whom the Commons represent, and who are greatly interested in the Event of this Impeachment; to suppress any Part of that Evidence, extensive as it is, which came to their Knowledge, material to the Prisoner's Cause.

The Commons have thought this a Matter worthy their own Interposition, and therefore have taken it into their own Hands, not to deprive the noble Lord of any legal Defence: The Candour of the Commons, and your Lordships Justice, will secure him against any Danger of that kind; not because they wanted that Evidence, which would be sufficient in the ordinary Courts of Justice; for far would it be from them to throw their Weight into the Scale of Evidence; but because of the wide extensive Part the Prisoner has had in this great Scene of Treason, as its Contriver, Promoter, and Finisher, so far as Providence suffered it to go.

As to your Lordships, the Managers did not think it becoming them to prejudge your Opinion, or deprive your Lordships of that full Day-light in which the Crimes of this Lord appeared to them, and of that greatest of all Satisfaction, which every Judge would wish to have, in every Cause, of being certainly right in the Sentence he is to pronounce.

As to the People in general, it is of no small Moment, that they should be enabled to behold, in one View, the pernicious Schemes that have, for many Years, been concerting between *Rome*, *France*, and unnatural Traitors at Home, that they might see a Rebellion, which they have so lately and severely felt, traced, in some measure, to its Source; and be fully convinced, that, whilst they are themselves enjoying, at their Ease, and too often asleep, their Religion, their Liberties, and their Properties, under the Protection of the best of Princes, and the Influence of the wisest Constitution, they have Enemies both abroad, and within their own native Country, who are constantly awake for the Subversion of them all; and learn this certain Truth, which should be imprinted, in everlasting Characters, on the Mind of every *Briton*; That there is no effectual Security against those determined and perpetual Enemies, but in a vigilant and firm Union of honest Men; and be persuaded, that every Attempt to prevent, weaken, or dissolve such an Union, is little less than

Treason in its Beginning, and, if it takes Effect, must end in a real successful one, the worst that can happen to this Land of Liberty, the total Destruction of this Royal Family, and of this happy Establishment.

Sir JOHN STRANGE.

My Lords,

THE Managers do not think it necessary to take up any more of your Lordships Time, by way of general Opening of this Case; but propose to go directly to their Evidence: And the first Witness we desire may be called; is *Robert Chevis*, of *Murtoun*, Esq. a near Neighbour of the impeached Lord, but one at a very great Distance from his Way of Thinking or Acting.

Lord *Levat*. My Lords, I have not had the Use of my Limbs these Three Years: I cannot see, I cannot hear; and I beg, if your Lordships have a mind I should have any Chance for my Life, that you will allow either my Counsel or Solicitors to examine my Witnesses, and to cross-examine those produced on behalf of the Crown, and to take Notes.

Lord *High Steward*. What your Lordship says, if I understand you right; is, that, by reason of your Age and Infirmities, you cannot examine the Witnesses yourself; but pray, that either your Counsel or Solicitors might have Liberty to cross-examine the Witnesses against you, and to examine your own Witnesses. It is my Duty to acquaint your Lordship with what is the known and clear Law in these Cases; and I did acquaint your Lordship with it, in what I mentioned to you at first, that, by the Order of this House, you had Counsel and Solicitors assigned you, who had Liberty to assist you in all Matters of Law that might arise in the Course of your Trial; but that, by the known Rules of Law in Proceedings of this Kind, they have not Liberty to assist you in Matters of Fact, or in the Examination of Witnesses. As to taking Notes, I have observed, that one of your Solicitors has, during the Time that the Managers for the House of Commons have been speaking, taken Notes; and that has been allowed.

Lord *Levat*. My Lords, It is impossible for me then to make any Defence, by reason of my Infirmities. I do not see; I do not hear; I came up to your Lordships Bar at the Hazard of my Life; I fainted away several times, I got up so early; I was up by Four o'Clock this Morning; and I am so weak, that, if I am deprived of the Assistance I ask for, your Lordships may do as you please; and it is impossible for me to make any Defence at all, if you do not allow my Counsel or Solicitors to examine the Witnesses. I will therefore submit myself to the Lords.

L. H. S. Gentlemen of the House of Commons, You have heard what has been asked by my Lord *Levat*, with his Reasons for it: Have you any thing to offer on that Head?

Sir *W. Yonge*. My Lords, It has been determined by your Lordships, That the Prisoner at the Bar cannot, in this Case, be allowed Counsel to assist him, except in Matters of Law: And, as that is known to be Part of the Law of the Land, whatever Inclination the Managers may have to indulge the noble Lord at the Bar, it is not in our Power to depart from the Law of the Land. We therefore hope your Lordships will excuse us in not consenting to what is contrary to the Law of the Land. We cannot do any thing of this kind without repairing to our own House.

The Witnesses being produced.

Lord *Levat*. My Lords, I object to this Witness being examined, because he is a Tenant of mine; and I am informed, that my Tenant cannot be Evidence against me.

L. H. S. My Lord *Levat*, There is no Rule of Law for that in England.

Lord *Levat*. My Lords, I am told, that there is an Act of Parliament, that no Vassal, Tacksmen, or Tenant, shall be a Witness against his Lord.

L. H. S. Your Lordship will please to name that Act of Parliament.

Lord *Levat*. My Lord, I am told it is in the First Year of King *George* the First, Cap. 19.

Then the Clerk, by Direction of the Lord High Steward, read the Title of the Act of Parliament passed in the First Year of his late Majesty King *George* the First, intituled,

"An Act for Encouraging all Superiors, Vassals, Landlords, and Tenants, in *Scotland*, who do and shall continue in their Duty and Loyalty to his Majesty King *George*; and for Discouraging all Superiors, Vassals, and Landlords, and Tenants, there, who have been, or shall be, guilty of rebellious Practices against his said Majesty; and for making void all fraudulent Entails, Tailzies, and Conveyances, made there, for barring or excluding the Effects of Forfeitures, that may have been, or shall be, incurred there on any such Account; as also for calling any suspected Person or Persons, whose Estates or principal Residence are in *Scotland*, to appear at *Edinburgh*, or where it shall be judged expedient, to find Bail for their good Behaviour, and for the better disarming disaffected Persons in *Scotland*."

And also the First Section, whereby it is Enacted,

"That if any of his Majesty's Subjects of *Great Britain*, having Lands or Tenements in *Scotland* in Property or Superiority, has been, or shall be, guilty of High Treason, by holding, entertaining, or keeping any Intelligence or Correspondence in Person, or by Letters, Messages, or otherwise, with the said Pretender, or with any Person or Persons employed by him, knowing such Person to be so employed, or shall, by Bill of Exchange, or otherwise, remit or pay any Sum or Sums of Money for the Use or Service of the said Pretender, knowing such Money to be for such Use or Service; and that whether the said Facts or Things be done within or without this Realm, or has been, or shall be, adherent to the said Pretender in this Realm, giving him Aid or Comfort in this Realm, or elsewhere; every such Offender, who shall be thereof duly convicted and attainted, shall be liable to the Pains, Penalties, and Forfeitures for High Treason. All and every Vassal and Vassals in *Scotland*, who shall continue peaceable, and in dutiful Allegiance to his Majesty, his Heirs and Successors, holding Lands or Tenements immediately of the Crown, shall be vested and seized, and are hereby Enacted and Ordained, to hold the said Lands or Tenements of his Majesty, his Heirs and Successors, in Fee and Heritage, for ever, by such Manner of Holding, as any such Offender held such Lands or

Tenements

" Tenements of the Crown at the Time of the Attainder of such Offender: And where Lands or Tenements, belonging to any such peaceable and dutiful Subjects to his Majesty, his Heirs and Successors, lie within any Regality or Constabulary in Scotland, the same shall be, and they are hereby, dissolved from every such Regality or Constabulary for ever: And, in like manner, all and every Tenant and Tenants in Scotland, who shall continue peaceable, and in dutiful Allegiance to his Majesty, his Heirs and Successors aforesaid, bricking and occupying any Lands, Milns, Mines, Woods, Fishing, or Tenements, as Tenant or Tenants, Tacksmen or Tacksmen, from and under any such Offender, shall, and they are hereby ordained to bruck and occupy all and every such Lands, Mines, Milns, Woods, Fishings, and Tenements, for the Space of Two Years, or Crops, to be accounted from and after such Attainder, freely, without Payment of any Rent, Duty, or Service, for the said Two Years or Crops: And the Court of Exchequer in Scotland is hereby authorized and required, on Production of any such Attainder, to revise, compound, and pass Signatures, and that without paying any Composition, in favours of every such Vassal or Vassals, and his, her, or their Heir or Heirs, of the said Lands and Tenements above-mentioned respectively to be holden of his Majesty, his Heirs and Successors, in Fee and Heretage, for ever, and by such Holdings as is above-mentioned, with Clauses of *Nova Damus*, and (where such Lands or Tenements hold Ward or *Few cum Maritagio*, or with Clauses irritant) with Change of Holdings from Waird to Taxed-Waird, according to the Rules now observed in the Court of Exchequer in Scotland, dispensing with Recognition and Clauses irritant in favours of the Crown in Time coming, in the most ample and best Form, to the End that Chartours and Infeftments may be thereupon duly exped."

And also the Ninth Section; whereby it is

" Provided always, and be it Enacted, by the Authority aforesaid, That no Person or Persons, who may reap, or have any Benefit or Advantage by the Attainder, Conviction, or Forfeiture, of any Person or Persons, by virtue of this Act, shall be capable of being a Witness or Witnesses, against any Person or Persons, by whose Attainder, Conviction, or Forfeiture, any Benefit shall or may accrue to such Witness or Witnesses."

Lord High Steward. My Lord Lovat, are those the Clauses your Lordship means? or will you have any other Clause read?

Lord Lovat. My Lord, That is what I mean.

L. H. S. What your Lordship insists upon seems to me to be, That, by this Act of Parliament, as you understand it, a Person who is a Tenant or Tacksmen to any Lord, if his Lord is convicted of Rebellion, and such Tenant remains peaceable, the Tenant is discharged from Two Years Rent of the Lands held by him. And by the Ninth Section, No Person can be a Witness, who may reap or have any Benefit by the Attainder of the Person he is to be a Witness against. I am not now going to give any Opinion upon that Section, neither is it proper that I should; but it is necessary for me to inform your Lordship, that it is incumbent upon you to lay a Foundation of Fact, to shew, that the Person produced as a Witness is a Tenant or Tacksmen under your Lordship, within the Description of this Act of Parliament: And your Lordship may either prove this Fact, by calling Witnesses of your own, for that Purpose; or by putting the Question to the Person now produced by the Managers. Has your Lordship any Witness to prove this Fact; or will you examine the Gentleman produced upon a *Voire dire*?

Lord Lovat. I will ask it of this Gentleman.

L. H. S. Gentlemen of the House of Commons, Have you any Objection to my Lord Lovat's asking the Question of this Witness?

Mr. Att. Gen. My Lords, We have no Objection to having that Question asked of the Witness.

L. H. S. As the Question is to the Competency of the Witness, and he is to be examined touching that, he is not now to be sworn as a Witness in Chief; but the Oath is to be administered upon a *Voire dire*.

Then the Witness was sworn by the following Oath:

You shall true Answer make to all such Questions as shall be demanded of you; and you shall speak the Truth, the whole Truth, and nothing but the Truth.
So help you GOD.

L. H. S. My Lords, As my Lord Lovat's Voice is low, whatever Questions his Lordship has to ask of this Gentleman, your Lordships, I presume, will (as you did upon a former Occasion) let my Lord Lovat propose the Question, and let the Clerk repeat it to your Lordships, and to the Witness. My Lord Lovat, You will now propose the Question, and the Clerk will repeat it to my Lords, and the Witness.

Lords. Ay, ay.

Then one of the Clerks was sworn to make true Report of what should be said by the Prisoner.

Lord Lovat. My Lords, I beg this Witness may be asked, Whether he holds any Lands of me, or within my Regality, either by Tack, Lease, or otherwise?

Chevis. I hold my Lands of the Crown: I never had a Tack of Land of my Lord Lovat.

L. H. S. Do you hold any Lands, either by Vassalage, Lease, or Tack, from my Lord Lovat?

Chevis. I never had a Tack of Land from my Lord Lovat.

L. H. S. You are to answer to the Whole of the Question, Whether you hold any Land, either by Vassalage, Lease, or Tack, of my Lord Lovat?

Chevis. I never had a Lease from my Lord Lovat: I was in Possession of a Farm of his there, which, by his own Consent, was given to other People; but I never had a Lease from him.

L. H. S. Did you hold that Land of my Lord Lovat?

Chevis. The Farm belonged to my Lord Lovat.

L. H. S. How did you hold it of him; by Tack, or Lease, or how?

Chevis. It was ceded to me by other People, who were in Possession before me.

L. H. S. Did you hold it by Lease, or Tack, or in what Manner?

Chevis. I never had any Lease, or Tack, from the Lord.

Mr. Att. Gen. Do you now hold any Lands from my Lord Lovat?

Chevis. No, I hold none of him.

Mr. Att. Gen. Have you held any Lands of him since the Beginning of the Rebellion?

Chevis. I have held none since the Beginning of the Rebellion; nor been in Possession of a Fur of Land under him.

Mr. Att. Gen. My Lords, I should be glad to know of this Witness, whether he holds any Lands within the Regality of Lovat.

Chevis. No, I hold no Lands of my Lord Lovat there: I had that small Farm I before mentioned.

Lord Cholmondeley. My Lords, The Question put to the Witness, at first, was, Whether he held any Lands of my Lord Lovat, either as Vassal, Tenant, or Tacksmen, according to the Description mentioned in the Act of Parliament? And if he does, then he comes within the Description there mentioned. He has told your Lordships, That he does not hold any Lands, by Tack or Lease, from my Lord Lovat. My Lords, I pray that the Question may be now asked him, Whether he holds any Lands of my Lord Lovat, either by Vassalage, Tack, or Lease?

L. H. S. Sir, You hear the Question proposed by the noble Lord. Do you hold any Lands under my Lord Lovat, as Vassal?—Chevis. No.

L. H. S. Do you hold any Lands under my Lord Lovat, as Tenant?

Chevis. No.

L. H. S. Do you hold any Lands under my Lord Lovat, as Tacksmen?

Chevis. No.

Lord Talbot. My Lords, I desire this Witness may be asked, Whether he apprehends he can receive any Benefit under this Act of Parliament, by my Lord Lovat's being convicted of High-Treason?

L. H. S. Sir, You hear the Question asked by the noble Lord.

Chevis. I never heard the Act of Parliament mentioned till this Day: I know of no Benefit I am to receive under it.

L. H. S. Do you know of any Benefit that you are to receive; or do you apprehend, that you can receive any Benefit from the Conviction of my Lord Lovat?—Chevis. No.

L. H. S. Do you hold any Lands at all within the Regality of Lovat?

Chevis. No.

Proclamation for Silence.

Lord Lovat. My Lords, I beg this Witness may be asked, Whether he owes me any Money?

Mr. Att. Gen. My Lords, on Behalf of the Commons, we do object to that as an improper Question, because I must submit it to your Lordships, that no Question is proper to be asked, but what tends to the Discovery of something material to the Point in Controversy. Now, my Lords, The Question proposed to be asked, be it answered one Way or the other, cannot tend to prove any thing material to the present Purpose.

Lord Lovat interrupting,

L. H. S. My Lord Lovat, You are not to interrupt the Gentlemen of the House of Commons: You shall be fully heard in your Turn.

Mr. Att. Gen. My Lords, I say your Lordships will not permit a Question to be asked, which is totally immaterial to the present Purpose: And, I apprehend, this Question is totally immaterial, because the Questions now to be put to the Witness are only for the Purpose of disqualifying him to be an Evidence, which this Question does not in the least relate to; and be it answered the one Way or the other, it cannot tend to disqualify the Witness: Whether it be answered Yea or No, it cannot tend to disqualify the Witness.

Lord Lovat. My Lords, I beg, that the Witness may be asked, Whether he receives any Rents, or other Profits, from those Lands lying within the Regality of Lovat?

Mr. Att. Gen. My Lords, If this amounts to a Question, to bring the Witness under the Description of the Act of Parliament, it is a Question that has been already put by your Lordships; and answered particularly and precisely. If the Question tends to any other Matter, I cannot conceive to what Purpose it is to be asked. But, my Lords, it is incumbent on the noble Lord at your Bar, to mention what he intends to shew by the Question he asks.

L. H. S. My Lord Lovat, the Witness on this Examination hath sworn, That he holds no Lands or Tenements under your Lordship, either as Vassal, Tenant, or Tacksmen; and your Lordship would now have him asked, Whether he receives any Rents, or other Profits, from any Lands lying within the Regality of Lovat? As what the Witness has already sworn does fully answer all the Disqualifications mentioned in the Act of Parliament which your Lordship has quoted, what do you intend by the present Question?

No Answer being made by the Prisoner, Robert Chevis, of Murtoun, was sworn in Chief.

Sir John Strange. My Lords, I desire this Witness may inform your Lordships, How long he has been acquainted with the noble Lord at the Bar.—Chevis. From about the Year 1733.

Sir John Strange. Whether he has been acquainted with him ever since the Year 1733?—Chevis. Ever since.

Sir John Strange. Do you live near the noble Lord at the Bar?

Chevis. I live within Two Miles of him.

Sir John Strange. Whether he has not been often in his Company since the Year 1733?

Chevis. A great many times.

Sir John Strange. Whether he went to his House frequently?

Chevis. Yes.

Sir John Strange. Whether he has had any Conversation, and what Conversation, with him, in relation to publick Affairs?

Lord High Steward to the Witness (perceiving him to have a Paper in his Hand),

L. H. S. What Paper is that in your Hand?

Chevis. Notes of my own.

L. H. S. Are they of your own Hand-writing?—Chevis. Yes.

L. H. S. To what Purpose did you take them?

Chevis. Only to refresh my Memory.

L. H. S.

L. H. S. Was that the only Reason you took them for?

Chevis. The only Reason.

Sir John Strange. My Lords, I beg this Witness may be asked, What was the general Turn of the Conversation of the noble Lord at the Bar?

Chevis. The general Turn of his Conversation was in Favour of the Pretender, and his Family.

Sir John Strange. Whether the Witness speaks of the Conversation so far back as the Year 1733?—Chevis. Yes.

Sir John Strange. Whether the Witness had ever any Conversation with the noble Lord at the Bar, in relation to the Year 1719?

Chevis. I had.

Sir John Strange. My Lords, I beg he will give an Account, What the noble Lord at the Bar has said to him, in relation to what was going to be done in the Year 1719?

Chevis. My Lord Lovat told me of a Letter he had written to the late Lord Seaforth; and that he had sent it by his own Lieutenant to Lord Seaforth, to encourage and desire him to come down with his Men; and that he, Lord Lovat, would join him with all his, in favour of the Pretender.

Notice being taken by some Lords, at the upper End of the Court, that they could not well hear the Witness, the Lord High Steward directed the Clerk to repeat the Answers of the Witness as he delivered them: Which was done accordingly.

Sir John Strange. Whether the noble Lord at the Bar acquainted him with his having sent such a Letter?

Chevis. He told me he had sent such a Letter by his Lieutenant.

Sir John Strange. My Lords, I beg he may be asked, whether he ever knew, from the noble Lord at the Bar, that That Letter was delivered, or not?

Chevis. Lord Lovat told me, that the Letter was delivered.

Sir John Strange. To whom did he say the Letter was delivered?

Chevis. He said the Letter was first shewn to Chisholm of Knockford; and after that it was delivered to my Lord Seaforth.

Sir John Strange. I shall be glad to know, whether my Lord Lovat said any thing to the Witness, in relation to any Affidavit that had been made concerning that Letter?

L. H. S. Gentlemen of the House of Commons, The Transaction now inquired of happened in the Reign of his late Majesty; and there is no Charge, in the Articles of Impeachment, of any High-Treason committed against his late Majesty: You will therefore open to my Lords, how you would apply the Evidence which you are now examining to.

Sir John Strange. My Lords, Your Lordships will please to observe, that, in the Answer of the noble Lord at the Bar, he does particularly mention his great Duty and Affection for his late Majesty, and his Behaviour from time to time, in that respect; and we are now introducing this particular Evidence, in regard to that Matter, by first taking it up so long ago as the Year 1719, to shew what was then the Disposition, Behaviour, and Conduct, of the noble Lord at the Bar.

My Lords, We say, that, in the Year 1719, there was that Letter written, with a View to assist the Spanish Invasion then intended, in favour of the Pretender: That that Letter was sent; but before it was delivered to the Person to whom it was addressed, there was a Communication of it, in the manner the Witness hath mentioned; and that Person gave proper Notice, and made Affidavit of it, which was sent up to the Government, giving an Account of it: And, by the great Dexterity of the Prisoner at the Bar, he got the Letter back again.

My Lords, The Use we make of this is to shew, that this is no new Matter, arising from the present Rebellion: But, by deducing it from the Year 1719, we shall make the noble Lord's Conduct to be one continued Act of Treason, consistent with the Article of the Charge.

L. H. S. Then I apprehend you apply this Piece of Evidence, to encounter and contradict the Allegation in my Lord Lovat's Answer, which you have mentioned.

Then the Lord High Steward repeated to the House that Allegation, out of the Prisoner's Answer.

Sir John Strange. My Lords, That is what we propose to shew by this Evidence. The Witness has gone so far as to acquaint your Lordships, that That Letter, before it was delivered to the Person to whom it was addressed, was shewn to one Chisholm of Knockford. My Lords, I desire he may inform your Lordships, what the noble Lord at the Bar said was done, in consequence of that Communication.

Chevis. Chisholm made Affidavit of it, which was sent up to Court.

Sir John Strange. Did Lord Lovat acquaint you whether he heard of such Affidavit being transmitted?—Chevis. He did.

Sir John Strange. Did he tell you what he did upon that Occasion?

Chevis. That he went immediately to Court, and got himself introduced there. And Lady Seaforth being then in London, she applied to him to do something in favour of her Son; which he then absolutely refused, till her Son should return him that Letter; which being done, he shewed it to a certain Friend, who read the Letter, and who told him, That there was enough to condemn Thirty Lords there; and threw it into the Fire.

Sir John Strange. My Lords, I desire he will give an Account whether the noble Lord at the Bar said any thing at that Time, whether he had signed and sealed the Letter.

Chevis. He said he had not signed it; and therefore they could not fix him with it.

Sir John Strange. I desire this Witness may inform your Lordships, whether, when the noble Lord at the Bar told him, that he had not signed it, he said any thing further to him upon that Occasion, than that he had not signed it?

Chevis. He said, That he could not be fixed with it; and that That was the Way he intended to get off, by its not being signed.

Sir John Strange. I desire you will please to inform their Lordships, whether you remember the Time when Roy Stuart broke out of Inverness Gaol?

Chevis. Yes; it was in 1736.

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Sir John Strange. Who was Sheriff at that Time?

Chevis. My Lord Lovat.

Sir John Strange. After Roy Stuart had escaped out of Inverness Gaol, where did he go to live? By whom was he entertained?

Chevis. He came to my Lord Lovat's House, and was entertained there.

Sir John Strange. How long was he entertained there?

Chevis. Much about Six Weeks, to the best of my Remembrance.

Sir John Strange. Was you often at my Lord Lovat's during these Six Weeks?—Chevis. Frequently.

Sir John Strange. Was you ever there when Lord Lovat and Roy Stuart were together?—Chevis. Very often.

Sir John Strange. Do you remember whether Roy Stuart was going abroad about that Time?

Chevis. He was going abroad then; and the Ship was prepared for him before he left Lord Lovat's House; and he went in my Lord Lovat's Chaise or Chariot.

Sir John Strange. I desire you will inform their Lordships, whether any Message was sent from the noble Lord at the Bar by Roy Stuart, and to whom?

Chevis. I heard the noble Lord at the Bar charge him with a Message to the Pretender.

Sir John Strange. What do you mean by charging him with a Message?

Chevis. To assure the Pretender, whom he called his King, of his Fidelity; and that he was determined to live and die in that Cause.

Sir John Strange. I beg that he may inform your Lordships, whether there was any Thing said at that Time in relation to any Commission or Patent.

Chevis. He charged him to expedite his sending his Commission of Lieutenant-General of the Highlands, and his Patent of a Duke.

Sir John Strange. I beg he may inform your Lordships, whether, at any other Time or Times, he heard the noble Lord at the Bar say any thing whether he had, or had not, succeeded in what he had sent for?

Chevis. About 1742, he owned to me, That he got his Commission and Patent to be a Duke.

Sir John Strange. What Commission did he tell you he had got?

Chevis. A Commission of Lieutenant-General of the Highland Clans.

Sir John Strange. From whom did he say he had received this Commission, and Patent to be a Duke?

Chevis. From his lawful Sovereign King James the Eighth.

Sir John Strange. Pray recollect yourself. Did he make use of that Expression which you have now repeated, that he had it from his lawful Sovereign King James the Eighth? Are you certain he did?

Chevis. Yes.

Sir John Strange. Did he tell you any thing what he would do, now he was invested with that Command, and had got such a Commission and Patent?

Chevis. He said, That he was in a Condition thereby to humble his Neighbours.

Sir John Strange. Have you at any other Time heard him speak of this Patent, or of this Commission?—Chevis. Several Times.

Sir John Strange. Is it often that you have heard him?

Chevis. Often.—He has told me, That he had a Right to it by his Services for that Family; and that he had the like Commission from the Pretender's Father from St. Germain's.

Sir John Strange. I desire the Witness may inform your Lordships, whether, during the Time that the noble Lord at the Bar and Roy Stuart were together, they diverted themselves with composing any thing, and what.

Chevis. They did, in composing Burlesque Verses, that, when young Charles came over, there would be Blood and Blows.

Sir John Strange. You have not mentioned it in a poetical Manner: Pray, can you recollect the Lines?

Chevis. When young Charley does come o'er,

There will be Blows and Blood good Store.

Sir John Strange. I beg that you will acquaint their Lordships, whether this Verse, that you mention, is a Translation, or whether this is the original Language in which it was composed?

Chevis. It was framed in Erse; and this is the Substance of one Verse.

Sir John Strange. I beg this Witness may inform your Lordships, whether he has at any Time heard the Prisoner say any thing in relation to any Association?

Chevis. I have.

Sir John Strange. Please to tell the Time you heard this Discourse, and what the noble Lord at the Bar said.

Chevis. It was between 1737 and 1740.

Sir John Strange. What did you hear the noble Lord at the Bar say then?

Chevis. That there was an Association of the Highland Clans in favour of the Pretender, whom he called his lawful Sovereign King James the Eighth; and that he had entered into that Association, and would live and die in that Cause.

Sir John Strange. I beg he may be asked, whether, at the Time he is speaking of, one Drummond of Bochaldie was at Lord Lovat's House.

Chevis. Drummond of Bochaldie was there much about this Time; and used to drink Success to the Association?

Sir John Strange. Do you remember Bochaldie's being at Castle-Downey, and staying there any Time?

Lord High Steward. What Place is Castle-Downey?

Chevis. It is Lord Lovat's Place of Residence.

Sir John Strange. My Lords, It is sometimes called Beaufort, and sometimes Castle-Downey. To whom does it belong?

Chevis. To my Lord Lovat.

Sir John Strange. Do you know whether you heard my Lord Lovat say any thing to Bochaldie at that Time?

Chevis. He mentioned an Invasion of Britain in favour of the Pretender.

Sir John Strange. What Year are you now speaking of?

Chevis. The Year 1739.

Sir John Strange. You say, That Drummond was then at Lord Lovat's, staid there a considerable Time, and heard my Lord Lovat propose an Invasion of Britain in favour of the Pretender?

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Chevis.

Chevis. I did.
Sir John Strange. Did you hear him propose it? And did you hear of any-body else he proposed it to?

Chevis. I have heard the like was proposed to *Cameron of Lochiel*, and others.

Sir John Strange. From whom have you heard it?
Chevis. From my Lord *Lovat* himself.

Sir John Strange. Do you remember any Thing to have happened at Lord *Lovat's* about the Time of *Ostend's* being taken by the *French*?

Chevis. I was not there then; but he wrote a Letter to me, and told me, That the whole Coast of *Flanders* was now clear.

Sir John Strange. Did you hear my Lord *Lovat* say any thing in relation to the Coast of *Flanders* upon *Ostend's* being taken?

Chevis. I have heard him say as much as he wrote in that Letter.
Sir John Strange. What have you heard him say?

Chevis. That the Coast of *Flanders* was then cleared; and that the *French* would be over in one Night's Time, and carry all before them.

Sir John Strange. I should be glad you would inform their Lordships, whether, at any Time in the Year 1745, Lord *John Drummond* was at *Castle-Downey*, or not?

Chevis. To the best of my Memory, he was about that Time at *Castle-Downey*.

Sir John Strange. I should be glad you would inform their Lordships about what Time of the Year this was, whether it was Summer, or Winter?

Chevis. I think it was Summer; to the best of my Memory, between Summer and Harvest.

Sir John Strange. I beg you will inform their Lordships, whether at any Time, and in what Month, in the Year 1745, the Master of *Lovat* came to my Lord's House; or whether you saw him at my Lord's in 1745?

Chevis. I saw him there several Times in 1745.

Sir John Strange. Did you see him there when any Paper or Manifesto was produced?

Chevis. I saw him there when the Manifesto was produced.
Sir John Strange. At what Time was this?

Chevis. It was in September 1745. The Manifesto came in a Packet inclosed to Lord *Lovat*.

Sir John Strange. What Manifesto was it?
Chevis. The Pretender's Manifesto and Declaration, which he ordered the Master immediately to read.

Sir John Strange. Was it read accordingly by the Master of *Lovat*?

Chevis. It was accordingly read.
Sir John Strange. What did Lord *Lovat* say when it was read, or before it was read?

Chevis. I objected to the Manifesto's being read; and Lord *Lovat* told me I talked Treason.

Sir John Strange. Did he tell you what was his own Disposition in regard to that Manifesto, after it had been read?

Chevis. He told me, after reading the Manifesto, That he was to join the Pretender's Party in that Cause; and that he would live and die in that Cause.

Sir John Strange. I beg the Witness may mention to your Lordships, whether the noble Lord at the Bar expressed his Opinion in relation to the good or ill Success of it?

Chevis. He said he thought Success was morally sure: As sure as Light, as sure as God was in Heaven, the Pretender would prevail.

Sir John Strange. I beg you'll recollect, and give my Lords the very Words. Did he say the Pretender?

Chevis. Not the Pretender; but his right Master.
Sir John Strange. What was the Expression he made use of?

Chevis. As sure as the Sun shined.
Sir John Strange. That who would prevail?

Chevis. That his Master (the Pretender) would prevail.
Sir John Strange. I beg you will inform their Lordships, whether any thing was offered to you upon that Occasion?

Chevis. I was offered a Captain's Commission.
Sir John Strange. By whom?—*Chevis.* By Lord *Lovat*, in that Service.

Sir John Strange. In what Service?

Chevis. In the Service of that Person, whom he called his lawful Prince.
Sir John Strange. My Lords, I beg he may inform your Lordships, whether my Lord *Lovat* said any thing in relation to the Pretender, to recommend him to the Witness, at the Time he says Lord *Lovat* offered him a Commission?

Chevis. I have often heard Lord *Lovat* say, That whoever looked the Pretender, his lawful King, in the Face, he would own he was his only rightful King, as he himself owned him to be.

Sir John Strange. I beg he may be asked, whether he can recollect, during the Time of the late Rebellion, any Number of *Frasers* being assembled?

Chevis. I cannot say; for, after the Time of reading the Manifesto, I did not visit my Lord *Lovat*. I discontinued going to his House.

Sir John Strange. For your own Sake, I desire to ask you, Did you accept of the Commission offered you by Lord *Lovat* or not?

Chevis. I did not indeed; I refused it.
Sir John Strange. What Healths have you heard the Prisoner toast in your Company?

Chevis. Confusion to the White Horse, and all the Generation of them.
Sir John Strange. Are you certain you heard my Lord *Lovat* propose that Health?

Chevis. I have heard him propose it, and drink it.
Sir John Strange. What did you understand was the Meaning of that Expression, Confusion to the White Horse?

Chevis. Confusion to the present Royal Family: It could mean nothing else. It was in Allusion to the Arms of the Family.

Sir John Strange. I should be glad you would inform their Lordships, whether you know of any Message sent by my Lord *Lovat*, by *Drummond of Bechallie*, besides what he has mentioned; any Thing concerning the Reformation or Revolution?

Chevis. He was to execute the Message, and that with respect to his Commission and Patent.

Sir John Strange. With whom was he to execute that Commission?
Chevis. With the Pretender, at *Rome*.

Sir John Strange. Did he, at that Time, say any Thing more to him; and what was it?

Chevis. He talked of the Association, and of the Invasion.
Sir John Strange. Did my Lord *Lovat* say any Thing of Religion, at that Time?

Chevis. I heard him say frequently, he believed there was no true Religion in the World but one, which was the Church of *Rome*.

Sir John Strange. Was any Thing said of the Revolution?

Chevis. He cursed the Reformation and the Revolution too.
Sir John Strange. What did he curse the Reformation for?

Chevis. Because, he said, it brought a false Religion upon us; and the Revolution involved us in a Load of Debt.

Sir John Strange. Did he then propose any Scheme to get rid of this Grievance?

Chevis. The Scheme he proposed was, by favouring the Invasion, and by taking Part in it.

Sir John Strange. Did he say for what Purpose that Invasion was to be?

Chevis. To restore the rightful King.
Sir John Strange. Did he name him?

Chevis. To restore his lawful Sovereign King *James* the Eighth.
Sir John Strange. I beg you'll give their Lordships an Account, whether you ever heard Lord *Lovat* say any Thing in relation to a Marriage contracted for his Daughter?

Chevis. I heard Lord *Lovat* say, that when his Daughter was married to *Mr. Pherfon of Clunie*, he took it to be an Accession of Strength, by the adding one *Highland* Clan more to the Number.

Sir John Strange. Please to inform their Lordships, whether, through the Progress of the Rebellion, you heard the Lord *Lovat* say any Thing, as to what he would do with his Tenants that would not join?

Chevis. He said, It was very easy for him to cut them off in a Moment, as he was in such a Capacity now.

Sir John Strange. What did he mean by that?

Chevis. Any Tenant that should oppose him, or any of the Clan, or Neighbours.

Sir John Strange. I beg you will inform their Lordships, what is the Power and Authority that Lord *Lovat* insists to have over his own Clan? or whether they are under his Power and Command, or not?

Chevis. Lord *Lovat* certainly has the Power of an absolute King over them.

Sir John Strange. Inform their Lordships, whether you apprehend the Command of the Clan is in my Lord *Lovat*, or his Son the Master?

Chevis. It is intirely in my Lord's own Hands.
Sir John Strange. Do you know what Age my Lord *Lovat's* eldest Son is?—*Chevis.* Much about Nineteen.

Sir John Strange. Was he at Home at the Beginning of the Rebellion? or was he then at any other Place, and where, for Education?

Chevis. He was at *Saint Andrews*, the Place of his Education; and was called Home about that Time.

Sir John Strange. How long was that before Lord *Lovat* made his Son read the Manifesto which you have mentioned? How long was he at Home before that?—*Chevis.* Not very long before that.

Sir John Strange. You say the young Gentleman was at *Saint Andrews*, and was sent for Home by his Father; and that his Father set him to read the Manifesto: Pray how long had the young Gentleman been at Home, before he was ordered to read the Manifesto?

Chevis. It might have been about two Months, to the best of my Memory.

Sir John Strange. Do you think it was so long?

Chevis. I believe it might have been about two Months.
Sir John Strange. When my Lord *Lovat* offered you a Captain's Commission, did he acquaint you who was to be your Colonel?

Chevis. He did not acquaint me, at that Time, who was to be my Colonel; but he said he was in that Service in that Cause himself; and I understood, that I was to serve under him.

Sir John Strange. My Lords, As the Witness has informed your Lordships, that he did not go to Lord *Lovat's*, after he told him it was High Treason to object to the reading of the Pretender's Manifesto, I shall not examine him to any Thing subsequent in Point of Time to that; and therefore I shall not trouble your Lordships with asking him any more Questions.

Mr. Attorney General. My Lords, I beg this Witness may inform your Lordships, whether he has heard any Thing of any Threats made Use of by the noble Lord at the Bar, to his Tenants, or Clan, to come down upon them, if they refused joining?

Chevis. I saw a Party of the *McDonalds* in the Country; and I think they came to the Place where I lived; and I take the Design of them to have been, that they should be there, to overawe the Country.

Mr. Attorney General. Who commanded that Party of the *McDonalds*?

Chevis. *McDonald* of *Barisdale*.
Mr. At. Gen. Did you hear any Thing said by my Lord *Lovat* to *McDonald*, concerning him or his Clan?

Chevis. He said, in general, that, upon being invested with this Patent of Duke, he would be able not only to humble and keep in Awe his own Clan, but his Neighbours.

Mr. At. Gen. I beg he may inform your Lordships, whether he knows any Thing of *Barisdale's* going about to the Clans, to encourage them to join?

Chevis. I saw him at Lord *Lovat's* House the Day of the Rendezvous.
Mr. At. Gen. What did he do there?

Chevis. He spirited up the Country People, and carried them along to the Rendezvous.

Mr. At. Gen. Who was that?

Chevis. *McDonald* of *Barisdale*.
Mr. At. Gen. What do you know in relation to that Rendezvous?

Chevis.

Chevis. I saw the Rendezvous at a Distance, but I was not upon the Spot.

Mr. At. Gen. Who was at the Rendezvous?

Chevis. Four, or Five, or Six hundred Men.

Mr. At. Gen. Whose Men were they?

Chevis. The *Frasers*.

Mr. At. Gen. Under whose Command were they?

Chevis. I was told, they were under the Master's Command; but I was not personally present.

Lord High Steward. Gentlemen of the House of Commons, Have you done with this Witness?

Managers. My Lord, We have done with him.

Lord High Steward. My Lord *Levat*, The Gentlemen of the House of Commons have gone through with their Examination of *Mr. Chevis*: Has your Lordship any Questions to ask him?

Lord Levat. My Lords, He has said so many false and wicked Things, that I do not know what Questions to ask him, or where to begin.

Lord High Steward. Your Lordship will be pleased to propose the Questions; and then they will be asked of the Witnesses.

The Clerk repeated the Prisoner's Questions to the Witnesses.

Lord Levat. My Lords, I pray he may be asked, Whether or no, since my Arrival here, and being before the House of Lords, and that many Witnesses had been summoned to give Evidence against me, whether this Witness did not go about to solicit Witnesses against me? and whether he did not examine Witnesses himself?

Chevis. I refuse it.

Manager. You mean, you deny it.

Chevis. I deny it.

Lord Levat. My Lords, I offer to prove it.

Lord High Steward. My Lord *Levat*, Your Lordship must do that when you come to make your Defence: Your Lordship will then have an Opportunity, by Witnesses, to contradict or invalidate the Testimony of this, or any other Witness produced against you.

Lord Levat. I beg this Witness may be asked, Whether he knows, or ever heard, that several People were threatened to be put in Prison; and were put in Prison, if they did not come up to be Evidence against me.

Chevis. I deny it.

Lord Levat. I beg he may be asked, Whether he discovered to any Person belonging to the Government, the Declaration which he says he heard read at my House?

Chevis. In September 1745, I told it in common Conversation; but I never went to any of the Government, to inform them of it: The Rebellion broke out then immediately.

Lord Levat. My Lords, I beg this Witness may be asked, Whether he ever said himself, or has heard others say, that the late Plot by the Master of *Levat* against me, was to hang the old Man, and save himself?

Chevis. I never heard of such a Plot; but have often heard of a Plot of my Lord *Levat's*, to try to hang his Son the Master of *Levat*, and save himself.

A Lord. My Lords, I don't doubt the Witness designs to pay the Money he owes to my Lord *Levat*; but I pray he may be asked, whether he expects to be forgiven that Debt, if my Lord *Levat* is convicted?

L. H. S. My Lords, While this Witness was examined upon a *Voire dire*, there was a Question proposed by my Lord *Levat*, to be asked him, which was, Whether he owed my Lord *Levat* any Money? That Question was objected to by the Gentlemen of the House of Commons, as not tending to discover any Thing material to the Point then in Question: And what is now proposed by the noble Lord, to be asked of the Witness, is, Whether this Gentleman owes my Lord *Levat* any Money? and if he does, whether he expects to be forgiven that Debt, in case my Lord *Levat* should be convicted?

Chevis. In regard of that Debt, it was condescended some Years ago, that my Lord *Levat* should accept a Gentleman who was my Debtor, for the Payment of that Money.

L. H. S. Do you owe my Lord *Levat* any Money?

Chevis. A mere Trifle: This which he speaks of was to be compensated another Way.

L. H. S. Whether the Debt be more or less, do you expect to save that Debt, or to be favoured in the Payment of it, if my Lord *Levat* should be convicted?

Chevis. Not at all; I deny it.

A Lord. How long have you been in Town?

Chevis. Since Tuesday last about Noon.

A Lord. Whether have you lived at your own Expence since that Time; or who hath supported you?

Chevis. I did design to have lived at my own Expence; but I have been supported at the Expence of the Government.

[Then the Witness withdrew.]

Mr. Solicitor General (the Honourable William Murray, Esquire). My Lords, The next Witness we beg Leave to call, is *Robert Frazer*, late Secretary to my Lord *Levat*.

Robert Frazer called in and sworn in Chief.

Proclamation made for Silence.

The Prisoner rising up, the *Lord High Steward* said, My Lord *Levat*, Do you object to this Witness?—*Lord Levat.* Yes.

L. H. S. What is your Objection?

Lord Levat. He holds a Tack of Land of me.

L. H. S. Is it true? Do you hold a Tack of Land of his Lordship?

R. Frazer. No; I do not hold any Tack of Land of my Lord *Levat*.

Lord Levat. I am ready to prove it.

L. H. S. Gentlemen of the House of Commons, My Lord *Levat* may have Liberty to examine a Witness, to prove that Fact. It has been frequently done after a Witness has been sworn in Chief. My Lords, at the Common Law, where a Witness is tendered by the Plaintiff to be sworn, the Oath to give Evidence in Chief is administered to him, unless the Defendant makes an Objection to his Competency, and then he may be examined touching that Objection, upon a *Voire dire*: But, after the

Witness has been sworn in Chief, if any Objection is then made to him, he may be asked the same Question by virtue of his Oath in Chief, as he might have been asked upon a *Voire dire*. I have known it done both Ways. But, after the Witness has been examined by the Defendant to the Fact of the Objection, and has denied it upon his Oath, it is not usual to give the Defendant Liberty to call a Witness to prove it, in order to repel him from being a Witness, unless the other Side acquiesces in it.

Lord Levat. I have sent for my Witness.

The House having waited some Time, my *Lord High Steward* asked the Prisoner, where his Witness was: Who said, he was at the Coffee-house; and a little Time afterwards said, My Lords, The Witnesses are all gone about an Hour ago, not expecting to be called.

Lord High Steward. How came your Witnesses to go away whilst your Trial is going on?

Lord Levat. My Lords, They did not know they would be called To-day.

Mr. Solicitor General. My Lords, The Objection made by the Noble Lord at the Bar having been positively denied by the Witness, and there being no Evidence here to contradict him, we hope we may proceed to examine him.

Mr. Attorney General. My Lords, We hope your Lordships will not permit the Prisoner at the Bar to suspend your Lordships Proceedings whenever he pleases: And we hope the Candour of the Managers, in not opposing his going into this Objection, after the Witness has denied it upon his Oath, shall not be extended to delay his Examination, under a Pretence of this Kind. The Witness produced denying the Objection upon his Oath, and there being no Evidence here to contradict it, we hope we shall be permitted to go on with the Witness. My Lords, The Managers were aware of this; nevertheless did not at first oppose any Indulgence to the Prisoner that might tend to Justice; but as it is now known what Point the Witness is called to, though I do not suppose the Witness capable of being influenced, yet if a bare Allegation of this Sort is sufficient to put off your Lordships Proceedings, I must submit it to your Lordships, whether it will not give an Opportunity of something to be done which ought not to be done.

Mr. Noel.

IT is with great Difficulty and Disinclination, that we can prevail upon ourselves to object to the utmost Candour that can be shewn to the Noble Lord at the Bar. My Lords, This is an Occurrence which, in my little Experience, I never knew to arise. My Lords, I apprehend the Way is, upon this Occasion, to ask the Questions of the Witnesses upon a *Voire dire*. The Noble Lord at the Bar made the Objection, and applied to the Witness for an Answer to that Question, who has positively denied it: If, after that, the Prisoner is to say, I can falsify what the Witness has now sworn; allow me Time for it; and your Lordships should indulge him with it in this Manner; there is Nobody but must be apprehensive of very dangerous Consequences attending it: For any Kind of Evidence may, by that Means, be prevented.

Lord High Steward. My Lords, The Gentlemen of the House of Commons may proceed in their Examination of this Witness; and my Lord *Levat* will be at Liberty to ask what Questions he pleases, in his Cross-Examination; and will likewise be at Liberty to call Witnesses to prove this particular Fact in his Defence in another Shape; for he may prove this Fact, in order to impeach this Witness's Credit, and probably have as much Effect of it as if it had been properly taken Advantage of.

Mr. Sol. Gen. My Lords, I beg this Witness may be asked, when he first came to live in Lord *Levat's* Family; and how long he lived with him?

L. H. S. Sir, you hear the Question.

R. Frazer. I entered into Lord *Levat's* Service in October 1744.

Mr. Sol. Gen. How long did you continue with him?

R. Frazer. I continued in his Service till his Lordship and I were taken Prisoners, the 7th of June last.

Mr. Sol. Gen. I beg you may inform their Lordships, whether, in the Month of July 1745, you knew of any Information that was given to my Lord *Levat*, of an Intention of an Insurrection and Invasion; and what Intimation was given of it?

R. Frazer. Some time after the 25th July 1745, I heard a Gentleman came to my Lord *Levat's* House, to tell him, That the Pretender's Son was landed somewhere about *Lochaber*. I heard my Lord *Levat* say, He did not land like a Prince; that he had no Army with him, and only a few Servants.

Mr. Sol. Gen. What did my Lord *Levat* say upon that Occasion? Was his Son at Home?

R. Frazer. He was at Home, or was then sent for.

Mr. Sol. Gen. Do you know of any Person that was sent by my Lord *Levat* to see the Pretender at that Time?

R. Frazer. Not at that Time; I can't say that I knew of any.

Mr. Sol. Gen. Do you know of any Endeavours that were then used to raise Men upon my Lord *Levat's* Estate? And if you do, please to mention the Times.

R. Frazer. I remember some time after he dictated a Letter to me, to be sent to Two of the Heads of the Tribes of the *Frasers*.

Mr. Sol. Gen. Name them.

R. Frazer. *James Frazer* of *Foyers*, and *John Frazer* of *Ferraine*.

Mr. Sol. Gen. What was that Letter for?

R. Frazer. To get Men ready to join the Master of *Levat*.

Mr. Sol. Gen. Where were the Men to go with him?

R. Frazer. The Letter does not particularize that.

Mr. Sol. Gen. Do you know of any body that was sent to take Lists of the Men to be raised?

R. Frazer. I took the Lists of the Names of the Men. My Lord *Levat's* Chamberlain ordered me to make a List of the Names of all the Men capable of bearing Arms North of *Loch Ness*.

Mr. Sol. Gen. For what Purpose were those Lists made?

R. Frazer. To get the best of my Knowledge to join the Master of *Levat*, with the Pretender.

Mr. Sol. Gen. Were such Lists made out with my Lord *Levat's* Privy, or by his Direction?

R. Frazer.

R. *Frazer*. I am sure he was acquainted with it.
 Mr. *Sol. Gen.* How are you sure he was acquainted with it?
 R. *Frazer*. Because I went into the Room, and told him what I was doing; and that I was writing the List.
 Mr. *Sol. Gen.* What did he say to you upon that Occasion?
 R. *Frazer*. I cannot remember now.
 Mr. *Sol. Gen.* Pray, did my Lord *Lovat* see the List after it was made out?
 R. *Frazer*. I can't tell; I returned it to *John Frazer*, my Lord's Factor.
 Mr. *Sol. Gen.* Do you know of any Message that was sent or passed between my Lord *Lovat*, and Lord *Louden*, and Lord *President*?
 R. *Frazer*. Yes.
 Mr. *Sol. Gen.* What was it about?
 R. *Frazer*. Several Letters were sent by my Lord *Louden*, and my Lord *President*, to my Lord *Lovat*, to dissuade him from entering into the Rebellion.
 Mr. *Sol. Gen.* What Answer did my Lord *Lovat* make to these Letters?
 R. *Frazer*. He said his Son was so obstinate as to enter into the Rebellion; but that he could not help it.
 Mr. *Sol. Gen.* Was that Fact true? Was the Son so obstinate?
 R. *Frazer*. No; I am sure it was not true.
 Mr. *Sol. Gen.* Why are you sure it was not true?
 R. *Frazer*. Because, whilst I was preparing a Letter to the Lord *President*, which my Lord *Lovat* dictated, wherein he acquainted them of his Son's Obstinacy in going into the Rebellion (which Letter my Lord directed me not to let any body see), his Son the Master came in, and asked me for the Letter; and I refusing to give it him, the Son took the Letter out of my Hand.
 Mr. *Sol. Gen.* Who took it out of your Hand?
 R. *Frazer*. The Master of *Lovat* took it out of my Hand; and, after reading it, said, Good God, how is this! Accuse me behind my Back! To call me stiff-necked and disobedient! I will set the Saddle upon the right Horse.
 Mr. *Sol. Gen.* Pray repeat the Answer you made last.
 R. *Frazer*. The Master of *Lovat* said, If this Letter goes, I will go, and put the Saddle upon the right Horse, and will go and discover all to my Lord *President*.
 Mr. *Sol. Gen.* What did he mean by putting the Saddle upon the right Horse?
 R. *Frazer*. That he would go and discover to my Lord *President*, that his Father, my Lord *Lovat*, had forced him to do what he had done.
 Mr. *Sol. Gen.* Did the Son say any Thing to my Lord *Lovat* upon that Occasion?—*Frazer*. Not that I know of. The Words *stiff-necked and disobedient* were left out of the Letter.
 Mr. *Sol. Gen.* How came these Words to be left out?
 R. *Frazer*. It was done by the Master of *Lovat*'s Order.
 Mr. *Sol. Gen.* Did you hear any Thing that passed between Lord *Lovat* and his Son about his Backwardness in going into the Rebellion?
 R. *Frazer*. I heard him blame the Master of *Lovat* for being dilatory.
 Mr. *Sol. Gen.* Dilatory in what?—*R. Frazer*. In raising Men.
 Mr. *Sol. Gen.* For what Purpose?
 R. *Frazer*. To join the Pretender's Son.
 Mr. *Sol. Gen.* Do you know any Thing of Lord *Lovat*'s sending for People, as Painters, or of any Sort, to prepare his Tents?
 R. *Frazer*. Yes; I myself wrote a Letter to his Agent at *Inverness*, who was a Painter.
 Mr. *Sol. Gen.* By whose Order did you write that Letter?
 R. *Frazer*. By my Lord *Lovat*'s Order.
 Mr. *Sol. Gen.* To what Purpose was the Letter wrote?—*R. Frazer*. It was to order the Agent, or the Painter, to make some Bell-Tents.
 Mr. *Sol. Gen.* What did the Painter do in Consequence of that Letter?
 R. *Frazer*. He made them.
 Mr. *Sol. Gen.* Did my Lord *Lovat* know of it?—*R. Frazer*. Yes.
 Mr. *Sol. Gen.* How do you know he did?—*R. Frazer*. Because I was with my Lord *Lovat* when the Man was making them.
 Mr. *Sol. Gen.* What are Bell-Tents?
 R. *Frazer*. They are Lodges to keep Arms dry from the Rain.
 Mr. *Sol. Gen.* Did you know of any Colours being made?
 R. *Frazer*. Yes; we had one Pair of new ones made, and another Pair mended.
 Mr. *Sol. Gen.* About what Time was that? and what Month?
 R. *Frazer*. About the Month of *September*, I think.
 Mr. *Sol. Gen.* Was it before the first Rendezvous?
 R. *Frazer*. I think it was after the first Rendezvous.
 Mr. *Sol. Gen.* Can you give an Account of the Men being rendezvoused, and whether it was done by my Lord *Lovat*'s Directions, or under his Authority?—*R. Frazer*. They were rendezvoused.
 Mr. *Sol. Gen.* Where were they rendezvoused?
 R. *Frazer*. Upon that Part of Lord *Lovat*'s Estate near *Castle-Downey*.
 Mr. *Sol. Gen.* About what Time was this? in what Month?
 R. *Frazer*. In the Month of *August*.
 Mr. *Sol. Gen.* What was the particular Purpose of their being reviewed then?
 R. *Frazer*. To see who was capable of bearing Arms, and who had any.
 Mr. *Sol. Gen.* Were the Officers appointed then?
 R. *Frazer*. No, I believe not.
 Mr. *Sol. Gen.* How do you know that the Prisoner was made privy to this Rendezvous?
 R. *Frazer*. Because they came back to my Lord's House afterwards.
 Mr. *Sol. Gen.* Were they in Officers Drefs?
 R. *Frazer*. They had white Cockades on.
 Mr. *Sol. Gen.* How far was the Place of Rendezvous from Lord *Lovat*'s House?—*R. Frazer*. About a Quarter of a Mile.
 Mr. *Sol. Gen.* Were the Persons there Tenants to my Lord *Lovat*?
 R. *Frazer*. They were his Tenants.
 Mr. *Sol. Gen.* What Arms had they?—*R. Frazer*. I can't say: I had my Lord's Liberty to go there and see them; but I did not stay there.
 Mr. *Sol. Gen.* Do you know of any other Rendezvous?

R. *Frazer*. About a Fortnight afterwards there was another Rendezvous.
 Mr. *Sol. Gen.* Do you know of any Ammunition, Muskets, or Arms, that were given to the Men?
 R. *Frazer*. I don't know of any Arms that were given them. There was a Barrel of Powder sent from *Inverness*.
 Mr. *Sol. Gen.* By whose Order was that done?
 R. *Frazer*. By my Lord *Lovat*'s Order; I wrote the Letter.
 Mr. *Sol. Gen.* What was done with that Powder?
 R. *Frazer*. It was distributed among the Men.
 Mr. *Sol. Gen.* How do you know that it was done by my Lord *Lovat*'s Order?—*R. Frazer*. Because the House-keeper being disgraced, I got the Key of the Place where it was, and saw the Powder and Bullets there.
 Mr. *Sol. Gen.* Was the Key delivered you for that Use?
 R. *Frazer*. I told my Lord of my having the Key.
 Mr. *Sol. Gen.* Do you know of any Bonnets being provided?
 R. *Frazer*. There were Bonnets provided for them.
 Mr. *Sol. Gen.* By whose Order?
 R. *Frazer*. By my Lord *Lovat*'s.
 Mr. *Sol. Gen.* For what Purpose were they provided?
 R. *Frazer*. They were given to the Men.
 Mr. *Sol. Gen.* Do you know where the Officers went after the last Rendezvous?
 R. *Frazer*. The Officers came back that Night.
 Mr. *Sol. Gen.* Where did they come to?
 R. *Frazer*. They came to my Lord *Lovat*'s House.
 Mr. *Sol. Gen.* Had they Cockades?
 R. *Frazer*. They had white Cockades in their Bonnets.
 Mr. *Sol. Gen.* Do you know for what Sign or Mark they wore white Cockades?
 R. *Frazer*. It was a Symptom of their being People to join the Pretender.
 Mr. *Sol. Gen.* Do you know of any thing that happened at my Lord *Lovat*'s after the Battle of *Preston-Pans*?
 R. *Frazer*. *Frazer* of *Dallcraig* came to *Castle-Downey* with an Account of the Battle of *Preston-Pans*.
 Mr. *Sol. Gen.* What did my Lord *Lovat* say to him upon that Occasion?
 R. *Frazer*. He said, That his Men should be soon ready to go South.
 Mr. *Sol. Gen.* For what Purpose?
 R. *Frazer*. To join the Rebels, I understood.
 Mr. *Sol. Gen.* Do you know of any Men passing by my Lord *Lovat*'s House?
 R. *Frazer*. My Lord *Cromartie*'s Regiment passed by; and he and the *McDonalds*, and several others, were entertained there that Night.
 Mr. *Sol. Gen.* Did you hear any thing that passed upon that Occasion? any thing that was said by my Lord *Lovat* upon it.
 R. *Frazer*. Yes, that it was owing to the Master of *Lovat*'s Disobedience, that the *Frasers* were not ready as soon as any other.
 Mr. *Sol. Gen.* Was there any thing else that passed then, or any particular Healths drank?
 R. *Frazer*. Yes, the Health of the Pretender's Son was drank.
 Mr. *Sol. Gen.* By what Name?
 R. *Frazer*. By the Name of *Prince Charles*.
 Mr. *Sol. Gen.* Pray at what time did the Master of *Lovat* go and join the Rebels?
 R. *Frazer*. It was between the 10th and 20th of *December* that he went. My Lord *Lovat* was taken Prisoner on the 10th or 11th of *December*, and escaped about the 19th or 20th; and at the same time the Master marched with the *Frasers*.
 Mr. *Sol. Gen.* Was my Lord *Lovat* extremely displeased at his Son's so marching? or did he disapprove of it?
 R. *Frazer*. No.
 Mr. *Sol. Gen.* Did he send Word for his Son to come back again?
 R. *Frazer*. He did afterwards send for him back, to raise more Men.
 Mr. *Sol. Gen.* Do you know of any Person who was concerned in the Rebellion, that after the Battle of *Falkirk*, came to my Lord *Lovat*'s House? and whether any thing passed in Company then, and what it was?
 R. *Frazer*. Yes; there was a *French Gentleman* came, that was said to be the *French Ambassador*.
 Mr. *Sol. Gen.* Where did he come to?
 R. *Frazer*. To a Place belonging to my Lord *Lovat*.
 Mr. *Sol. Gen.* When was that?
 R. *Frazer*. It was after their Retreat from *Stirling*.
 Mr. *Sol. Gen.* Do you know who was there besides?
 R. *Frazer*. There were several others, particularly *Lochiel*, *Keppoch*, *Camuran*.
 Mr. *Sol. Gen.* Do you know of my Lord *Lovat*'s saying any thing to them about his assisting them?
 R. *Frazer*. He told them, he hoped they would excuse him, on account of his Age and Infirmities.
 Mr. *Sol. Gen.* Did he say any thing to shew his Zeal for their Success, as he did not go himself?
 R. *Frazer*. Yes; he said, I cannot go myself; but I will send my only Son, the Darling of my Life.
 Mr. *Sol. Gen.* Do you know of any thing that passed between my Lord *Lovat* and his Son after that?
 R. *Frazer*. Yes; the Master came to *Gortuleg*; and my Lord had lately received a Letter from one *Mr. Sheridan*, who had some Office under the Pretender's Son, complaining of my Lord's not getting his Men ready.
 Mr. *Sol. Gen.* Do you know of any thing that passed between them in relation to the Men having Leave to go home?
 R. *Frazer*. Yes; my Lord was angry with the Master for giving them Leave.
 Mr. *Sol. Gen.* Pray, how long was this before the Battle of *Culloden*?
 R. *Frazer*. This was in the Month of *February*.
 Mr. *Sol. Gen.* Do you know any thing of the Pretender's Son's coming to my Lord's House after the Battle of *Culloden*?
 R. *Frazer*. Yes; the very Night after the Battle, the Pretender's Son came to my Lord's.

Mr. *Sol. Gen.*

Mr. Sol. Gen. Was my Lord Lovat there then?—R. Fras. Yes.

Mr. Sol. Gen. Do you know any thing of what passed between them; or what my Lord Lovat said to him?

R. Fras. He made some Apology for not joining him in Person.

Mr. Sol. Gen. Did he mention any thing to shew his Zeal for him, tho' he did not join him in Person?

R. Fras. He said he had sent his Son to join him, whom he loved more than himself.

Mr. Sol. Gen. Did he mention his having sent any more?

R. Fras. Yes; he mentioned his having sent his Clan.

Mr. Sol. Gen. Was the Excuse accepted; or what did the Pretender's Son say to him?

R. Fras. I cannot tell particularly: I do not understand French; and they spoke in French.

Mr. Sol. Gen. Did all the Conversation, which passed between them, pass in French?

R. Fras. No; they spoke sometimes English, and at other times they spoke French.

Mr. Sol. Gen. What Language was that Discourse spoken in, which you have given an Account of as to Lord Lovat's Son and Clan?

R. Fras. It was in English.

Mr. Sol. Gen. You have said you did not understand all their Discourse: Pray did you perceive any other Demonstrations of Friendship that passed between them?

R. Fras. Yes; they embraced one another.

Mr. Sol. Gen. Do you know of any Consultation or Meeting of the General Officers of the Rebel Army, which my Lord Lovat had at that Time?—R. Fras. Yes.

Mr. Sol. Gen. Who were present?

R. Fras. There were several Gentlemen present.

Mr. Sol. Gen. Name them.

R. Fras. There was Cameron of Lochiel, John Murray of Broughton, Barrisdale, John Roy Stuart, Glenbuckie, and others.

Mr. Sol. Gen. How long was this after the Battle of Culloden?

R. Fras. It was not very long.

Mr. Sol. Gen. How long was it?

R. Fras. A matter of Ten or Twelve Days.

Mr. Sol. Gen. Was there any body else there? Was the Young Pretender there?—R. Fras. No; he was not.

Mr. Sol. Gen. Do you know any thing of the Conversation that passed then, or the Result of the Consultation?

R. Fras. No; I was turned out of the Room: I did not hear.

Mr. Sol. Gen. Do you know of any Money that was distributed? To whom was it distributed, by whom, and for what Purpose?

R. Fras. I saw the Pretender's Son's Treasurer give Money.

Mr. Sol. Gen. For what Purpose was the Money given?

R. Fras. To raise Men.

Mr. Sol. Gen. Do you know what kind of Money was so given?

R. Fras. It was French Louisdors.

Mr. Sol. Gen. Was you with the Prisoner till the Time he was taken? If you was, give an Account of his Retreat.

R. Fras. We staid in an Island for a Month; and when we escaped, we were obliged to take a Boat to come down a Loch.

Mr. Sol. Gen. What was the Name of the Island?

R. Fras. The Island of Morer.

Mr. Sol. Gen. Had you been with Lord Lovat from the Time of the Battle of Culloden to that Time?

R. Fras. We were in the Island from the Beginning of May till the 7th of June.

Mr. Sol. Gen. With what View did my Lord Lovat come there?

R. Fras. To screen him from the King's Troops, which were then in Pursuit of him, and several others of them.

Mr. Sol. Gen. Do you know of any thing that passed between the Master of Lovat and him at that Time?

R. Fras. I remember the Master proposed it to him to surrender himself to the Duke; but my Lord Lovat advised him against it, and said he could not do it consistently with his Honour; and he did not think he had been so mean-spirited as to offer it.

Mr. Sol. Gen. Do you know any thing of any Advice that was given by my Lord Lovat about the Raising of Men?

R. Fras. Yes; my Lord Lovat was present at Morer, where they were speaking of the Raising of Men.

Mr. Sol. Gen. Had the Prisoner any Guard that attended him whilst he was in Morer?

R. Fras. Yes; he had a Guard of twenty Men to attend him.

Mr. Sol. Gen. Did they resist any of the King's Forces that might oppose them?

R. Fras. Not that I know of.

Mr. Sol. Gen. By whom were they paid?—R. Fras. I paid them.

Mr. Sol. Gen. By whose Directions did you pay them?

R. Fras. By my Lord Lovat's Directions.

Mr. Sol. Gen. Did you apprehend, that the Master of Lovat carried his Men into the Rebel Army without his Father's Permission?

R. Fras. No; I am very sure he could not.

Mr. Sol. Gen. Why are you sure of it?

R. Fras. Because my Lord Lovat is a very strict Man; and none of his Children could have done it without his Consent.

Mr. Sol. Gen. Had my Lord Lovat a Power over them?

R. Fras. Yes; he had a very great Power over them.

Mr. Sol. Gen. Pray, was the Guard my Lord Lovat had, armed?

R. Fras. Yes.

Mr. Sol. Gen. You say there was no Opposition given by them to any of the King's Forces?

R. Fras. No; I think there was two or three of them fired: But my Lord Lovat sent me out to tell them not to fire.

Mr. Sol. Gen. Do you know any thing of my Lord Lovat's soliciting a Commission from the Pretender, to be Lieutenant-General of the Highlands, or a Patent to be Duke?

R. Fras. I remember, some time after I went into my Lord Lovat's Service, which was the 18th of October 1744, I saw in the Desk a Copy of an old Patent, which gave the Title of Duke to Lord Lovat only.

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Mr. Sol. Gen. What other Papers did you see there?

R. Fras. Some time after I saw a new Patent, where the Title was to descend to the Heirs Male of the Family.

Mr. Sol. Gen. Did you hear from my Lord Lovat how he obtained the Patent?

R. Fras. I have heard my Lord Lovat say, That his Patent lay in the Hands of one Drummond in France.

Mr. Sol. Gen. Did he say what Drummond?

R. Fras. To the best of my Knowledge, he said it was Drummond of Bobaldie.

Mr. Sol. Gen. Do you know any thing of any other Commission which my Lord Lovat had?

R. Fras. Yes; I saw a Commission for his being Lieutenant-General of the Highlands.

Mr. Sol. Gen. Where did you see that Commission?

R. Fras. Lying upon a Table in my Lord's Room. I read it, and made a Copy of it by my Lord's Order.

Mr. Sol. Gen. Are you sure whether he himself ordered you to copy it?

R. Fras. I am sure he ordered me to make a Copy of it.

Mr. Sol. Gen. Had you any other Discourse with him about it? Did you hear with what View he had got it?

R. Fras. No; I had no other than what I have now informed you of.

Mr. Sol. Gen. Do you know of any Complaint my Lord Lovat ever made about an Independent Company being taken from him?

R. Fras. I heard him complain, that the Court did not use him civilly in taking away his Company.

Mr. Sol. Gen. When did you hear him make that Complaint?

R. Fras. Frequently in Company, in speaking upon the Subject.

Mr. Sol. Gen. Pray what did my Lord Lovat say upon that Occasion?

R. Fras. I heard him say, That it was intirely owing to General Wade; and that he did not blame the Government.

Mr. Sol. Gen. Did he draw any Consequences from that?

R. Fras. I have heard him speak extraordinary well of his late Master King George.

Mr. Sol. Gen. What more did he say about this Treatment?

R. Fras. He said, That the Court used him so ill, that he could not help doing what he was doing.

Mr. Sol. Gen. What was he then doing?

R. Fras. Raising Men to join in the Rebellion. He said he had no Dislike to his present Majesty, but only to the Persons who took away his Commission.

Mr. Sol. Gen. Pray what do you apprehend was the Meaning of that Expression of the Master of Lovat, that he would go to the Lord President, and discover all?

R. Fras. I understood, that he meant, that he would go and join his Majesty's Forces.

Mr. Sol. Gen. My Lords, We have done with the Examination of this Witness for the present. We shall have Occasion, by-and-bye, to call him, to prove an Exhibit or Two.

Lord High Steward. My Lord Lovat, The Gentlemen of the House of Commons have gone thro' their Examination of this Witness: Would your Lordship ask him any Questions?

Lord Lovat. I am not able to ask him any Questions.

Then the Witness, by Order of the Lord High Steward, withdrew; and the Lord High Steward returning back to his Chair, the House was moved to adjourn to the Chamber of Parliament.

Lord High Steward. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?—Lords. Ay, Ay.

The House was accordingly adjourned to the Chamber of Parliament; and the Lords, and others, returned in the same Order, in which they came down: And the House being there resumed,

Ordered, That this House will proceed further in the Tryal of Simon Lord Lovat in Westminster-Hall, To-morrow, at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. Eld and Mr. Thurston, to acquaint them therewith.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do take back the said Lord Lovat, and bring him again to the Bar of this House in Westminster-Hall To-morrow, at Eleven of the Clock in the Forenoon.

Tuesday the 10th of March, 1746.

The SECOND DAY.

THE Lords, and others, came from the Chamber of Parliament into Westminster-Hall, in the same Order as on Monday: Where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court; and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, Bring forth your Prisoner, Simon Lord Lovat, to the Bar, pursuant to the Order of the House of Lords, to you directed.

The Deputy-Governor of the Tower brought the Prisoner to the Bar, in the like manner as before. And then he kneeled down.

L. H. S. Your Lordship may rise.

Then the Lord High Steward asked Leave to go down to the Table: Which was done.

L. H. S. Gentlemen of the House of Commons, You may proceed in your Evidence.

Mr. Noel. My Lords, The next Witness we beg Leave to call in Support of the Charge, is John Murray of Broughton.

John Murray of Broughton came into Court.

Mr. Noel. My Lords, We desire that he may be sworn.

Lord Lovat. My Lords, I have Objections against this Witness. One or two I apprehend to be essential.

L. H. S. Make your Objections.

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Lord

Lord Lovat. As I cannot read myself, I desire your Lordships will give Leave to the Clerk to read them.

Clerk reads. My Objection is, That he is attainted by an Act of Parliament made in the last Session, Page 443; and that he did not surrender himself before the 12th of July last.

Mr. Att. Gen. My Lords, I observe, that the noble Lord at the Bar said, That he had several Objections to the examining this Witness; and that One or Two of them were essential; but the noble Lord has not mentioned more than one. I presume, my Lords, it would be proper that he should name all his Objections at once, that the Managers may have an Opportunity of answering them all, and receiving your Lordships Judgment upon the Whole: Therefore, if he has any other Objections to offer, it would be proper he should mention them now to your Lordships.

Lord Lovat. My Lords, I submit it to your Lordships, that That is a very odd Proposition. I give your Lordships an essential one now; and when that is answered, I have another. I am not to be directed by those who are my Persecutors.

L. H. S. My Lord Lovat, You are not to be directed by your Accusers, but by the Lords who are your Judges; and the Course of Proceeding in this, and all other Courts, is, That a Person who objects to any Witness, should name all his Objections at the same time; and it is the more material in this Court, as it tends to prevent the Trouble of making several unnecessary Adjournments.

Lord Lovat. My Lords, As this Objection is very essential, I pray that it may be answered before I make another.

Lord Talbot. My Lords, If this is a material Objection to the Witness, then there will be no Occasion for any other; but if it is an immaterial one, then your Lordships may go into any other; but the Way proposed by the Managers may be very detrimental to the unhappy Person at the Bar.

L. H. S. Your Lordships hear what is proposed; and the Question is, Whether the Noble Lord at the Bar shall name all his Objections now, or take them up by One?

Sir William Yonge. My Lords, I should hope, that, in any Course of Proceeding, where Objections of this Kind are made, they should be made all together; for if they are made separate, we must consequently make distinct Answers to them all; which may oblige your Lordships to adjourn often to the Chamber of Parliament; which will create a great and unnecessary Delay of Time: And, my Lords, there can be no Objection to his naming the Whole at once, since they will all be distinctly considered by your Lordships, and undoubtedly receive distinct Answers. I therefore humbly insist, That he may be obliged to name all his Objections at once.

Mr. Noel. My Lords, What we are now upon, is no Point of Law at all: It is singly, Whether the noble Lord at the Bar, as is usual, should not name all his Objections at once? When he does name them, then to such as are clear Points of Law, he must be heard by his Counsel: But, at present, my Lords, we are upon a Question concerning the Course of Proceeding, Whether he shall name them all at once? that they may be taken into Consideration at the same Time.

My Lords, One Thing struck me in a very extraordinary Manner: It was said by the noble Lord at the Bar, That he was not to be directed by his Persecutors. My Lords, We are no Persecutors; we persecute no Man; we are entrusted by the Commons, who carry on this Prosecution against the noble Lord at the Bar for Treason; and we prosecute for the Preservation of the King's Government, and the Laws of the Land.

Lord Lovat. My Lords, I said I was not to be directed by those who accused me. Your Lordships cannot expect, I can say what I have to offer in an eloquent Manner. My Lords, Should the Saving of a little Time be a Reason for taking away a Person's Life? I hope these will not act like the Parricides who took off the Head of both Kingdoms in a Day, by their Prosecution. I am a Peer of this Land; and I think no Excuse of saving Time should be allowed as a Reason to destroy me.

L. H. S. My Lord Lovat, The Lords will use all the Deliberation, and give you all the Time that is requisite for your Defence; but I must beg your Lordship will have so much Consideration as to keep your Temper, and not suffer yourself to be hurried into Passion; for that may greatly prejudice you in making your Defence. Your Lordship will find the Advantage in your Defence, by keeping your Temper.

Lord Lovat. I give your Lordship my humble Thanks: And, since your Lordships will not allow me Counsel, I have spoke the little Non-sense I had to say; but now your Lordships shall hear me say nothing out of Temper.

L. H. S. My Lord Lovat, The Question now is, Whether you shall name all your Objections at once? I must acquaint your Lordship, That is the Rule in the Courts below, That if several Objections are made to a Witness, they are all named at once, in order to prevent unnecessary Delays.

Lord Lovat. My Lords, To shew how much I desire to save Time (tho' according to the Course of Nature, my Time can be but short), I am so far from desiring to give your Lordships Trouble, or to prolong Time, that I do insist upon this Objection to the Witness, and rely upon it as the only material Objection.

Then the Lord High Steward directed the Act of the last Session of Parliament, for the Attainder of several Persons, and, amongst others, of John Murray of Broughton, to be read: And the same was read accordingly by the Clerk at the Table.

L. H. S. Gentlemen of the House of Commons, You hear the Objection made by my Lord Lovat against this Witness: Which is, That he stands attainted by the Act of Parliament just now read; and that he did not surrender himself before the 12th of July, the Day prescribed by the Act. And this being a Question of Law, he desires to be heard by his Counsel to it.

Mr. Attorney General. My Lords, We have that which will appear to your Lordships, to be a plain and a clear Answer to it. It appears, that this is an Act of Parliament for attainting several Persons, upon a certain

Condition; which is, That if those Persons do not, before the 12th of July 1746, surrender themselves to One of his Majesty's Justices of the Peace, then every one, so not surrendering himself, shall be adjudged to be, and is thereby, attainted of High Treason. And our Answer to it is this, That the Condition has been complied with by Mr. Murray. I shall readily own, That, supposing the Condition had not been complied with, according to Law, in that Case Mr. Murray, being an attainted Person, could not be a Witness, unless he had been pardoned. But our Answer to that will be, That he hath surrendered himself; and the Surrender will appear upon Record; and the Manner of it is this: The last Term, Mr. Murray was brought by Habeas Corpus to the Bar of the Court of King's Bench; and a Transcript of the Act of Parliament being by *Mittimus* and *Certiorari* brought into that Court; and Mr. Murray brought up, and personally appearing before the Justices of the Court of King's Bench; and being asked by them, What he had to say, why he should not suffer Death, according to Law? upon a Supposition, that he was attainted upon that Act of Parliament, he pleaded in general, That he was one of the Persons named in the Act; and that, long before the 12th of July 1746, to wit, on the 28th of June then last, he did, at Edinburgh, in due Manner, according to the Meaning of the Act, render himself to Andrew Fletcher, Lord Justice Clerk, and one of his Majesty's Justices of the Peace: And he says, That the said Andrew Fletcher had then Authority to admit him to make such Surrender. He then states, That on the said 28th of June, in consequence of this Surrender, he was committed by the Lord Justice Clerk to Prison, according to the Directions of the Act of Parliament; and that he had ever since that Surrender remained in Custody, and still continues in Prison, and is ready to take his Trial, and submit himself to Justice. My Lords, He having pleaded this Plea, the Attorney General, by virtue of a Warrant from his Majesty, confessed the Plea to be true: Upon which the Court of King's Bench made a Record of it. He was remanded back to Prison, and there remains to answer, according to Law, when he shall be called to an Account for this High Treason. My Lords, We have the Record, and beg it may be read.

Lord Lovat. My Lords, I object to the reading this Record, because it is no Evidence against me; and I beg my Counsel may be heard to it. I am a Stranger to the Record, which is grounded only upon the Confession of the Attorney General, unsupported by any Proof; and I desire my Counsel may be now heard.

Mr. Att. Gen. My Lords, As to the Objection against reading this Record, I apprehend there is no Foundation for it. It is a Record of the Court of King's Bench, concerning the Person to whom the noble Lord at the Bar has objected, as being attainted; and, upon the Face of the Record, it will appear, that he is not a Person attainted. As to what the noble Lord says, That he is no Party to the Record, It is true he is not; but it is a Record notwithstanding. It is a Record upon the Point in Question, to shew whether or no the Person who is proposed as a Witness, is attainted: And there is no other Way by which he can have an Opportunity, in a Court of Justice, to avoid that Attainder, but by being brought into that Court, and asked, What he has to say why Execution should not be awarded against him, upon the Foundation of his being attainted by the Act? The Law gives him a Right to make his Defence against that Demand of Execution. He has done it, by averring a Fact of a Surrender, pursuant to the Act; and the Attorney General having confessed that Fact, it appears, that the Witness is not attainted; and the whole is (as it ought to be) entered on Record, which is the proper Evidence of his not being attainted; and therefore must be proper to be read to your Lordships, to answer an Objection, founded on a Supposition, that he is, though the Prisoner is not, nor could possibly be, a Party to it.

L. H. S. My Lord Lovat, You have heard what the Managers say: Do you now insist upon the Objection to the Reading of the Record? or will you reserve your Objection to the Witness till after the Record has been read?

Lord Lovat. I desire, that it should not be read.

L. H. S. Do you desire, that your Counsel may be heard to that Question, as a Point of Law?

Lord Lovat. Yes, I do.

Mr. Att. Gen. To be sure, my Lords, if it is any thing, it is a Point of Law; but your Lordships will judge whether it is a Point of Doubt; and therefore deserves to have Counsel heard to it.

L. H. S. If my Lord Lovat insists upon it, his Counsel must be heard to this Point.

Mr. FORRESTER.

My Lords,

I AM, by your Lordships Order, assigned Counsel to the noble Lord the Prisoner at the Bar, to advise and assist him in Matters of Law. The Objection that the noble Lord has made to the reading this Record, is, That it is grounded upon a Plea of Mr. Murray, confessed by his Majesty's Attorney General, to which the noble Lord is no Party; that Nobody is bound by that Confession but the Crown; and consequently, that it cannot be read against the noble Lord at the Bar. And, my Lords, I apprehend, that a Plea resting merely upon the Confession of the King, and which, in Fact, may or may not be true, ought not, in point of Law or Justice, to conclude any Party but the Crown, in whom alone resided the Power of confessing it.

My Lords, I am ready to acknowledge, that the Law of England gives the greatest Credit to Proofs by Matter of Record; and that they are Proofs of the highest Nature: But, my Lords, there is a great Difference between Records grounded upon the Confession of the Party, and Records upon Verdicts.

The Reason is, That in Records grounded upon Confession, the Party may come in, and suggest a Thing that is true or false: And it would be extremely hard, in regard to Third Persons, who may be injured by it; I say, it would be extremely injurious, if they had no Method to be let in, to falsify a Plea thus confessed. But where a Record is grounded upon a Verdict, and Judgment given thereupon, the Case is very different, because there is always a full Hearing before a Court of Justice;

the Facts are proved by Testimony of the Witnesses; and the Jury give their Verdict upon such Proofs: So that both the Matters of Fact and Law, if any arise, being fully debated and determined, it is highly reasonable such Proceedings should be conclusive, upon the Maxim, *Ex auditu publico ut sit finis litium*; since, if it was not, every Fact might be called in question over and over again, and so Courts of Justice would never come to an End of the Business before them. My Lords, The Distinction that I make is not purely of my own Imagination; your Lordships will find it in the best Writers on the Crown Law. My Lord Coke, in his *Third Inst.* fol. 231. and Lord Chief Justice Hale, in the First Volume of his *History of the Pleas of the Crown*, fol. 361. tells us, That if a Tenant in Fee aliens his Lands, and then is attainted of Treason, by Verdict upon an Indictment, supposing the Offence committed before the Alienation, the Alienor cannot falsify the Attainder, upon a Supposition, that there was no Treason committed before the Alienation; but that, had the Attainder been by Confession, the Alienor might falsify the Attainder in the very Point of the Treason, there being nothing conclusive done by the Alienor. This, my Lords, I apprehend is extremely strong to the present Purpose: Your Lordships will be pleased to observe how far it goes; it respects the Crown in point of Interest, the Lands actually forfeited to and vested in the Crown by the Attainder; which yet being grounded only on the Confession of the Party, cannot operate to injure a Third Person, but he may set it aside, and recover his Lands again, notwithstanding the Record by which it appears, that the Alienor committed Treason, and sold the Lands after the Treason actually committed. My Lords, I am aware of an Objection that may be made: It will perhaps be said, That it was in the Power of the Crown to have fully established Mr. Murray's Credit, by taking another Method, that of granting him a Pardon; which would have removed all Objection. My Lords, I grant it would; and had it been done, the noble Lord at the Bar, nor his Counsel, would not have troubled your Lordships with any Objections. But, my Lords, there is a very wide Difference between the two Methods: A Pardon takes away, as Lord Hobart expresses, both *panam & reatum*; it obliterates the Crime as much as if there had been no Crime at all; and when that has been once declared by the Crown, it is conclusive to all People: A Pardon removes all Objections to the Person, and to his Character. But the present Case is extremely different; for the Substance of Murray's Plea, tho' confessed by the Attorney General, still remains a Matter of Doubt, and a Matter of Evidence. My Lords, That Mr. Murray appeared in the Court of King's Bench, that he pleaded he was the Person named in the Act, so far is true, and so far I allow: But, my Lords, notwithstanding he pleaded that he surrendered on the 28th June, and was then committed to Prison, this may be false; Evidence might have been produced to the contrary; and, upon that Evidence, it might have appeared, that he did not surrender before the 12th of July.

My Lords, should that happen to be the Case, in what Condition would a Third Person be, was this Proceeding to be conclusive against him? It is a Maxim in Law, that *Actus legis nemini facit injuriam*. The Maxim holds equally strong as to the Acts of the Crown; and, if our Books are not so explicit on the latter as the former Head, their Silence proceeds from the great Modesty of our Laws, which, as they repose the highest Trust in the Honour and Justice of the Crown, won't suppose its prerogative will ever be turned to the Subject's Detriment: And indeed right Reason tells us, that neither the Acts of the Crown, or of any Party whatsoever, ought to affect a Third Person, who was a Stranger to them, and who has had no Opportunity of controverting them.

My Lords, I would trouble your Lordships with a very short Case to illustrate what I am contending for: A Copyholder is attainted, and flies, and the Land escheats to the Lord: Suppose that he is afterwards taken, and brought up into the Court of King's Bench, and there pleads, that he is not the Man; and that Plea is confessed by the Attorney General; would this be Evidence against the Lord, who had acquired a Property in the Land by Escheat? Would he be concluded by that Proceeding? Would the Tenant, by saying, I have pleaded I am not the Man, and the Attorney General has confessed it, avail himself against the Lord? My Lords, here is to be an Interest divested out of a Person by a mere Confession of the Parties, in a Proceeding to which he is a Stranger, and was never admitted to litigate: And as the Lord by Escheat would not be concluded in the Case I just now put, I do not see any Distinction can be made between that and the present.

The noble Lord at the Bar has a Right to object to every Person attainted; and that Right cannot be taken away by any Proceeding between other Persons, to which he is no Party.

My Lords, the Case is rather stronger here; because, by the same Reason that Mr. Murray is enabled to be a Witness, by having pleaded, that he surrendered within the Time limited by the Act, and that Plea confessed by the Attorney General, if a Person actually attainted by Verdict and Judgment (which is the highest Kind of Attainder) should, upon any Occasion, be brought up to the Court of King's Bench, and asked why Execution should not be awarded against him, that he should deny, as happened in *Okey's Case*, his being the same Person, and that Denial be confessed by the Attorney General, this Man, whom the Law disables by his Attainder for an Offence of the highest Kind, from giving Testimony in any Case, the Attorney General would, by his bare Confession, restore to Credit, and enable to give Evidence in any Case.

This would be investing the Attorney General with a legislative Power; and that, I believe, your Lordships will scarcely think proper or reasonable.

Mr. FORD.

My Lords, I AM likewise assigned of Counsel for the Noble Lord at the Bar. And the Question before your Lordships is, Whether the Record, now produced, can be received in Evidence to repel the Objection that arises from the late Act of Parliament to Mr. Murray's Evidence?

By that Statute, he is actually attainted, unless he surrendered before the 12th of July 1746; and, if attainted, it is admitted by the Gentlemen of the House of Commons, that he is incapable of being a Witness. My Lords, the great Consequence of Questions of this Nature is ob-

vious to every one, the Justice of all Judicial Determinations depending intirely on the Veracity of Witnesses, who are to prove the Facts, upon which such Determinations are to be founded: And there can scarcely arise a Question relating to Evidence of greater Importance to any Man, than the present to the noble Lord at the Bar, whose Estate, Life, and Honours, depend on the Evidence that may be received against him; and therefore your Lordships will be particularly cautious that he shall not be affected by any but legal, unexceptionable Witnesses.

As to the Record now offered to be read, it consists only of a Plea by Mr. Murray, that he surrendered in due time; which Mr. Attorney General has thought proper to confess. And it is argued, That this Plea and Confession are proper Evidence, that such Surrender was made, and the Provision of the Act, so far as concerns Mr. Murray, absolutely defeated.

My Lords, how far such a Proceeding may bind the Crown is not material in the present Question; but whether it shall conclude the noble Prisoner, who is an absolute Stranger to it, and who never had any Opportunity of contesting the Truth of the Fact, is of the utmost Importance. The Attorney General, by his Office, prosecutes and defends the Causes of the Crown, and, as such, may make many Admissions to bind the Crown; but it would be extremely inconvenient, if such Admissions should conclude any body else. In some Cases they are totally disregarded; and therefore, if things are confessed as Errors in a Record, which appear not to be Errors, the Court, where such Record is depending, is bound to give Judgment against such Confession, and according to Law.

So, if a Matter of Fact is offered to be admitted, which the Court knows to be otherwise, it seems to be their Duty to reject such Admission; and therefore suppose, upon the Statute of *Edw. VI.* one outlawed for Treason should be brought into the King's Bench, in order to have Execution awarded upon the Outlawry, and should plead what the Court knows to be false, That he surrendered himself within the Year to the Chief Justice, according to that Statute, and the Attorney General should be disposed to confess it, ought not the Court to reject such an Admission? Or must they be concluded by what is well known to be untrue? Certainly the Court would not suffer such an Attempt to prevail.

In the present Case, there is nothing offered to your Lordships to prove Mr. Murray's Surrender, but the Record of what passed between him and the Attorney General in the King's Bench; and if this Record is permitted to be read, tho' the Contents of it should be absolutely untrue, yet, when once read, it will be conclusive Evidence of the Fact it imports, and no Proof can be admitted to contradict it; and, if it is Evidence to be received on this Occasion, it must be Evidence in all Courts, and on all Occasions, where a Question may arise about Mr. Murray's Attainder.

My Lords, Mr. Murray may have Estates, which by the Custom of the Manors where they lie, or by the Grant of the Crown, may belong to the Lords of those Manors. If his Surrender was not made in proper Time, all such Estates are forfeited to such Lords; and yet, if this Record is to be admitted, it will be Evidence, that cannot be contradicted by them, and must divest those Rights and Estates, which, by this Attainder, they were lawfully intitled to.

But the Mischief of permitting such a Record to be read will not stop here: For Purchasers likewise must be concluded by it; and therefore, though Lands may have been long since sold and enjoyed, under a Title arising from an Attainder of the same Nature with Mr. Murray's, yet, if this amicable Proceeding between the Attorney General and the Party attainted, is to prevail, no Purchaser, even at any Distance of Time, can be secure.

In this Light, the Point seems of very extensive Consequence: For it is to give the King's Attorney Power to do more by the Admission of a Fact, which perhaps may not be true, than the King, by a Pardon, can effect: For the King's Pardon cannot restore Lands forfeited to others; whereas, if the present Attempt should succeed, the Rights and Titles of Strangers may be destroyed, though never so justly founded.

My Lords, whether Mr. Murray surrendered, or not, is a Matter of Fact capable of Proof, is a Fact of the utmost Importance to the Prisoner; and therefore, as the Rule of Law is general, That nothing done or transacted between Two Persons shall prejudice a Third, who does not concur in the Act, nor has an Opportunity of contradicting it, the present Record, which, for any thing apparent, may be an entire Fiction, ought not to be received.

And, my Lords, supposing there was a Possibility of proving this Fact by Matter of Record, yet, by the constant Rule of Evidence, the Record produced seems improper to be read; because it is not the best Evidence the Nature of the Thing will admit of, and, for that Reason, is not the proper Record to prove the Point in Question.

That the Judge or Justice, to whom Mr. Murray surrendered himself, made a Record of such Surrender, cannot be doubted. It was his Duty so to do, and must be presumed to have been done; and therefore, if this Fact is proper to be proved by any Record, the Original made by such Magistrate, who took the Surrender, ought to be produced.

My Lords, it may be said, this Record in Question imports an Admission by the proper Officer of the Crown, of a Fact which he must be supposed to have inquired into, and has therefore admitted, because he finds it to be true.

My Lords, this Answer might have been given, if Mr. Attorney had, at this Bar, offered originally to confess the same thing.—And suppose the Record, now attempted to be read, had never existed; and, upon an Objection to Mr. Murray's Testimony, the Attorney General had said, Here, I have the King's Warrant to confess, that he surrendered before the 12th of July;—would your Lordships have received such an Admission?—Would you conclude yourselves by the Confession of a Fact, without knowing whether it was so, or not?—Would the Court have suffered the Force of an Act of Parliament to have been defeated by such an Acknowledgment?—Or, would not clear and positive Proof have been required of an actual Surrender?

My Lords, if it could, upon what Reason can such a Confession in the King's Bench, in an inferior Court, in the Absence of the Prisoner, who

who may be prejudiced by it, be received in Evidence against him?—If it is true that Mr. Murray surrendered in proper Time, it may be easily proved; if it is not, the present Method, by which it is attempted to be proved, is a certain one to draw the Court into an Error about it.—Your Lordships must perceive the Danger of allowing such a Proceeding; how mischievous it may be to the Prisoner, to Lords of Manors, to Purchasers, to all Strangers, who never can have an Opportunity of disputing the Truth of it.—And therefore, whatever Effect it may have between the Crown and Mr. Murray, it is humbly submitted, that it ought not to be read against the Lord at the Bar.

Mr. HAMILTON GORDON.

My Lords,

I HAVE likewise the Honour to attend your Lordships, as one of the Counsel for the noble Lord at the Bar, whose Province it is to lay before your Lordships, and enforce, with all humble Submission, what may occur to them in his favour in point of Law: But the Two learned Gentlemen, who have gone before me, have spoken so fully, and discharged their Duty so well, that I should trespass upon your Lordships Time, and also do them Injustice, if I consumed much of it. Besides, my Lords, I am too diffident of my own Abilities to speak long upon a Question, which is involved in the particular Laws of this Country; and therefore I shall, with your Lordships Indulgence, confine my Endeavours to serve my Client, to a few general Observations, which, I humbly think, must naturally occur to every Man upon that Point, which the noble Lord at the Bar has taken the Liberty to propose to your Lordships by way of Objection.

The noble Prisoner at the Bar has objected, That Mr. Murray is not a competent Witness against him; or, in other Words, that, according to the Rules of Law, his Evidence ought not to be received. And, to maintain that Position, he has laid down another, namely, That the Record of the Court of King's Bench, which proceeds singly upon the bare Admission of his Majesty's Attorney General, unsupported by any Proof, ought not to be read as Evidence of Mr. Murray's Surrender, so as to qualify him to give Evidence upon this Trial.

As to the First, I humbly apprehend it to be wholly unnecessary to use any Arguments to prove, that, if those Proceedings in the King's Bench did not stand in the Way of the noble Lord at the Bar, Mr. Murray must, of course, have been rejected as an incompetent Witness.

It remains therefore only to be considered, Whether such Proceedings, transacted only between the Crown and Mr. Murray, can affect the Interest of a Third Person.

My Lords, the Consequences of this Question are of the greatest Importance to the Subjects in general; and although the noble Lord is more immediately concerned in it, yet if it should be determined, that this is proper Evidence to affect him, the like Evidence must be received against every other Subject of Great Britain; for the Law cannot distinguish between him and others: And I beg leave, my Lords, to say, that it appears from the Authorities, which have been cited by the other Gentlemen, and which have always been considered as of the greatest Weight in this Country, that the Admission of the Attorney General, or any other, cannot affect a Third Person; and I take it, my Lords, to be a general established Rule, that the Interest of one cannot be affected by the Admission of another.

My Lords, I apprehend, that my Lord Coke's Sense of this Matter is so extremely clear and obvious, that it requires no Explanation; and so is the Opinion of another great Lawyer, my Lord Chief Justice Hale.

My Lords, the Law gives an Opportunity to falsify the Verdict of Twelve Men, where a Third Party, from the Want of it, may be injured only in a pecuniary Matter; how much more reasonable is it therefore, that this kind of Agreement should be set aside, and held of no Consequence, in a Case where the Life, Fortune, and Honour, of a noble Lord is concerned?

My Lords, I would humbly ask, What Kind of Acquittal was this? Not an Acquittal by Verdict, the legal Acquittal in this Kingdom; but by a bare Consent; a Consent that surely has not Force enough to repeal an Act of Parliament.

My Lords, the only Way the Act of Parliament left for Mr. Murray to avoid the Consequences of an Attainder, was the Performance of a Condition; that is, surrendering himself within a Time limited.

Now, I would suppose that this Act had been a Deed granting an Estate on a certain Condition, must not that Condition have been performed truly and effectually? Certainly it must, by the Rule laid down by Lord Coke. Shall not Acts of Parliament, therefore, be as strictly complied with as common Deeds and Conveyances? Surely the Gentlemen of the House of Commons will hardly deny it. Consequently the Attorney General could not, by any Consent of his, make this Record in the King's Bench tantamount to an actual Surrender.

Suppose, my Lords, the Act had attainted Mr. Murray of Felony instead of Treason, could this Admission of Mr. Attorney General have deprived the Lord of the Lands which would have escheated to him? No, my Lords, it could not, if any Regard is to be paid to the Rule laid down in 5 Coke 96. That the Estates of Third Persons shall not be divested by colorable or covinous Payments, but by such as are true and effectual. And what are Payments but Performances of Conditions? And the same Law that guides one, will the other.

The Fact is not as the Record states it; the Attorney General's Consent, which is the Fiat for this Record, was a Consent after the Impeachment of the noble Lord. I wish it rather had preceded it.

My Lords, if Mr. Murray had held by Copyhold from the noble Lord at the Bar, and had been attainted, the noble Lord would have been intitled to the Escheat or Forfeiture of those Lands; and no Admission of the Attorney General's could defeat him of it, any more than it could in the Case of a Forfeiture of Lands in a County Palatine, where the Grantee of the Crown became intitled to the Benefit of it. Shall therefore, my Lords, such Admission be permitted to affect the Life, Honours, and Fortune of the noble Lord at the Bar? or, indeed, of any other in his unhappy Situation? No, surely; for it is against the common known Principles of Law, and of Reason too, that a Man shall be attainted as to some Cir-

cumstances, and free from Attainder as to others; that he shall be incapable to hold his Lands or Chattels, and yet be restored in Credit, so as to affect the Life of an Innocent Man; for such, till Conviction, every one is, by Law, presumed to be: I say, my Lords, this is a Construction to unprecedented and new, that, we hope, it will never receive the Sanction of your Lordships.

My Lords, I hope your Lordships will never countenance the Admission of such an Evidence, an Evidence who is so strongly agitated by the Hope of Pardon, and Fear of Punishment; that, to procure the one, and avoid the other, he may give up all Sense of Honour, Humanity, and Justice.

My Lords, as the learned Gentlemen, who spoke before me on the same Side, have made it unnecessary for me to add any thing more, I shall not give your Lordships any further Trouble at present; and I beg your Lordships Pardon for that which I have already given you. But, if any Reply should be necessary to what shall be offered by the Gentlemen of the House of Commons, I hope we shall have your Lordships Indulgence.

Lord High Steward. Gentlemen of the House of Commons, You may proceed.

Mr. ATTORNEY-GENERAL

My Lords,

THE Managers do not dispute the Prisoner's Right to any good Objection against the Competency of the Witness, or insist, that it is not equally proper before your Lordships on this Impeachment, as it would be on a Trial in the ordinary Courts of Justice. But they dispute the Validity of the Objection, upon its own proper legal Foundation.

As the Objection is to the Reading this Record, the mere Stating of the Question will be an Answer to it, and obviate or refute every Argument used in support of it.

The original Objection was against Mr. Murray's being examined as a Witness, upon the Supposition of his standing attainted of High-Treason by the late Act, in not surrendering within the Time prescribed. The Managers allowed the Consequence, if the Allegation of his Attainder were true, as that would render him infamous, not as it would prove him guilty of Treason; for the Guilt alone, without the Attainder, would not render him incompetent, it being a clear established Point, that even a *particeps criminis* may be a Witness, to prove the Guilt of those who joined with him in the same Crime: And your Lordships, in the late Trial of the Lord Balmerino, admitted that Sort of Evidence. But the Managers answered the Objection, by denying the Attainder; and produced this Record, to shew the Surrender pursuant to the Act, which attaints him only on Condition of his not surrendering within the Time limited. This Record is of a Proceeding commenced on the Part of the Crown, on the Foot of this very Act, in the proper Court of Justice, against the Witness, and defended, on the Part of the Witness, by this Surrender; and that Defence and Surrender confessed by the Attorney General, by Warrant from the Crown; and this allowed by the Court, who, instead of awarding Execution against him, remanded him to Prison, where he now remains forthcoming to Justice, according to the Act.

Now, to say that such a Record, relating to the precise Point in question, cannot be read to disprove the supposed Attainder, and support the Competency of the Witness, would be to deny one of the first Principles of Evidence; and therefore the Counsel, aware of the Absurdity, have not ventured in Terms to assert a Proposition so contrary to the known Law of the Land, as that such a Record is not proper to be read; but seem rather, in the Way of Argument, to deny the Consequence of it when read, and have insisted on Reasons that tend to shew that it is not conclusive Evidence; and therefore, that the Fact of the Surrender may be still controverted by Evidence on the Side of the Prisoner, rather than that it is no Evidence at all.

Though this is more properly a subsequent Question, and a very different one in its Nature, yet, in the present Case, it is really, and in Effect, the same, and the necessary Consequence of the other: For to insist, that this Record is not conclusive Proof of Mr. Murray's not being attainted by that Act, must proceed on this Supposition, that he may still be held attainted under the Act, notwithstanding this Record. But, I presume, your Lordships will upon no Terms be induced to admit of that Suggestion, when it is considered, that the certain Effect of it must be, that he may be called up again for Execution, and put a Second Time on the Defence of his Life against the same Charge.

But to consider the Grounds, on which the Objection has been attempted to be supported,

There are Two general Reasons insisted on; one, That the Surrender insisted on in Behalf of the Witness, when he was brought before the Court of King's Bench, was neither proved to the Court, nor found by a Jury; but only confessed by the Attorney General: The other, that the noble Lord was himself no Party to the Record; and therefore not to be affected by it.

As to the First, in order to support that Reason, a Distinction is attempted to be set up between the Case of a Fact, on which a Judgment is grounded, appearing by a Verdict or Evidence, and where it appears only by the Confession of the Party; and it is said, That in the former Case it may, but in the latter, cannot be conclusive to any other Persons but those who were Parties.

And, for this Purpose, the Authorities of my Lord Chief Justice Coke and Lord Hale, and others, are cited, to shew the Difference, in point of Consequence to Third Persons, between an Attainder by Verdict, or by Confession; that, in the one Case, the Crime may be disputed by a Purchaser under the attainted Person; but, in the other, it cannot, though the Time of the Commission of it may.

It will be unnecessary for me to enter minutely into the nice Disquisition, How far, and for what Purposes, the Crime appearing on an Attainder, may be controverted by Strangers, whose Interest is affected by it; because I am satisfied your Lordships will see, that the Distinctions on that Head are totally foreign to the present Question; and one single Observation would be sufficient to make that manifest; that is, that none of the Cases cited, or that can be cited, prove, that any Stranger can controvert the Attainder itself, whether founded on a Verdict or Confession.

or by Default; and it is the Attainder, and not the Crime, that is the only material Thing on the present Objection.

All that will be necessary, therefore, upon this Point, will be to shew, that the Confession, in this Case, binds the Crown; and that, if it does, there is no Attainder. The Inference will then follow of Course, that the Record may be read, to prove *Murray* not attainted, as the precise Point to be proved in Answer to the Objection to his Competency.

The Authority of the Attorney General to confess the Truth of the Plea of Surrender, has not been directly denied by the Counsel; but as they have seemingly, in Consequence, done it, and the clear Establishment of that Right, in this Case, will, by certain Inference, establish the Right to read this Record, I shall state a little to your Lordships how that Authority stands, upon the Nature and Reason of the Thing, and the known constant Practice.

The Law and Constitution has intrusted the Crown, as the executive Power, with the Prosecution of Crimes; and though oftentimes such Prosecutions are carried on by private Persons, even those are, for the most part, in the Name of the Crown.

But those, as well as Civil Suits, may be commenced sometimes without a just Foundation, and the Party sued may have a just Defence to the one as well as the other. Where that appears, it is equally just, in both Cases, to put a Stop to them; and as a Subject-Plaintiff may confess the Defendant's Plea; so may the Crown, by the Attorney General, its proper Officer, confess the Prisoner's Defence; and such Confession, in both Cases, is, and ought to be, both in Law and natural Justice, a Security against future Action or Prosecution for the same Cause. Nor is there any Reason that can be given for the Power in the Case of a Subject, but what will hold equally strong, and stronger, in the Case of the Crown, as there could not be a greater Grievance to the Subjects in general, than to have it established as a Rule, that, when once a criminal Prosecution is commenced, the Defendant, how innocent soever, or how willing soever to make Satisfaction, must be put to the Vexation of a Trial, or the Charge of a Pardon, which might, in many Cases, be his Ruin. And how strange would it appear to say, that the King might not do the same Justice to Innocence, that every honest Man would do? or that he might not, for such wise and gracious Reasons as would induce him to grant a Pardon after Sentence, stop the Proceedings in the ordinary Course of Law, before they come to Sentence?

To avoid these Absurdities, the Law intrusts the proper Officer, the Attorney General, with the Power of confessing a Defendant's Plea, where it appears to be true, in Charges of a lesser Nature, and, in the higher, by the immediate Warrant of the Crown; and such Confession has the Effect it ought to have of an absolute Discharge; and, I should imagine, Nobody, who thinks of it for a Moment, would, for the Sake of the Subject, wish it otherwise.

And, my Lords, this has been the constant Practice, not only in Criminal Prosecutions, properly so called, but in all Crown Causes even for Civil Rights: And whoever has had the Honour of serving the Crown in the Office of Attorney General must have eased the Subject on that Head, when, on Applications by the Parties sued, and Attendances by the Officers of that Branch of the Revenue which is in question, the Plea has appeared to be a just one, and both the Crown and the Subject find their Account in this Method of Proceeding, in the Expence and Delay that are saved by it; and such Confession, being recorded, has, to all Intents, the same Effect, as if, on Issue joined, a Jury had found the Fact to be what the Attorney General confessed.

The Practice is the same in criminal Cases, where the Attorney General confesses the Plea, whether it be to the Merits of the Charge, or only in order to let the Defendant into an Opportunity of trying those Merits.

There is one sort of Case frequently happens, very parallel to the present, where a Person is outlawed for Treason or Felony, which amounts in Law to an Attainder for the Crime, and equally affects the Party, both as to his Life and Estate, as on a Verdict. The Party having no way of coming at the Trial, but by reversing the Outlawry by Writ of Error, which cannot be allowed without his Majesty's Consent, it is a frequent Practice to apply for that Indulgence; and it is very easily granted, provided there has been no great Delay. If the Party assigns an Error in Fact, as he may, the Attorney General confesses it, if true; and the Outlawry is reversed, and the Attainder avoided by it. And no one ever doubted, but the Record of that Reversal is conclusive Proof of his not being attainted.

Nay, the Crown has sometimes directed the Attorney General to confess Errors in Fact, as the Party's being beyond Sea at the time of the Outlawry, which have not been true; only that he may have an Opportunity of taking his Trial, and not suffer for a Default in not appearing only. And no Lawyer ever said, that such a Confession was not as effectual to avoid the Outlawry, as the Verdict of a Jury impanelled to try it.

And if, in the present Case, the Truth was, That Mr. *Murray* did not actually surrender, but was apprehended before the Day; and that should be thought, in Strictness, not a Compliance with the Act; and the Attorney General was now prosecuting for the Crown only; I believe he would be under no Difficulty of owning the Truth, or apprehensive, that your Lordships would say, that the Confession was either illegal or unequitable; or that, when the End of the Act was answered, by Mr. *Murray's* being ready to take his Trial, it was not agreeable to his Majesty's Royal Justice and Clemency, to remove the only Impediment to his having it. Nor can the Exercise of this Power be objected to from any Reasons but what would equally affect the Exercise of that great and excellent Prerogative of Pardoning.

What I have now said will fully shew, that the Cases cited are not applicable to the present: They are the Cases of innocent Purchasers, whose Estates were to be lost by the subsequent Attainder, and supposed Guilt, of the Vendors.

It would be unjust in itself, not to give them an Opportunity of defending their Property, by controverting the Fact on which it depended.

The Law, in Conformity to natural Justice, gives them, in some Cases Liberty of disputing the Crime itself, where the Conviction is by Confession; and the time of the Commission, where it is by Verdict: But, in those Cases, the Question was a Matter of Property between the Crown and an innocent Subject, and depended on the Crime's being committed before or after the Purchase, and not merely on the Attainder, which would stand good, let that Question be determined either Way; but, in the present Case, the Question is on the Incompetency of a Witness, which depends solely on his Attainder, and not on the Reality, or Time, of his Crime. Therefore, to make a parallel Case, it must be said, that if the Attorney General had confessed a Plea of Not Guilty to an Indictment of Treason, and the Prisoner, being thereupon acquitted, should be brought as a Witness either in a Criminal or Civil Suit, his Competency might be objected to, and the Objection supported by Proof of his actual Guilt: But this cannot be pretended; the contrary is so clear, that if he had never been indicted or acquitted, the clearest Proof of his Crime could not be admitted for this Purpose; and no Evidence can, in any Case, establish such an Objection, but a Record of an Attainder.

The only Colour of Distinction between the Case put, and the present, is, that the Attainder here appears *prima facie*, and must be avoided by a Surrender to be proved. This is true; and therefore puts the Proof on us, to remove the Objection; and it is for that Reason this Record is offered as the proper Proof: And, as in the Case where the Proof lies on the Side of the Objection, the Record of the Attainder is the proper Evidence; so in this, where it lies on the Side of the Witness, the Record of his Surrender is the direct Proof that he is not attainted.

My Lords, I come now to the Second Reason given for the Objection, That the Prisoner is no Party to this Record; and I shall have Occasion to say very little upon this, because it is, in Effect, answered by the first Reason insisted on by the Counsel themselves; which supposes, if the Surrender had been found by Verdict, the Record would be proper Evidence; and yet the Prisoner would then have been equally no Party. This, therefore, destroys the Rule and Supposition on which this Reason is founded, which is, that no Record can be read against a Man to which he was no Party; and, indeed, there is not, nor can be, any such Rule; it is most notoriously otherwise in the very Instance in question, of the Incompetency of a Witness, on account of his Attainder, which never can be proved by any thing but the Record; and yet the Party to be prejudiced by it neither is, nor can be, a Party to it.

The noble Lord is controverting no Property on the Foundation of Mr. *Murray's* supposed Attainder; he neither claims or defends any Right that is demanded on the Foundation of his Discharge; the Record has no more relation to him than to all the World; and if the Witness is disabled as to him, he is so with respect to all Mankind, and in all Causes Civil or Criminal, and must be put on the Trial of his Surrender, as often as he shall be called upon during his Life, to give his Testimony in any Court, and in any Suit. What Absurdities this would be attended with, I need not mention; your Lordships will be beforehand with me, in suggesting them to your own Thoughts.

Sir JOHN STRANGE.

My Lords,

THE Question arising upon the Objection made by the noble Lord at the Bar, is not what the Consequence of this Record will be, when it is read, but singly, Whether we shall be now admitted to read it, or no? My Lords, the Objection made by the noble Lord at the Bar against this Witness, was founded upon this Record. My Lords, it was called for, and read; which was the Act of Parliament made in the last Sessions, for the Attainder of several Persons; and, my Lords, upon that Sort of Attainder no Writ of Error could lie; and therefore, my Lords, there was no other Way to take off the Force of that Attainder, that was warrantable, than the Method taken in the present Case. And, my Lords, I must submit it to your Lordships, whether we are not intitled to read what we now call for, not as a distinct Record, but as Part of the whole Record relating to the Person now at your Lordships Bar; for the Record must come before your Lordships in all its Parts: Nobody can call for a particular Part of a Record to be read, but the Whole must be laid before your Lordships; and therefore, my Lords, I beg Leave to contend, that this is Part of the Record of the Proceedings against the Person whom we now call upon as a Witness, which the noble Lord at the Bar himself called for. My Lords, what the Consequence of it will be afterwards, is a Question of another Nature; but I must submit it to your Lordships, that as Part of the Record of the Proceedings against Mr. *Murray*, we are certainly intitled to have it read.

My Lords, One Objection taken by the Gentlemen on the other Side, is, That it is not the Record of the proper Jurisdiction, but that it ought to be a Record made by the Person to whom Mr. *Murray* surrendered himself: But, my Lords, I must beg Leave to submit it to your Lordships, by Way of Answer, That it is the Record of a proper Jurisdiction, in a Case of this Nature. My Lords, the Court of King's-Bench, as a Court of criminal Jurisdiction, may have Offenders of all Sorts brought before them. My Lords, in the present Case, a *Certiorari* issues out of Chancery, and by *Mittimus* the Record is removed into the King's-Bench: And I will call upon the Counsel for the impeached Lord, if they will venture to say, that a *Certiorari* will not lie for that Purpose. My Lords, if it will lie, it must be for some End or Purpose that a *Certiorari* was brought, and the Record transmitted thither; that was the proper Jurisdiction, and that Court then had a Right to call upon the Party brought up before them by *Habeas Corpus*, to know what he had to say, why Execution should not be awarded, upon the Footing of the Attainder by this Act of Parliament? My Lords, the Question was put by that Court to the Person who was then a Prisoner before them: He pleaded a Surrender within the Time; and insisted, that there he was amenable to Justice: He alleges, that as a proper Answer to that Court, upon the Question asked him; and whether it was, or was not a proper Answer, depended upon the Fact. The Court could have no Doubt, but if the Party surrendered himself in Time, and was amenable to Justice, but that was an Answer

to their demanding to know of him, why Execution should not be awarded against him? And, my Lords, if that Fact had not been verified in a legal Way, there must have been Execution awarded; but if legal Satisfaction was given by the then Prisoner, it was the Duty of that Court to record that as a Matter of Fact, which was properly verified before them. And, my Lords, there are two Ways of verifying Matters of Fact; one is by the actual Proof of the Fact (if the other Party denies it), or by Confession; and if the Party knows that he cannot in Conscience deny it, then he ought to confess it, and not put the other to the Expence and Trouble of proving that which he knows to be true: If you know that to be Fact, that the Party surrendered himself to Justice, and was forthcoming, will any body say, that it is not right and just, to admit that Fact as alleged? Therefore, my Lords, the Question of Fact in this Case has been properly determined by that Court; the Consequence of which is, that That Court ought to make a Record of it; and that is to be considered, not as a distinct, separate Record of itself, but as the Proceeding upon this Record of this Act of Parliament, which had thus been removed there by *Certiorari*; and it is, to all intents and Purposes of Law, to be considered as a Record of the Proceedings; and they are to be considered as having the former Proceedings before them, upon the same Record; and all Courts are bound to admit that Record, which was thus made in a Court of legal Proceeding: and therefore, my Lords, if that Court was the proper Jurisdiction, can any body say, that the Record of what was there transacted is not as proper Evidence as what the Noble Lord at the Bar has called for, and which has been read to your Lordships, which is the Act of Attainder of the last Sessions of Parliament? My Lords, the Gentlemen on the other Side say, that this is an erroneous Method: Say they, you have not gone to the proper Person; here is a particular Jurisdiction to record a Surrender, and you should have gone to the Justice of Peace to whom the Surrender was made. My Lords, I have looked upon the Act of Parliament, to see what the Legislature had thought proper to prescribe, as the Duty of the Justice of Peace to whom the Surrender is directed to be made.

My Lords, all that is required of him by this Act of Parliament is, he is, upon the Surrender, to commit the Person so surrendering to Prison, for the High-Treason, there to remain till he is discharged by due Course of Law; and he is immediately to give Notice of it to the Secretary of State. Your Lordships will then be pleased to consider, what it is that the Gentlemen insist upon: My Lords, will any body say, that what is mentioned in this Act of Parliament, in regard to the Justice of Peace, will take away the Jurisdiction from a Supreme Court of Original Jurisdiction, in Cases of that Kind; and that without a Word being mentioned in the Act concerning it?

My Lords, they say, That the Jurisdiction of recording the Surrender is given to the Justice of Peace, though the Act of Parliament does not say a Word of his doing any Thing of this Nature: And, my Lords, if the Act of Parliament had made him the proper Person, whose Duty it was to record the Surrender, to what Purpose is he to send an Account of it to the Secretary of State? Was he to make up the Record? No; all the Justice of Peace was to do, was to give Notice of the Transaction before him, to those Persons who are appointed to do what shall be done upon such a Surrender. My Lords, there is something that was said by the Counsel for the Noble Lord at the Bar, which I will only just take Notice of: They were pleased to put this Case: Say they, Suppose this Record is now to stand, it is a Matter transacted, to which the Noble Lord at the Bar is no Party, and consequently ought not to be read against him. My Lords, I will venture to say, there is no such general Rule; Nobody will contend (because there are numberless Instances of it), that Records are not constantly permitted to be read as Evidence against Persons who are no Parties to them. My Lords, Suppose a Man is charged with having harboured a Person attainted of Treason or Felony; and, when he comes to be tried, say they, Gentlemen, you shall not read the Record of that Person's Attainder, because the Man now charged is no Party to it: Do not charge me with receiving or harbouring a Man attainted by that Record; for though the Record may be read as against him, yet it cannot be read against the Person charged, who was no Party to it. My Lords, Would any Court of Justice make the least Difficulty in admitting such a Record to be read? My Lords, the Reason of the Thing itself speaks it; for till the Record is read, it does not appear there is any Person attainted; and consequently no Charge against the Prisoner. And, my Lords, to make it a Civil Case, suppose a Lord of a Manor claims by Escheat the Estate of a Person attainted, and another Lord claims the same Estate, cannot the Record of the Person's Attainder be read as Evidence in that Case, though neither of them are Parties to it? My Lords, there can be no Doubt but it may; and therefore, my Lords, that Objection has no Force upon the present Question. My Lords, the Objection now made is to the reading of a Record, or Part of a Record, which the Noble Lord at the Bar himself called for; and I must submit it to your Lordships, that we are entitled to have it now read: What the Consequence of reading of it will be, is not now to be considered; for we argue singly upon the Question, Whether it shall be now read, or no?

Mr. SOLLICITOR GENERAL.

My Lords,
WHETHER the Record which has been opened may be read at all; and what shall be the Effect of it, after it is read (I mean, whether it may be falsified), are two separate and distinct Considerations.

Your Lordships were pleased to ask the Noble Lord at the Bar, and his Counsel, Whether they would rest their Objection to the reading of it? or suffer it to be read, and then object to the Consequence of it?

They chose to object to the Reading; and the Counsel were allowed to speak to that Point only: And yet there is not an Authority they have quoted, which don't prove, that at least it must be read.

The Competency of all Evidence, in a great Measure, depends upon the Nature of the Question to which it is applied; for that is Evidence in one Case, and to one Purpose, which is not so in another Kind of Case, or to another Sort of Purpose.

The Merits of this Objection, therefore, will depend upon thoroughly understanding the Purpose for which this Record is produced.

The Incapacity of a Person attainted to give Testimony, does not arise from his Life being thereby in the Power of the King; or any Presumption, that, through the Fear of Death, he may be induced to exceed the Bounds of Truth; but it is one of those many Incapacities which are the Consequences of his Attainder.

He is cut off from the Community; his Blood is corrupted; he loses his Credit; and therefore can be a Witness in no Case, neither for or against a Prosecution, nor in any Civil Suit between Subject and Subject.

All Proceedings upon which a Man can be attainted, at the Common Law, are between the King and the Party only: But such Proceedings are Evidence, and the only Evidence to prove the Attainder between all Persons, and upon all Occasions; which shews the Mistake the Gentlemen proceed upon, when they object, that my Lord Lovat was no Party to this Record; and therefore it shall not be read against him.

The Party who objects to a Witness, because he is attainted, undertakes to shew, that, according to the Course of the publick Law and Justice of the Nation, he is so; and therefore may read any Proceedings in the Course of that publick Law, to prove it.

So likewise, in Answer to the Objection, and to shew the Person not attainted, any of the like Proceedings may be read.

If a Conviction and Judgment is read, it may be answered by reading the Reversal of that Judgment upon a Writ of Error; and yet the King must be the only Party to both these Proceedings.

The likeliest Case to the present, at Common Law, is that of an Outlawry.

If an Outlawry is produced, to prove a Man attainted, the Reversal of that Outlawry may be given in Evidence, as a full Answer to that Proof: And yet most of those Reversals in High-Treason, are grounded upon the Attorney General's confessing an Error in Fact, by the King's Command; and this generally is a merciful Confession, contrary to the Truth of the Case: Several Noble Families now enjoy their Honours, and their Estates, by virtue of such Reversals.

I will not mention Instances; as your Lordships have the Assistance of the Judges, I am persuaded they will inform your Lordships, that there are many. Would an Objection be endured to the reading such a Reversal?

The present Case is that of a Parliamentary Outlawry, if I may so call it: Persons fled from Justice are attainted in a more expeditious and summary Way than could be done by the Course of the Common Law, unless they come in, and take their Trials within a limited Time.

The only Court in this Part of the Kingdom, which can award Execution against a Person, as attainted within this Act, is the Court of King's Bench: There can be no Party to such Proceedings but the King, who is intrusted with the whole Execution of the publick Law of the Nation. A Proceeding, therefore, in that Court, which shews a Man never to have been attainted within the Act, is Evidence to answer an Objection, which says, he is. It proves conclusively, that, in the Eye and Consideration of the publick Law, he is not an attainted Man; he may inherit, he may purchase; he can't be put to Death. By this Proceeding the King is bound for ever; all Magistrates are bound; no Judicature can now consider the Witnes in any other Light than he ought to be considered in, if the Act had never been made. It is possible then to doubt, whether (in Answer to an Objection, that by the Law of the Land this Witness is now looked upon as an attainted Man) a Record should be read, which proves, that by the Law of the Land he is not looked upon as an attainted Man? He is either a Person liable to all the Consequences of an Attainder, or none.

Mr. NOEL.

My Lords,

I SHALL be very short in offering my Sentiments to your Lordships upon the present Question, because three learned and able Gentlemen have already spoken very fully to it.

My Lords, The Question arises upon an Objection taken by the Noble Lord at the Bar, against the Competency of Mr. Murray's Testimony, as he stands attainted by the Act of the last Sessions of Parliament, which has been read to your Lordships: But after that, another Objection arose, in consequence of what we, on the Part of the Prosecution, offered, which was a Record we proposed to be read: To the reading of which the Noble Lord objected, and has relied upon that Objection, that it cannot be read at all.

My Lords, I was surpris'd at that Objection; and the Counsel for the Noble Lord have been so sensible, that there was no great Weight in it, that they have prematurely, in the Course of their Arguments, run into a Debate concerning the Force and Effect of it when read, and not to the actual reading of it; and, my Lords, it was a very strange Proposition to be insisted on before your Lordships, that in a Question relating to Mr. Murray, and him alone, when an Objection is made to his Testimony, that he stands attainted by an Act of Parliament, that your Lordships should shut your Eyes, and not receive Evidence of the Proceedings of a Court, having proper Jurisdiction to determine any Question which might arise upon that Act of Parliament: I say, my Lords, that would be a most extraordinary Thing indeed, when the Objection relates to Mr. Murray, upon the Attainder by Act of Parliament; and yet, they say, your Lordships shall not see the Record of the Proceedings of a Court of Justice, founded upon that Act of Parliament. But, my Lords, as the Gentlemen have, under a Notion of considering this Objection in some Degree, considered the Force of the Record itself, if it had been read, tho' they have done it improperly, yet I doubt it will be expected, that we should take Notice of the Foundation of that Argument.

The Question, therefore, seems to be, Whether Mr. Murray is to be considered under the Act, and the Proceedings in the Court of King's Bench upon it, as an attainted Person, or not.

My Lords, the Act of Parliament does not finally conclude any Person: It names several Persons, whom the Act declares shall be attainted by the Force of that Law, unless they comply with the Terms expressed in it; and the proper Court of Law must judge, when the Person comes before them,

them, whether he was a Person within the Meaning of the Act of Parliament, or not. Therefore, my Lords, when he was before a Court, who had proper Jurisdiction upon that Question, Whether he was an attainted Person, or not, and they have determined that Question, That he was not, then there is an End of that Question. But it has been said, That this may affect, in consequence, the Property of a third Person; and that the Noble Lord at the Bar ought not to be affected by the Proceedings in the King's-Bench. But I apprehend this Question relates personally to Mr. Murray, and to no other. It is merely a Question as to his Capacity or Incapacity; that is, whether he be attainted or no, and therefore, my Lords, that distinguishes this Case from the Cases of private Property, alluded to by the Counsel for the Noble Lord in the Course of their Argument.

My Lords, I beg Leave to state this Matter in a stronger Light: If your Lordships shall say, That Mr. Murray is an attainted Person, you must likewise say, that he is liable to have Execution awarded against him upon this Act; for, when that is the Question, it must be considered in-tire, with all its Consequences.

My Lords, if no Execution can be awarded against him, your Lordships cannot say, that he is an attainted Person: Therefore your Lordships see what Difficulties will ensue, if you should determine, that he stands attainted, with respect to the Noble Lord at the Bar, but not to the Consequences that the Law draws from his being an attainted Person. My Lords, it would be the strangest Case in the World, if that should be your Lordships Sentiments, that he is not attainted in one Respect, and yet that he is attainted in another Respect.

My Lords, the Counsel for the Noble Lord object, That the Proceeding which has been had, has been by the Confession of the Attorney General, though they admit it was in the Power of the Crown to make such Confession. I must submit it to your Lordships, that though it is by the Confession of the Attorney General, as it is by proper Authority, and in a legal Court, having proper Jurisdiction, that it is as effectual and binding upon the Crown as any Act they can possibly do: And can your Lordships say, that Mr. Murray shall not have the Benefit of a legal Proceeding of a Court of Justice, having complete and lawful Jurisdiction, and who have determined the Case?

My Lords, it is said, That there is some Difference where it is upon the Confession of the Attorney General, and where it is founded upon a Verdict. My Lords, your Lordships will consider what are the Circumstances of the Case in regard to that Matter: A Gentleman is brought before a Court of Justice, to answer why Execution should not be awarded against him upon a supposed Attainder. He pleads a Fact that is sufficient, if true, to exempt him from that Attainder: Can the Gentleman say, that he must not avail himself of it, because the Attorney General will not put him to the Expence to prove it? My Lords, it is said, that if he had denied the Plea, the Consequence to Mr. Murray must have been, that he would not have appeared to have been a Person exempted from the Act? No: But, say they, because the Attorney General and the Crown are satisfied of the Truth of the Plea, and will not put him upon proving it, therefore he is not to have the Benefit of the Judgment of the Court upon that Question. I must submit it to your Lordships, that every Man, under those Circumstances, would be in a most fatal Situation, and that it would be attended with very bad Consequences. A Man is asked, what he has to say why Execution should not be awarded against him; and pleads a Fact that actually will clear him from the Attainder: The Attorney General confesses the Plea, does not join Issue, and will not give him an Opportunity of proving it; and, my Lords, what is to be the Consequence? Why, according to this Doctrine, he must inevitably be condemned as a Person attainted; whereas, if he had been put to the Proof of it, it might have been determined, that he was not attainted. I apprehend your Lordships will not suffer them to draw that Inference, that, because the Attorney General has not put him to the Proof of his Plea, he is to be considered as a Person attainted, contrary to the Judgment of the Court.

SIR RICHARD LLOYD.

My Lords,

THE Question has been so fully spoken to already, that I shall not have Occasion to take up much of your Lordships Time: But I cannot forbear expressing my Surprise at the Objection now made, viz. "That this Record cannot be read against the Noble Lord at the Bar:" The Reason given for which is, that he is no Party to it. Many Answers have been given; and I will not repeat them: But shall offer a Consideration or two to your Lordships, in order to shew that the Force and Effect of Mr. Murray's Attainder has been, by this Transaction on Record, totally taken off.

My Lords, the whole Argument on the Prisoner's Side is in this Compass; viz. they say, that Mr. Murray (the Person produced by us as a Witness, is still attainted; and therefore, by the Rules of Law, cannot be a Witness: And 'tis certainly true, that if he stands now attainted, he cannot, by our Law, be admitted to give Testimony. Let us come then to that Question, Does he, or does he not, at this Hour, stand attainted by virtue of the late Statute?

It cannot be doubted, but that a Parliamentary Attainder of this Sort may be dissolved by some Method or other; and the very Statute directs one Way; viz. by Surrender before a particular Day; and the only Way to ascertain that Fact is a Judgment on Record, that he did surrender.

I would ask the Counsel, for the Noble Prisoner, whether Mr. Murray can by Law be called to Judgment for that High-Treason for which he was by the late Act attainted? They must own, that this Record of Surrender would be an absolute Defence on such an Occasion; nay, it would be an absolute Bar to such a Demand of Judgment. If this Defence would not be his Security, the Consequence is, that there would be no Method at all of getting rid of such an Attainder.

It has been objected, that though this may be a good Discharge betwixt the Crown and Mr. Murray, yet it ought not to affect others, who are not Parties to that Proceeding. My Lords, 'tis true, others may be affected by Mr. Murray's being restored to his Credit. But that is no Ob-

jection; for though by virtue of this Record he is so restored, yet that is only a Consequence, which necessarily follows from the Facts ascertained by that Record. The Proceeding on the Record was a legal Transaction between the Crown and Mr. Murray, and no other Person whatsoever had a Right to be a Party to it. The King, at the Time of Mr. Murray's pleading on the Record, was the only Person to call him to account for his Guilt: The only Controversy at that Time was betwixt the Crown and the Party called down to Judgment: The Matter therefore being a legal Transaction, a Law Controversy betwixt the only proper Parties, its necessary Consequences must follow, let who may be affected.

But 'tis said, "That if it had been found by Verdict, that Mr. Murray had surrendered in due Time, then the Record might have been read in Evidence against all Persons; but that, as 'tis founded on Mr. Attorney General's Confession of the Surrender, it ought not." This is a strange Distinction. I would ask the Gentlemen who make it, whether this Record by Confession is not a full and complete Record? Has not his Majesty's Attorney a Right to confess it? No Lawyer will say, that he has not such a Right by the Laws of our Land.

My Lords, let me argue this Matter, not on the Principles of Law only, but on those of Reason, abstracted from the Law; and thence see, whether Mr. Murray is not as much discharged from his Attainder, or his Attainder as much avoided, by this Confession of the King by his Attorney, as he would be by Verdict.

Is the King the only Person in the Kingdom, who shall be compelled to say a Thing is not true, which he knows to be true? Or, is his Majesty the only Person who shall be hindered from owning that to be true upon Record, which he and all the World knows is true?

'Tis a Point of legal Controversy betwixt the Crown and one of his Subjects; and supposing it to have been a Fact notorious, that Mr. Murray (the Defendant in that Controversy) had come in and surrendered in due Time according to the late Act, would it not be absurd to say, that the Crown's Attorney should be bound by Law to say, that he did not surrender? i. e. shall be bound to deny and put to Trial a Fact, which he knows is indisputably true, and needs no Trial? Yet this, my Lords, must be the Doctrine to be maintained by the Counsel for the Noble Prisoner; or else they must agree, that this Record of the Fact of Surrender, by Confession of the Attorney General, is of equal Weight with any other Record whatsoever.

My Lords, his Majesty has a Right to the Life of every Person attainted; and would it not be a cruel Law, that should prevent him from admitting any Facts to be true, which such Person insists on for the saving his Life, when the same, within his own Knowledge, strictly are so?

There is no Doubt but that a Transaction of this Kind betwixt Subject and Subject is good, where each Party to a Controversy (Plaintiffs and Defendants) admit such Facts on the Record, which they know the Certainty of, and never, unless out of a Spirit of Perverseness, put them in Issue. Where is the Difference, since the Crown and Mr. Murray are, as to that Matter then in Controversy, the only Persons who could be Parties? The Capacity to be a Witness is only a Consequence naturally flowing from the Avoidance of the Attainder. Mr. Murray is not restored to his Credit by Act of Favour, but a necessary Consequence of Law, and such as the Crown could not prevent; for as the Attainder was the only Cause of his Loss of Capacity to be a Witness; when the Force of that is taken off, that Capacity is of Course restored, not out of Favour, but of strict Right, and by necessary Consequence.

My Lords, I would ask one Question; viz. Whether the Counsel for the Noble Lord at the Bar will say, that Mr. Murray has this present Day any Attainder against him? Or whether he can ever be called again to answer on the Foot of that Parliamentary Attainder, in which he was included?

If he cannot, as most certainly he cannot, then there is nothing now existing which takes away his Testimony; and as the present Record is of a Controversy betwixt the only proper Parties to it, and is produced only to manifest a Fact then depending, and then by the Rules of Law ascertained, it ought to be read.

L. H. S. Gentlemen of the House of Commons, I suppose you have no Objection to the Counsels replying.

Sir John Strange. No, my Lords; provided we have the last Word; which is our Right.

MR. FORRESTER.

My Lords,

I Shall take up the less of your Lordships Time at present, because I admit most of the Propositions laid down by the learned Managers; though I conceive that none of them have answered the Objection we made to the Reading of this Record, which was the Possibility of Damage that might ensue to the Noble Lord at the Bar. My Lords, the Reason is plain why we object to it, because the Credit of the Fact depending merely upon the Confession of the Attorney General, if it be received in the present Case, it must be so in every other, whether the Questions relate to Property, or any other Matter; and if it be conclusive to the Noble Lord at the Bar, it is equally so to every Man in this Land. My Lords I admit every Case put by the learned Manager who spoke first, as relative to Criminal Proceedings; but what we insist upon is, That this Confession of the Attorney General does only bind the Crown, and the Parties to it; but binds no other Person: And, my Lords, they have cited no Authority to your Lordships to prove it binding upon any body else. My Lords, it was said by the learned Manager, That if Mr. Murray was brought a second Time into any Court of Justice, he would have the whole Benefit of this Record, and thereby, my Lords, prove himself not attainted by this Act of Parliament: And there is no doubt of it, because the Confession is the Act of the Crown, who is bound by it.

They likewise say, that any Person claiming under Mr. Murray might intitle himself under this Record. My Lords, I admit that also, because such Person would have the same Right as Mr. Murray himself; but, my Lords, that does not prove that it can affect any other Person.

My Lords, it is admitted that a Pardon would have taken off all Objection: But I humbly insist, that by this Method, the Gentleman still con-

continues liable to be considered as an attainted Person in another Part of the Kingdom, I mean in Scotland, where this Record would be no Evidence; for should he escape from his present Confinement to Scotland, and be brought into the Court of Justiciary, to shew Cause why Execution should not be awarded against him, as attainted by this Act of Parliament, his Plea in the King's-Bench, confessed by the Attorney General, would be of no Avail to him: He must make out the Fact insisted on by other Proof, which, being Matter of Evidence, might as well come out one Way as the other, that he did not, as that he did, surrender before the 12th of July last; that he was taken by the King's Forces, as that he did surrender himself as the Act requires. Thus your Lordships see, in how high a Degree the Question affects the Noble Lord at the Bar; and your Lordships will be very tender how this Gentleman's Testimony is admitted in a Case of this Nature, until both his Competency and Credit be established by better Authority than the bare Confession of the Attorney General.

My Lords, I mentioned several Instances, where a Record of this Kind would not be Evidence against a third Person: But, say the Gentlemen, that is not the Case here; because my Lord Lovat is not affected by Murray's Attainder. The King, who had the sole Right of prosecuting, and had an Interest in the Attainder, has declared him not to come within the Act of Parliament. But I must submit to your Lordships, that my Lord Lovat is affected by, and concerned in, the Consequence of the Attainder. He has a Right to set aside the Testimony of Mr. Murray, if attainted; and that Right of setting aside his Testimony is equally strong as a Right to an Estate, or any other Right given by Law; and the same Methods must be used to deprive him of the one as the other. My Lords, it is said, That this Method of Confession is the proper Course; that it is daily made use of in that; and the Attorney General, upon a Writ of Error brought, and Errors assigned in Fact, or in Law, may admit them to be so. But, my Lords, in none of the Cases quoted by the Gentlemen is there any, wherein the Attorney General has, by his Confession, made that Error, which is not so: And although the Party should assign Errors, and the Attorney General admit them, yet would not that bind the Court to pronounce them to be Errors, if they appear otherwise. My Lords, as so much Time has been taken up already, I will not repeat any of the former Arguments; but shall conclude with an Observation delivered down to us by one of the greatest and most upright Judges that ever sat in this Hall; I mean my Lord Chief-Justice Vaughan, who tells us, That the artificial Reasoning of Law ought never to take place against the Principles of natural Justice and Equity: And, my Lords, it is a Principle of natural Justice, that a third Person should not be prejudiced by the Acts of others. The same learned Judge concludes his Paragraph, by adding, That in Cases which depend upon fundamental Principles, from whence plain and natural Conclusions may be drawn, Millions of Precedents are to no Purpose: But, my Lords, there has not been one single Precedent laid before your Lordships, where the Right of a third Person may be affected in the Manner now contended for; and as nothing of that Kind has been attempted, I beg leave to insist, That the Right of the Noble Lord at the Bar to set aside this Witness, is as much a Right, as that he has to any Part of his own Estate; and submit therefore to your Lordships, whether they ought not to substantiate this Testimony by some better Proof than so weak a Thing as a Record, founded only on the Suggestion of the Party, confessed by the Attorney General.

L. H. S. Gentlemen of the House of Commons, the Counsel for my Lord Lovat have done with what they had to offer by way of Reply: Would you say any thing to it?

MR. ATTORNEY GENERAL.

My Lords,

IT is said by the Counsel for the noble Lord at the Bar, That they do not deny any Proposition laid down by us; but that they deny the Consequence of those Propositions. My Lords, A Denial of the Premises would be a Denial of the Consequences; but an Admission of the Premises here is an Admission of the Consequences: They now say, all they desire to contend for, is, That the Confession in this Case does not bind a Third Person; and that they shall not by that lose their Right to this Objection. My Lords, What is that Objection founded upon? It is founded upon this Supposition, That the Witness called is an attainted Person. If he is not attainted, their Objection fails; for they cannot say, that he is an improper Person to produce as a Witness, upon any other Ground. If the Record therefore destroys the Pretence of an Attainder, it proves his Competency. Now the Counsel for the Prisoner have not been able to point out, or suggest, any one Instance or Respect, in which he can be said to be, or affected, as an attainted Person, unless for the present single Purpose. And it would be very extraordinary to say, that a Person who can lose neither his Life nor Estate, nor the Purity of his Blood, as a Person attainted of Treason, should be deemed attainted, for no other Purpose but to render him infamous. My Lords, What is the Offence by this Act? It is not High-Treason; the Offence is in not submitting to Justice; and the Record shews, that he did submit himself to Justice. This is stronger, as to that Point, than a Pardon, because it avoids the original Guilt. The Gentlemen say, That this Record cannot be made use of in Scotland; and that if the Witness was brought before a Court of Justice there, for Execution, upon the Foundation of this Act, he could never avail himself of this Record. My Lords, I deny that; and I take it to be clearly otherwise; for what would be the Consequence, if he could not? Much more than the Gentlemen are aware of: For by the same Rule that this Record could not avail him there, no Verdict, no Acquittal in England, could protect a Man from another Prosecution in Scotland, for the same Offence; and the Prisoners who have already had, or hereafter shall receive their Trial, either in England or Scotland, for the late Rebellion, and been acquitted; may, by being sent into the other Part of the Kingdom, be tried a Second Time, and be put twice in Hazard of their Lives. As this is contrary to the Laws of England, I believe it is equally so to the Laws of Scotland, as they stood originally; for I take it to be contrary to the First Principles of all Laws,

that after a Man is fairly tried for an Offence, by a Court that has full Cognizance of the Crime, he should be taken up, and tried again for the same Offence. No Law will admit of it. But, with respect to Treason, it is made clear by the Statute of 7 Ann. which makes the Law of Treason, and the Manner of trying it in Scotland, the same as in England. My Lords, if the Gentlemen ask, How this Record may be made use of there? The Method is by producing the Record, or proving a true Copy of it, as is done in Case of the Record of a Judgment of any other Court: And the Judges in Scotland will be bound by this Record. My Lords, the absurd Consequences arising from the contrary Doctrine appear at first Sight; and are too many now to enumerate. The Gentlemen say, That a Confession of an Error in Law will not be admitted in any Court: I do agree that it will not, because the Court must judge upon the Whole of the Record, and determine upon their own Judgment and Knowledge of the Law, whether (supposing all the Facts to be true) there is Error, or not. The Reason is, because that is their proper Province; and they neither want, nor can be bound by, the Confession of the Attorney General. But it is quite otherwise as to Matters of Fact, which the Court do not *ex officio* examine into themselves; they must take them to be either as they are stated and admitted between the Parties themselves, or appear by the Verdict of a Jury. To apply this to the present Case: Mr. Murray says, That he did surrender, and submit himself to Justice, according to the Act of Parliament. The Attorney General, by Command of his Majesty, admits that Fact: As there is no Issue joined, a Jury can't be summoned to try it; and it is impossible the Court should try it themselves, by examining Witnesses; they have no Commission for it; and the Law gives them no such Power. The Fact, therefore, must be taken to be true; and, as it cannot be now controverted, your Lordships must judge, whether it don't clear him of any Attainder.

Sir JOHN STRANGE.

My Lords,

I SHOULD not now have stood up, to have taken up any more of your Lordships Time, but in regard to what was mentioned by the Gentlemen who are Counsel for the Prisoner, that this Record cannot be made use of in Scotland. My Lords, I will beg Leave to put them in mind of the Statute made in the Seventh Year of Queen Anne; which says, That Trials for High-Treason in that Kingdom are to be the same as if they were here; and whatever Benefit a Person will be intitled to here, they would be equally intitled to there: And therefore I would not have it now taken for granted, that in such Cases, That should not be admitted as Evidence in one Part of the Kingdom, which is Evidence in another Part of it.

Lord Talbot. My Lords, If the Record is now to be read, only to shew, That Mr. Murray surrendered himself within the Time prescribed by the Act, I should have no Objection to the reading of it; but if it is to prove Mr. Murray to be a competent, or an incompetent Evidence, then I think it of that Consequence, that I hope some Lord will move to adjourn to the Chamber of Parliament.

Lord High Steward. My Lords, if any Debate arises upon the Point that has been argued at the Bar, your Lordships must adjourn to the Chamber of Parliament, to debate and consider it.

Then the Earl Stanhope moved the House to adjourn to the Chamber of Parliament: And the House was adjourned accordingly: And, after about Two Hours, returned in the same Order as before. The House was resumed; and Proclamation made for Silence.

Lord High Steward. The Lords adjourned to the Chamber of Parliament, upon the Question which had been argued before them, Whether the Record of the Court of King's Bench, offered in Evidence by the Managers, ought to be read, or not? And their Lordships have come to the following Resolution; with which I am ordered to acquaint the Managers for the House of Commons, and you, my Lord Lovat: And it is this; That the Managers for the Commons be admitted to prove, and give in Evidence, the Record of the Proceedings in the Court of King's Bench, upon the Certiorari; whereby the Act of the last Session of Parliament, for attainting John Murray of Broughton, and others, unless they surrender themselves by a certain Day therein mentioned, was removed before that Court.

Mr. At. Gen. My Lords, We desire Mr. Tully may be called, to prove the Record.

Lord Lovat. My Lords, I told your Lordships before, that I would give you very little Trouble; and now I am willing to give you still less. I acknowledge the Record; and shall not give your Lordships the Trouble of hearing it proved.

Lord High Steward. That will save the Trouble of proving it; but it must be read. Does your Lordship admit the Record to be read, without further Proof?

Lord Lovat. Yes, if your Lordships please.

Then the Record was read by the Clerk, at the Table; and is as follows:

Pleas before our Lord the King, at Westminster, of Hilary Term, in the Twentieth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great-Britain, France, and Ireland, King, Defender of the Faith amongst the Pleas of the King. Roll.

England. } OUR present Sovereign Lord the King hath transmitted to his beloved and faithful Sir William Lee, Knight, and his Associates, Justices of our said present Sovereign Lord the King, assigned to hold Pleas before the King himself, his Writ of *Mittimus*; together with a Writ, directed to the Clerk of his Parliaments, and the Return made to the same; and also the Record of a certain Act of Parliament of our said present Sovereign Lord the King, made at Westminster, closed in these Words:

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The Writ of } TO Our beloved and faithful Sir William Lee, Knight,
Militum. } and others, his Associates, Our Justices assigned to
hold Pleas before Us, Greeting. We send you inclosed, in these Presents,
the Tenor of a certain Writ of *Certiorari*, directed to our beloved *Ashley*
Cowper, Esquire, Clerk of our Parliaments; together with the Return;
indorsed upon the Back of the said Writ; and also the Tenor of a cer-
tain Act, whereof Mention is made in the same Writ, intituled, An Act
to attain *Alexander Earl of Kellie*; *William Viscount of Strathallan*; *Alex-*
ander Lord Pittligo; *David Wemyss*, Esquire, commonly called Lord *Elcho*,
eldest Son and Heir Apparent of *James Earl of Wemyss*; *James Drummond*,
Esquire, eldest Son and Heir Apparent of *William Viscount of Strathallan*;
Simon Fraser, Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat*;
George Murray, Esquire, commonly called Lord *George Murray*, Brother
to *James Duke of Athol*; *Lewis Gordon*, Esquire, commonly called Lord
Lewis Gordon, Brother to *Cosmo George Duke of Gordon*; *James Drum-*
mond, taking upon himself the Title of Duke of *Perth*; *James Graham*,
late of *Duntroon*, taking on himself the Title of Viscount of *Dundee*; *John*
Nairn, taking upon himself the Title or Stile of Lord *Nairn*; *David*
Ogilvie, taking upon himself the Title of Lord *Ogilvie*; *John Drummond*,
taking upon himself the Stile or Title of Lord *John Drummond*, Brother
to *James Drummond*, taking on himself the Title of Duke of *Perth*; *Robert*
Mercer, Esquire, otherwise *Nairn of Aldie*; Sir *William Gordon of Park*;
John Murray of Broughton, Esquire; *John Gordon the elder*, of *Glenbuckett*;
Donald Cameron the younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother
to *Donald Cameron the younger*, of *Lochiel*; *Ludovick Cameron of Tor-Castle*;
Alexander Cameron of Dungallon; *Donald Mac Donald of Clanronald*, junior,
Son to *Ronald Mac Donald of Clanronald*; *Donald Mac Donald of Loch-*
garie; *Alexander Mac Donald of Keppoch*; *Archibald Mac Donald*, Son of
Col *Mac Donald of Barisdale*; *Alexander Mac Donald of Glencoe*; *Evan*
Mac Phereson of Clunie; *Lauchlan Mac-Lauchlan of Castle-Lauchlan*; *John*
Mac Kinnon of Mac Kinnon; *Charles Stewart of Ardsheil*; *George Lockhart*,
eldest Son and Heir apparent of *George Lockhart of Carnwath*; *Lawrence*
Olipphant the elder, of *Gask*; *Lawrence Olipphant the younger*, of *Gask*;
James Graham the younger, of *Airth*; *John Stewart*, commonly called
John Roy Stewart; *Francis Farquharson of Monalterye*; *Alexander Mac*
Gilivrae of Drumaglash; *Lauchlan Mac Intosh*, Merchant at *Inverness*;
Malcolm Ross, Son of *Alexander Ross of Pitcalny*; *Alexander MacLeod*, Son
to Master *John MacLeod*, Advocate; *John Hay*, Portioner of *Restalrig*,
Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to
William Lumsdale, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William*
Fidler, Clerk in the Auditor's Office in the Exchequer of *Scotland*; of
High-Treason, if they shall not render themselves to One of his Majesty's
Justices of the Peace, on or before the Twelfth Day of *July*, in the Year
of our Lord One thousand Seven hundred and Forty-six, and submit to
Justice: The Tenor of which said Act We, for certain Reasons, have
caused to be brought before Us into Our Chancery. And we do hereby
command you, That, having inspected the Tenor of the said Act, you
do further cause to be done thereon, that which of Right, and according
to the Law and Custom of *England*, you shall see fit to be done. Witness
Ourselves at *Westminster*, the Tenth Day of *February*, in the Twentieth
Year of Our Reign.

The Tenor of the said Writ of *Certiorari*, and the Return made to
the same; and also the Tenor of the said Act, in the said Writ men-
tioned, follow in these Words:

The Writ of } GEORGE the Second, by the Grace of God, of Great
Certiorari. } Britain, France, and Ireland, King, Defender of the
Faith, To our beloved *Ashley Cowper*, Esquire, Clerk of our Parliaments,
Greeting. We being willing (for certain Reasons) to be certified con-
cerning the Tenor of a certain Act by Us Made and Enacted, by and with
the Advice and Consent of the Lords Spiritual and Temporal, and Com-
mons, in Parliament assembled, at *Westminster*, the Seventeenth Day of
October, in the Nineteenth Year of Our Reign, intituled, An Act to at-
tain *Alexander Earl of Kellie*; *William Viscount of Strathallan*; *Alexander*
Lord Pittligo; *David Wemyss*, Esquire, commonly called Lord *Elcho*,
eldest Son and Heir Apparent of *James Earl of Wemyss*; *James Drummond*,
Esquire, eldest Son and Heir Apparent of *William Viscount of Strathallan*;
Simon Fraser Esquire, eldest Son and Heir Apparent of *Simon Lord Lovat*;
George Murray, Esquire, commonly called Lord *George Murray*, Brother
to *James Duke of Athol*; *Lewis Gordon*, Esquire, commonly called Lord
Lewis Gordon, Brother to *Cosmo George Duke of Gordon*; *James Drum-*
mond, taking upon himself the Title of Duke of *Perth*; *James Graham*,
late of *Duntroon*, taking on himself the Title of Viscount of *Dundee*;
John Nairn, taking upon himself the Title or Stile of Lord *Nairn*; *David*
Ogilvie, taking upon himself the Title of Lord *Ogilvie*; *John Drummond*,
taking upon himself the Stile or Title of Lord *John Drummond*, Brother
to *James Drummond*, taking on himself the Title of the Duke of *Perth*;
Robert Mercer, Esquire, otherwise *Nairn of Aldie*; Sir *William Gordon of*
Park; *John Murray of Broughton*, Esquire; *John Gordon the elder*, of
Glenbuckett; *Donald Cameron the younger*, of *Lochiel*; Doctor *Archibald*
Cameron, Brother to *Donald Cameron the younger* of *Lochiel*; *Ludovick*
Cameron of Tor-Castle; *Alexander Cameron of Dungallon*; *Donald Mac Don-*
ald of Clanronald, junior, Son to *Ronald Mac Donald of Clanronald*;
Donald Mac Donald of Lochgarie; *Alexander Mac Donald of Keppoch*; *Arch-*
bald Mac Donald, Son of Col *Mac Donald of Barisdale*; *Alexander Mac*
Donald of Glencoe; *Evan Mac Phereson of Clunie*; *Lauchlan Mac Lauchlan*
of Castle-Lauchlan; *John Mac Kinnon of Mac Kinnon*; *Charles Stewart of*
Ardsheil; *George Lockhart*, eldest Son and Heir Apparent of *George Lockhart*
of Carnwath; *Lawrence Olipphant the elder*, of *Gask*; *Lawrence Olipphant*
the younger, of *Gask*; *James Graham the younger*, of *Airth*; *John Stewart*,
commonly called *John Roy Stewart*; *Francis Farquharson of Monalterye*;
Alexander Mac Gilivrae of Drumaglash; *Lauchlan Mac Intosh*, Merchant at
Inverness; *Malcolm Ross*, son of *Alexander Ross of Pitcalny*; *Alexander*
MacLeod, Son to Master *John MacLeod*, Advocate; *John Hay*, Portioner
of *Restalrig*, Writer to the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*,
Son to *William Lumsdale*, otherwise *Lumsdain*, Writer in *Edinburgh*; and
William Fidler, Clerk in the Auditor's Office, in the Exchequer of *Scot-*
land, of High-Treason, if they shall not render themselves to One of his
Majesty's Justices of the Peace, on or before the Twelfth Day of *July*,
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in the Year of our Lord One thousand Seven hundred and Forty-six, and
submit to Justice; do command you, That, immediately after the Re-
ceipt of this Writ, you do distinctly and openly send before Us, into Our
Chancery, the Tenor of the said Act, with all Things touching the
same, as fully and perfectly as the same now remains in your Custody;
together with this Writ. Witness Ourselves at *Westminster*, the Seventh
Day of *February*, in the Twentieth Year of Our Reign.

The Return. } THE Execution of this Writ appeareth in a certain
Schedule to this Writ annexed, as within I am com-
manded, *Ashley Cowper*, Esquire, Cler. Parliamentar. In the Parliament
held at *Westminster*, the Seventeenth Day of *October*, in the Year of our
Lord One thousand Seven hundred and Forty-five, and in the Nineteenth
Year of the Reign of our Sovereign Lord *George the Second*, by the Grace
of God, of Great-Britain, France, and Ireland, King, Defender of the
Faith; and there continued by several Adjournments until and unto *Wed-*
nesday the Fourth Day of *June* One thousand Seven hundred and Forty-six,
by the Consent of the Lords as well Spiritual as Temporal; and of the
Commons, and by the Assent of the King's Majesty then present; the
following Statute (amongst others) was Ordained, Enacted, and Esta-
blished, to wit, An Act to attain *Alexander Earl of Kellie*; *William Vis-*
count of Strathallan; *Alexander Lord Pittligo*; *David Wemyss*, Esquire,
commonly called Lord *Elcho*, eldest Son and Heir Apparent of *James Earl*
of Wemyss; *James Drummond*, Esquire, eldest Son and Heir Apparent of
William Viscount of Strathallan; *Simon Fraser*, Esquire, eldest Son and
Heir Apparent of *Simon Lord Lovat*; *George Murray*, Esquire, commonly
called Lord *George Murray*, Brother to *James Duke of Athol*; *Lewis Gor-*
don, Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George*
Duke of Gordon; *James Drummond*, taking upon himself the Title of
Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himself the
Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the
Title or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himself the
Title of Lord *Ogilvie*; *John Drummond*, taking upon himself the Stile or
Title of Lord *John Drummond*, Brother to *James Drummond*, taking on
himself the Title of Duke of *Perth*; *Robert Mercer*, Esquire, otherwise
Nairn of Aldie; Sir *William Gordon of Park*; *John Murray of Broughton*,
Esquire; *John Gordon the elder*, of *Glenbuckett*; *Donald Cameron the*
younger, of *Lochiel*; Doctor *Archibald Cameron*, Brother to *Donald Cam-*
eron the younger of *Lochiel*; *Ludovick Cameron of Tor-Castle*; *Alexander*
Cameron of Dungallon; *Donald Mac Donald of Clanronald*, junior, Son to
Ronald Mac Donald of Clanronald; *Donald Mac Donald of Lochgarie*; *Alex-*
ander Mac Donald of Keppoch; *Archibald Mac Donald*, Son of Col *Mac*
Donald of Barisdale; *Alexander Mac Donald of Glencoe*; *Evan Mac Pher-*
son of Clunie; *Lauchlan Mac Lauchlan of Castle-Lauchlan*; *John Mac Kin-*
nion of Mac Kinnon; *Charles Stewart of Ardsheil*; *George Lockhart*, eldest
Son and Heir Apparent of *George Lockhart of Carnwath*; *Lawrence Oli-*
phant the elder of *Gask*; *Lawrence Olipphant the younger*, of *Gask*; *James*
Graham the younger, of *Airth*; *John Stewart*, commonly called *John Roy*
Stewart; *Francis Farquharson of Monalterye*; *Alexander Mac Gilivrae of*
Drumaglash; *Lauchlan Mac Intosh*, Merchant at *Inverness*; *Malcolm Ross*,
Son of *Alexander Ross of Pitcalny*; *Alexander MacLeod*, Son to Master
John MacLeod, Advocate; *John Hay*, Portioner of *Restalrig*, Writer to
the Signet; *Andrew Lumsdale*, otherwise *Lumsdain*, Son to *William Lum-*
sdale, otherwise *Lumsdain*, Writer in *Edinburgh*; and *William Fidler*,
Clerk in the Auditor's Office, in the Exchequer of *Scotland*, of High-
Treason; if they shall not render themselves to One of his Majesty's
Justices of the Peace, on or before the Twelfth Day of *July*, in the Year
of Our Lord One thousand Seven hundred and Forty-six; and submit
to Justice.

WHEREAS *Alexander Earl of Kellie*; *William Viscount of Strathallan*;
Alexander Lord Pittligo; *David Wemyss*, Esquire, commonly called
Lord *Elcho*, eldest Son and Heir Apparent of *James Earl of Wemyss*;
James Drummond, Esquire, eldest Son and Heir Apparent of *William Vis-*
count of Strathallan; *Simon Fraser*, Esquire, eldest Son and Heir Appa-
rent of *Simon Lord Lovat*; *George Murray*, Esquire, commonly called
Lord *George Murray*, Brother to *James Duke of Athol*; *Lewis Gordon*,
Esquire, commonly called Lord *Lewis Gordon*, Brother to *Cosmo George*
Duke of Gordon; *James Drummond*, taking upon himself the Title of
Duke of *Perth*; *James Graham*, late of *Duntroon*, taking on himself the
Title of Viscount of *Dundee*; *John Nairn*, taking upon himself the Title
or Stile of Lord *Nairn*; *David Ogilvie*, taking upon himself the Title of
Lord *Ogilvie*; *John Drummond* taking upon himself the Stile or Title of
Lord *John Drummond*, Brother to *James Drummond*, taking on himself
the Title of the Duke of *Perth*; *Robert Mercer*, Esq; otherwise *Nairn*, of
Aldie; Sir *William Gordon of Park*; *John Murray of Broughton*, Esquire;
John Gordon the elder, of *Glenbuckett*; *Donald Cameron the younger*, of
Lochiel; Doctor *Archibald Cameron*, Brother to *Donald Cameron the*
younger, of *Lochiel*; *Ludovick Cameron of Tor-Castle*; *Alexander Cameron*
of Dungallon; *Donald Mac Donald of Clanronald*, junior, Son to *Rho-*
nald Mac Donald of Clanronald; *Donald Mac Donald*, of *Lochgarie*;
Alexander Mac Donald of Keppoch; *Archibald Mac Donald*, Son of Col *Mac*
Donald of Barisdale; *Alexander Mac Donald of Glencoe*; *Evan Mac Pher-*
son of Clunie; *Lauchlan Mac Lauchlan of Castle-Lauchlan*; *John Mac Kinnon*
of Mac Kinnon; *Charles Stewart of Ardsheil*; *George Lockhart*, eldest Son
and Heir Apparent of *George Lockhart of Carnwath*; *Lawrence Olipphant*
the elder, of *Gask*; *Lawrence Olipphant the younger*, of *Gask*; *James Graham*
the younger, of *Airth*; *John Stewart*, commonly called *John Roy Stewart*; *Francis*
Farquharson of Monalterye; *Alexander Mac Gilivrae of Drumaglash*; *Lauchlan*
Mac Intosh, Merchant at *Inverness*; *Malcolm Ross*, Son of *Alexander Ross*
of Pitcalny; *Alexander MacLeod*, Son to Master *John MacLeod*, Advocate;
John Hay, Portioner of *Restalrig*, Writer to the Signet; *Andrew Lum-*
sdale, otherwise *Lumsdain*, Son to *William Lumsdale*, otherwise *Lumsdain*,
Writer in *Edinburgh*; and *William Fidler*, Clerk in the Auditor's Office
in the Exchequer of *Scotland*; on or before the Eighteenth Day of *April*,
in the Year of our Lord One thousand Seven hundred and Forty-six, did,
in a traitorous and hostile Manner, take up Arms, and levy War, against
his present most gracious Majesty, within this Realm, contrary to the
Duty of their Allegiance; and are fled, to avoid their being apprehended,
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and prosecuted, according to Law, for their said Offences; Be it therefore Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if the said Alexander Earl of Kellie; William Viscount of Strathallan; Alexander Lord Pittligo; David Wemyss, Esquire, commonly called Lord Elcho, eldest Son and Heir Apparent of James Earl of Wemyss; James Drummond, Esquire, eldest Son and Heir Apparent of William Viscount of Strathallan; Simon Fraser, Esquire, eldest Son and Heir Apparent of Simon Lord Lovat; George Murray, Esquire, commonly called Lord George Murray, Brother to James Duke of Athol; Lewis Gordon, Esquire, commonly called Lord Lewis Gordon, Brother to Cosmo George Duke of Gordon; James Drummond, taking upon himself the Title of Duke of Perth; James Graham late of Duntroon, taking on himself the Title of Viscount of Dundee; John Nairn, taking upon himself the Title of Lord Nairn; David Ogilvie, taking upon himself the Title of Lord Ogilvie; John Drummond, taking upon himself the Title of Lord John Drummond, Brother to James Drummond, taking on himself the Title of Duke of Perth; Robert Mercer, Esquire, otherwise Nairn, of Aldie; Sir William Gordon of Park; John Murray of Broughton, Esquire; John Gordon the elder, of Glenbuckett; Donald Cameron the younger, of Lochiel; Doctor Archibald Cameron, Brother to Donald Cameron the younger, of Lochiel; Ludovick Cameron of Tor-Castle; Alexander Cameron of Dungallon; Donald Mac Donald of Clanronald, junior, Son to Rhonald Mac Donald of Clanronald; Donald Mac Donald of Lochgarie; Alexander Mac Donald of Keppoch; Archibald Mac Donald, Son of Col Mac Donald of Barisdale; Alexander Mac Donald of Glencoe; Evan Mac Phereson of Clunie; Lauchlan Mac Lauchlan of Castle-Lauchlan; John Mac Kinnon of Mac Kinnon; Charles Stewart of Ardsheil; George Lockhart, eldest Son and Heir Apparent of George Lockhart of Carnwath; Lawrence Oliphant the elder, of Gask; Lawrence Oliphant the younger, of Gask; James Graham the younger, of Airth; John Stewart, commonly called John Roy Stewart; Francis Farquharson of Monalterye; Alexander Mac Gilvrae of Drumaglass; Lauchlan Mac Intosh, Merchant, at Inverness; Malcolm Ross, Son of Alexander Ross of Pitcalny; Alexander Mac Leod, Son to Master John Mac Leod, Advocate; John Hay, Portioner of Restalrig, Writer to the Signet; Andrew Lumsdale, otherwise Lumsdaine, Son to William Lumsdale, otherwise Lumsdaine, Writer in Edinburgh; and William Fidler, Clerk in the Auditor's Office in the Exchequer of Scotland; shall not render themselves to one of his Majesty's Justices of the Peace, on or before the Twelfth Day of July, in the Year of our Lord One thousand Seven hundred and Forty-six, and submit to Justice for the Treasons aforesaid; then every of them the said Alexander Earl of Kellie; William Viscount of Strathallan; Alexander Lord Pittligo; David Wemyss, Esquire, commonly called Lord Elcho, eldest Son and Heir Apparent of James Earl of Wemyss; James Drummond, Esquire, eldest Son and Heir Apparent of William Viscount of Strathallan; Simon Fraser, Esquire, eldest Son and Heir Apparent of Simon Lord Lovat; George Murray, Esquire, commonly called Lord George Murray, Brother to James Duke of Athol; Lewis Gordon, Esquire, commonly called Lord Lewis Gordon, Brother to Cosmo George Duke of Gordon; James Drummond, taking upon himself the Title of Duke of Perth; James Graham, late of Duntroon, taking on himself the Title of Viscount of Dundee; John Nairn, taking upon himself the Title of Lord Nairn; David Ogilvie taking upon himself the Title of Lord Ogilvie; John Drummond, taking upon himself the Title of Lord John Drummond, Brother to James Drummond, taking on himself the Title of Duke of Perth; Robert Mercer, Esquire, otherwise Nairn of Aldie; Sir William Gordon of Park; John Murray of Broughton, Esquire; John Gordon the elder, of Glenbuckett; Donald Cameron the younger, of Lochiel; Doctor Archibald Cameron, Brother to Donald Cameron the younger, of Lochiel; Ludovick Cameron of Tor-Castle; Alexander Cameron of Dungallon; Donald Mac Donald of Clanronald, junior, Son to Rhonald Mac Donald of Clanronald; Donald Mac Donald of Lochgarie; Alexander Mac Donald of Keppoch; Archibald Mac Donald, Son of Col Mac Donald of Barisdale; Alexander Mac Donald of Glencoe; Evan Mac Phereson of Clunie; Lauchlan Mac Lauchlan of Castle-Lauchlan; John Mac Kinnon of Mac Kinnon; Charles Stewart of Ardsheil; George Lockhart, eldest Son and Heir Apparent of George Lockhart of Carnwath; Lawrence Oliphant the elder, of Gask; Lawrence Oliphant the younger, of Gask; James Graham the younger, of Airth; John Stewart, commonly called John Roy Stewart; Francis Farquharson of Monalterye; Alexander Mac Gilvrae of Drumaglass; Lauchlan Mac Intosh, Merchant at Inverness; Malcolm Ross, Son of Alexander Ross of Pitcalny; Alexander Mac Leod, Son to Master John Mac Leod, Advocate; John Hay, Portioner of Restalrig, Writer to the Signet; Andrew Lumsdale, otherwise Lumsdaine, Son to William Lumsdale, otherwise Lumsdaine, Writer in Edinburgh; and William Fidler, Clerk in the Auditor's Office in the Exchequer of Scotland, not rendering himself, as aforesaid, and not submitting to Justice, as aforesaid shall, from and after the said Eighteenth Day of April, in the Year of our Lord One thousand Seven hundred and Forty-six, stand and be adjudged attainted of the said High-Treason, to all Intents and Purposes whatsoever; and shall suffer and forfeit, as a Person attainted of High-Treason by the Laws of the Land ought to suffer and forfeit: And every of the said Justices of the Peace are hereby required to commit every of them, the said Alexander Earl of Kellie; William Viscount of Strathallan; Alexander Lord Pittligo; David Wemyss, Esquire, commonly called Lord Elcho, eldest Son and Heir Apparent of James Earl of Wemyss; James Drummond, Esquire, eldest Son and Heir Apparent of William Viscount of Strathallan; Simon Fraser, Esquire, eldest Son and Heir Apparent of Simon Lord Lovat; George Murray, Esquire, commonly called Lord George Murray, Brother to James Duke of Athol; Lewis Gordon, Esquire, commonly called Lord Lewis Gordon, Brother to Cosmo George Duke of Gordon; James Drummond, taking upon himself the Title of Duke of Perth; James Graham late of Duntroon, taking on himself the Title of Viscount of Dundee; John Nairn, taking upon himself the Title of Lord Nairn; David Ogilvie, taking upon himself the Title of Lord Ogilvie; John Drummond, taking upon himself the Title of Lord John Drummond, Brother to James Drummond, taking on himself the Title of Duke of

Perth; Robert Mercer, Esquire, otherwise Nairn of Aldie; Sir William Gordon of Park; John Murray of Broughton, Esquire; John Gordon the elder of Glenbuckett; Donald Cameron the younger, of Lochiel; Doctor Archibald Cameron, Brother to Donald Cameron the younger, of Lochiel; Ludovick Cameron of Tor-Castle; Alexander Cameron of Dungallon; Donald Mac Donald of Clanronald, junior, Son to Rhonald Mac Donald of Clanronald; Donald Mac Donald of Lochgarie; Alexander Mac Donald of Keppoch; Archibald Mac Donald, Son of Col Mac Donald of Barisdale; Alexander Mac Donald of Glencoe; Evan Mac Phereson of Clunie; Lauchlan Mac Lauchlan of Castle-Lauchlan; John Mac Kinnon of Mac Kinnon; Charles Stewart of Ardsheil; George Lockhart, eldest Son and Heir Apparent of George Lockhart of Carnwath; Lawrence Oliphant the elder, of Gask; Lawrence Oliphant the younger, of Gask; James Graham the younger, of Airth; John Stewart, commonly called John Roy Stewart; Francis Farquharson of Monalterye; Alexander Mac Gilvrae of Drumaglass; Lauchlan Mac Intosh, Merchant at Inverness; Malcolm Ross, Son of Alexander Ross of Pitcalny; Alexander Mac Leod, Son to Master John Mac Leod, Advocate; John Hay, Portioner of Restalrig, Writer to the Signet; Andrew Lumsdale, otherwise Lumsdaine, Son to William Lumsdale, otherwise Lumsdaine, Writer in Edinburgh; and William Fidler, Clerk in the Auditor's Office in the Exchequer of Scotland; so surrendering himself to Prison for the said High-Treason, there to remain till he shall be discharged by due Course of Law; and thereof immediately to give notice to one of his Majesty's Principal Secretaries of State.

I Ashley Cowper, Clerk of Parliaments, by virtue of the Writ of our said Lord the King of Certiorari to me directed, and to these Presents annexed, do certify, That what is above written is the true Tenor of the Act of Parliament aforesaid in that Writ expressed. In Witness whereof, to this Schedule I have set my Seal, and subscribed my Name. Dated the Ninth Day of February, in the Twentieth Year of the Reign of our said Lord the King, and in the Year of our Lord One thousand Seven hundred and Forty-six.

ASHLEY COWPER,

Plea of } AND now (that is to say) upon Thursday next after the John Murray. } Octave of the Purification of the Blessed Virgin Mary, before our said present Sovereign Lord the King at Westminster, cometh the said John Murray in the said Act named, under the Custody of the Lieutenant of the Tower of London, by virtue of his Majesty's Writ of Habeas Corpus ad Subiiciendum, &c. into whose Custody he the said John Murray had been before committed, upon the Account aforesaid, being brought to the Bar here in his own proper Person, who is committed by the Court to the said Lieutenant of the said Tower of London, charged as a Person attainted of High-Treason by virtue of the said Act: And being asked by the Court here, at the Instance of Sir Dudley Ryder, Knight, Attorney-General of our said present Sovereign Lord the King, who, for our said present Sovereign Lord the King, in this behalf prosecuteth, If he the said John Murray hath, or knoweth of, any thing to say for himself, why the Court here should not proceed to award Execution against him thereupon, he the said John Murray, for Plea, saith, That it is very true, that he is one of the Persons in the said Act named and intended; to wit, The Person therein designed and described by the Name, Title, and Addition, of John Murray of Broughton, Esquire, against whom, with the rest of the Persons therein named, designed, and described, the said Act was made, passed, and intended, for and on account of the High-Treason therein mentioned, and thereby supposed to have been committed against our said present Sovereign Lord the King: But, for further Plea, he saith, That, long before the Twelfth Day of July in the said Act mentioned; to wit, Upon the Twenty-eighth Day of June then last past, he the said John Murray, at the City of Edinburgh, in the Shire of Edinburgh, did, in due Manner, and according to the Directions, and agreeable to the true Sense, Intent, and Meaning of the said Act, render himself to the Right Honourable Andrew Fletcher, Esquire, Lord Justice Clerk of Scotland, being one of his Majesty's Justices of the Peace in the said Act mentioned and intended for that Purpose (he the said Andrew Fletcher having then and there full Power and Authority, by virtue of the said Act, to admit him the said John Murray to make such Render of himself to him the said Andrew Fletcher, as aforesaid); and that he the said John Murray was, upon the said Twenty-eighth Day of June, in consequence of such Render, as aforesaid, committed by him the said Andrew Fletcher to Prison, for and on account of the said High-Treason, according to the Directions, and agreeable to the true Sense, Intent, and Meaning, of the said Act; and that he, the said John Murray hath, ever since his said Render and Commitment, as aforesaid, until now, remained and continued, and still doth remain and continue, a close Prisoner, upon the Account aforesaid; and this he is ready to verify and prove, as the Court shall award: With this further, That at the Time of his said Render and Commitment, as aforesaid, he the said John Murray was, and ever since hath been, and yet is, willing and desirous to take his Tryal, and submit himself to Justice, pursuant to the Directions, and agreeable to the true Sense, Intent, and Meaning of the said Act.

Confession of the } AND the said Sir Dudley Ryder, Knight, Attorney General } General of our said present Sovereign Lord the King, who, for our said present Sovereign Lord the King, in this behalf prosecuteth, having heard and considered the said Plea of him the said John Murray, by him now pleaded in Form aforesaid, he the said Attorney General for our said present Sovereign Lord the King saith, That he doth not in any wise deny any of the Matters in the said Plea alleged; but doth now here in Court, for and on behalf of our said present Sovereign Lord the King, and by the special Order and Command of our said present Sovereign Lord the King, admit and confess the same to be in all respects true: Whereupon it is considered and adjudged by the said Court here, That the said Plea of him the said John Murray, for him so above pleaded, as aforesaid, and also the said Confession of the said Attorney General by him so made of the said Plea, as aforesaid, be recorded; and that he the said John Murray be remanded to the said Tower of London, under the Custody of the said Lieutenant, to be by him there kept in safe Custody, until he shall be from thence discharged by due Course of Law.

Mr. At. Gen.

Mr. Att. Gen. My Lords, we desire that Mr. Murray may now be sworn.

Lord Lovat. My Lords, I desire Leave to falsify the Record, and to prove, by Witnesses, that Mr. Murray did not surrender himself within the Time prescribed by the Act of Parliament.

Mr. Att. Gen. My Lords, what the noble Lord at the Bar now insists upon, is, that he shall be at Liberty to falsify the Record, by shewing, by Witnesses, that Mr. Murray did not surrender himself according to the Act of Parliament; but I must submit it to your Lordships, that there is no Ground whatsoever to admit the Prisoner to go into that Kind of Evidence; because this is a Record, which, according to the known Rules of Proceeding, cannot be falsified, since it is a Proof of a Thing transacted in a Court of Justice, before whom it was properly cognizable, and who alone, in this Part of the United Kingdom, could hear it, and had Power to record it; and I therefore must insist, that it is out of the Power of any Person whatsoever to contradict that Record.

L. H. S. My Lord Lovat, the Managers insist, that it appearing by Matter of Record, that Mr. Murray did surrender himself according to the Act of Parliament, that Matter cannot now be falsified.

Lord Lovat. My Lords, I must beg, that, since it is a Point of Law, your Lordships will be pleased to hear my Counsel to it.

Mr. Att. Gen. My Lords, as to its being a Question of Law, whether the noble Lord at the Bar shall be at Liberty to produce Witnesses to falsify that Record; to be sure, my Lords, it is a Question of Law, because it cannot be said to be a Question of Fact; but it does not follow as a Consequence, because the noble Lord at the Bar says, that he has a Point of Law to submit to your Lordship, that therefore your Lordships should permit his Counsel to argue it: For it is still in your Lordships Judgment, whether you have any Doubt concerning it; and it is apprehended, that this is too plain a Case to admit of any Doubt with your Lordships; and therefore that you will not permit Counsel to argue it, as the Consequence can only be Delay; and an Indulgence of this Kind, in Matters of no Doubt, would put it in the Power of a Prisoner to protract his Tryal, and keep your Lordships sitting as long as he pleased.

Sir John Strange. My Lords, I beg Leave to have it clearly understood, what it is that the noble Lord at the Bar insists upon; whether it be to prove, by Witnesses, that Mr. Murray was not in Custody within the Time prescribed by this Act of Parliament; or that Mr. Murray did not surrender himself, and submit to Justice within that Time.

Lord Lovat. I put it upon that strict Word, that he did not surrender himself.

L. H. S. Lord Lovat, does your Lordship desire to be heard by your Counsel to that Point?

Lord Lovat. Yes.

Mr. Forrester. My Lords, it would ill become me, in the Station of Counsel for the noble Lord at the Bar, to decline arguing any Point which he thinks may be of Service to him. The Question now made by the noble Lord is singly this; Whether he shall be at Liberty to adduce Witnesses, *viva voce*, to falsify the Contents of this Record? that is, to prove that Mr. Murray did not surrender himself within the Time prescribed by the Act; which being closely connected to the former Objection, I can at present, and until I have Time to consider the Question, do little else but what would be extremely indecent in me, repeat a great Part of what I troubled your Lordships with in the Morning, and which is now over-ruled. But, my Lords, the debating this Point may lead to the Consideration of another, and indeed a very material one; which is, Whether Evidence of his being taken Prisoner by the King's Forces will make it a Surrender within the legal Construction of the Act of Parliament, so as to warrant his Plea, and the Attorney General's Confession contained in the Record? And this I shall, in Point of Law, beg Leave to deny, upon the Authority of Lord Duffus's Case, and several other Cases. Your Lordships are to determine, whether we shall be heard to these Points or not: But, if I am at Liberty to speak to them, as they are both Questions of great Difficulty, I must beg some further Time for preparing myself, and laying my Thoughts together; since, at this Hour of the Night, and unprepared as I am, it is impossible to argue them so fully as my Duty requires, as the noble Lord has a Right to expect from me, and as your Lordships have a Right to expect Matters to be debated at your Bar.

Lord Lovat. My Lords, I am so very weak and infirm, and have been obliged, in order to attend in Obedience to your Lordships Commands, for two Days together, to be up by Three o'Clock in the Morning; I must therefore beg, that your Lordships will indulge me with a later Hour, and some Respite; otherwise I shall die at your Bar.

Mr. Att. Gen. My Lords, I did apprehend, from what the noble Lord at the Bar said, that the Point he wanted to submit to your Lordships was, Whether he should not be at Liberty to bring Witnesses to prove, that Mr. Murray did not surrender himself within the Meaning of the Act? But something has dropt since from the Prisoner's Counsel, as if they meant to shew, that Mr. Murray did not, in Fact, surrender, but was taken Prisoner before the Time given by the Act to surrender; and that this would not, in Point of Law, be a Surrender within the Act. My Lords, that is a Question totally different from the former. It is one Question, Whether he may be admitted to prove, that he did not surrender according to the Act of Parliament? and another, What would be the legal Effect of his being apprehended previous to the Time appointed? They are two intirely distinct Questions; and whether they shall be admitted to argue the former, is now for your Lordships Consideration; but as to the latter, it is a Matter subsequent, and not now to be considered.

Then the Duke of Newcastle moved to adjourn to the Chamber of Parliament; and the Lord High Steward went back to his Chair; and the House was adjourned accordingly.

The Lords and others went back in the same Order as before; and the House being resumed in the Chamber of Parliament, after Debate,

Ordered, That this House will proceed further in the Tryal of the said Lord Lovat To-morrow at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. Elst and Mr. Thynne, to acquaint them therewith.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do take back the said Lord Lovat, and bring him again to the Bar of this House in Westminster-Hall, at Eleven of the Clock in the Forenoon To-morrow.

Wednesday, the 11th of March, 1746.

The THIRD DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on Monday last, into Westminster-Hall; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, bring forth your Prisoner Simon Lord Lovat to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the Tower brought the Prisoner to the Bar, in the like Manner as before: and then he kneeled down.

Lord High Steward. Your Lordship may rise.

Lord High Steward. My Lord Lovat, your Lordship thought fit Yesterday to insist upon it, that, notwithstanding the Record, produced by the Managers for the House of Commons, of Mr. John Murray of Broughton's having surrendered himself within the Time, and according to the Terms prescribed by an Act of Parliament made in the 19th Year of his Majesty's Reign, your Lordship should be permitted to give Evidence, by Witnesses *viva voce*, that Mr. Murray did not surrender himself within the Time prescribed by that Act. To this Kind of Evidence the Managers for the House of Commons objected, because, as they alledged, it was giving Evidence to contradict a Fact which was verified by a Record of the highest Nature; and that therefore you should not be permitted to enter into such Proof: Whereupon you desired, that your Counsel might be heard to that Matter, as a Point or Question of Law. Against this the Managers thought fit to object, that it was no Doubt or Question of Law at all; that the Law of the Land was full, and clear, and settled in this Point; and that therefore your Lordship ought not to be heard by your Counsel to it. The House has taken all these Matters into Consideration, in the Chamber of Parliament; and hath come to the following Resolution, with which they have directed me to acquaint you; and it is this, That the Counsel for the Lord Lovat be not permitted to argue, that Parol Evidence should be received to prove, that John Murray of Broughton did not surrender himself according to the Act made in the last Session of Parliament in that behalf, in Contradiction to the Record of the Court of King's-Bench, produced by the Managers for the Commons.

The Lord High Steward asked Leave to go down to the Table: Which was done.

Lord High Steward. Gentlemen of the House of Commons, you may proceed.

Mr. Noel. My Lords, we now desire that Mr. Murray of Broughton may be sworn.

Lord Lovat. My Lords, I did object against Mr. Murray's being examined as a Witness: Your Lordships have been pleased to over-rule that Objection, and I now submit, that Mr. Murray may be examined, if you please.

John Murray called in, and sworn.

Lord Talbot. My Lords, I desire to ask Mr. Murray some Questions for the sake of forming my own Judgment in the Matter; but if it is improper that they should be asked, I submit it to your Lordships.

Lord High Steward. My Lords, the ordinary Method of proceeding in these Cases is, that where a Witness is produced, he is to be sworn in Chief, unless there be some Objection to his Competency; and then he is to be sworn upon a *Vowre Dire*. After he is sworn in Chief, the Party, who produces him, asks him such Questions as he thinks proper; after which the other Party is at Liberty to cross-examine him either to the Matter of Fact concerning which he has been examined, or any other Matter whatsoever, that shall tend to impeach his Credit, or weaken his Testimony; provided the Questions that are asked him, are such as the Law allows: So in this Court, after the Managers have produced any Witness, and have finished their Examination of him, the Prisoner has Liberty to ask him whatever Questions are proper; and it is most regular, that, after both Sides have gone through with their Examinations of the Witness, any of your Lordships should ask him what Questions you shall judge proper.

Mr. Noel. Mr. Murray, you will be pleased to attend to the Questions that shall be asked you. Give your Answers distinctly, and raise your Voice as much as you can, that my Lords may hear you.---My Lords, the first Thing I desire of this Witness is, that he may give your Lordships an Account when was the first Time that he heard of any Invitation to the Son of the Pretender to come into Scotland, and from whom he heard it.

Mr. Murray. My Lords, to the best of my Remembrance, in the Month of February, 1741-2, when I was at Edinburgh, I had there Occasion to see my Lord Traquair, who told me that there were several Gentlemen, to the best of my Memory, the Prisoner at your Lordship's Bar, my Lord Perth, my Lord John Drummond, Sir James Campbell of Achenbrack, and Mr. John Stuart Brother to Lord Traquair, had employed one Drummond of Bochalzie to go from Scotland to Rome, to assure the Pretender of their Zeal for his Service; and that they would be ready and willing, as soon as sufficient Assistance could be had from France, to appear publicly in Arms for him: And, at the same Time, he said, that he had given Drummond a Memorial signed by those Persons, I think

Seven

Seven of them in Number, to Cardinal Fleury, expressing their Attachment to the Pretender, and desiring him to procure Assistance from the Court of France; and at the same Time this Drummond carried with him a List of all the People, that, by those Gentlemen, were supposed to be ready and willing to join in the Pretender's Service.

Lord Lovat, interrupting,

MY Lords, Your Lordships will be pleased to consider, that what this Gentleman says, is only Hearsay Evidence, which should not be admitted before your Lordships, as it gives you a bad Impression of a Man. I am now trying for my Life and Fortune, and hope your Lordships will consider it.

Mr. Neill. My Lords, I am so far from differing from the noble Lord at the Bar in this respect, that I did understand the Witness was speaking only what he had heard from my Lord Traquair.

Mr. Att. Gen. My Lords, the Managers do know and desire, that your Lordships will distinguish between Evidence that does, and Evidence that does not affect the Prisoner at the Bar. The Witness was giving an Account by way of Introduction; which will be material for your Lordships Consideration. I beg leave to say, it is impossible for a Witness, in his giving an Account of a Transaction, to speak nothing but Words that alone will affect the Prisoner; and therefore This, though it does not affect the Prisoner, may be proper to introduce That, which he has to say, that may affect him. What he now says, is only giving an Account of a Plot or Conspiracy entered into by several Persons, which did afterwards bring on the Rebellion.

Lord High Steward. My Lord Lovat, The Managers do admit, that what has been hitherto said by the Witness under Examination does not affect you; and they desire now to offer it only as Evidence of a Conspiracy in general, which, if they do not apply to your Lordship by particular Evidence, will not affect you.

Lord Lovat. My Lords, As I said before, it gives a bad Impression.

Lord Coke. My Lords, I apprehend, that we are right in going into this Kind of Evidence; because, in the Preamble to our Articles of Impeachment, we set forth the general Conspiracy.

Mr. Solicitor General. My Lords, What has hitherto been said, is not Evidence against the noble Lord at the Bar; and God forbid that he should be affected by any thing that is not strictly Evidence against him! And therefore it is fit, that the View with which the Evidence is offered should be fully understood. The Preamble to the Articles of Impeachment asserts, That, ever since the Breaking out of the War, and particularly in 1743, many Persons have plotted and conspired with the Enemy, to procure an Invasion of this Kingdom by a Foreign Force, and to raise a Rebellion at Home. The first Article charges Lord Lovat to have been one of those Conspirators. It is necessary, therefore, by general Evidence, to shew, that there have been such Plots and Conspiracies as the Commons assert, and then to affect the noble Lord at the Bar, by proper Evidence, with being concerned in those Plots. This Method of Proceeding is not new, but the established Course. Upon the Impeachment of the Lord Viscount Stafford, a general Evidence was given of the Conspiracy, which was declared not to affect him, but as introductory only. The like was done upon the Trials at Law of the Persons accused of having been in the same Plot. The same Method was allowed as proper, and liable to no just Objection, in many Trials after the Revolution. In the Reign of the late King, upon the Trial of Lyster, the like Method was pursued: General Evidence was given of a Plot which did not directly affect him. I dare answer for the Gentlemen who manage this Prosecution, that no one of us will urge against the noble Lord any thing which is not brought home to him by strict and legal Proof: If we should, he is safe in your Lordships Judgment, which will distinguish general from particular Evidence.

Then the Witness was directed to go on with his Narrative.

Mr. Murray. My Lords, I mentioned to your Lordships, That at the same Time that Drummond went over to Paris, he carried with him a List of all the Gentlemen in Scotland, who, it was supposed by those who signed this Memorial, were ready and willing to join them: But this List I take rather to be a general List of the Highlands of Scotland; nor do I imagine there could be any Reason to think, that the great Number of People there mentioned, could appear in Favour of the Pretender. My Lord Traquair, at the Time of his informing me of this, told me, that Drummond was then in Edinburgh; and proposed, that I should have a Meeting with him. Accordingly, I had a Meeting with him; and he repeated to me much the same thing that I have repeated to your Lordships: Said he had been extremely well received by the Cardinal, to whom he had delivered the Memorial given him at Edinburgh: That he expressed much Satisfaction, and was very sanguine, and had the Pretender's Interest very much at Heart; and that, provided he could get sufficient Assistance and Assurance from those who are called the Pretender's Friends in England, that then he would send over the Troops required; the Number was 3000 Men, to be landed in Scotland; 1500 at or near Inverness, so as immediately to join with the Clan of the Frasers; the other 1500 were to be landed in the West-Coast, near Cameron's of Lochiel, who was to take the Command of them upon him, and to raise the People of Argyleshire: At the same Time, a Body of Ten or Twelve Thousand Men were to be landed as near London as they possibly could.---That at the same Time Drummond was in Edinburgh, he sent for Cameron; and when they met, he repeated what had past, and the Success he had at Rome and Paris; and assured them, that provided he could have Assistance in England, the Scheme might be put in Execution in Autumn following. After a Week's Stay in Edinburgh, Drummond went to London. I do not remember to have heard any thing more concerning this Matter till the August following. This was, to the best of my Memory, the End of March, or Beginning of April, that he left Edinburgh.

Lord High Steward. What Year was it in?

J. Murray. 1742. We call it so in Edinburgh.

Lord High Steward. You begin the Year in Scotland on the 1st of January?

J. Murray. Yes.

My Lords, in the Autumn following, when I was at my Lord Traquair's House in the Country, he told me he understood by Drummond, that Cardinal Fleury proposed sending a Body of Swedish Troops into Scotland, thinking they might be more agreeable to the People there, as they were Protestants, than French or Irish Brigades would be: But, at the same Time, said, he thought it would be necessary that a Person should be sent from Scotland, to be deputed to solicit those Troops from Sweden, in Conjunction with the Person whom the Cardinal should employ. My Lord Traquair thought that I should go on that Account: But I think it was rather Drummond's than my Lord Traquair's Proposition.

Lord High Steward. When was this?

J. Murray. In August 1742. I refused to comply with this. From which Time I do not remember to have heard any thing for Six Months; and, about that Time, my Lord Traquair and Cameron of Lochiel, at Cameron's House, did shew me a Letter written by Drummond from Paris; wherein he said, That upon his Return to France, he had represented the thing to the Cardinal in such a Light as engaged him to promise, that in a short Time he would land the Troops in Scotland, as proposed. There were several other Circumstances in the Letter, which I cannot now remember: So far I can say, that Letter, in general, when it was read to me, seemed very extraordinary, to think, that an Affair of such Consequence as the invading these Kingdoms, and raising a Civil War in the Country, was to be undertaken by a few People, and by such kind of Management. I said, I apprehended it was a Scheme of Drummond's, to keep up a Spirit of Party in this Country, and to make himself useful to the Gentlemen who employed him; and that there was no such thing intended by Cardinal Fleury. My Lord Traquair determined, that it was then necessary to know the real State of the Case; and he desired I would go to Paris for that Purpose. I at first did not comply with it; I did not care to execute it; nor did I agree to it till several Weeks afterwards: I was then coming to London; and in January I came up; but, upon the Road, I understood that Cardinal Fleury was dead.

Lord High Steward. When was this?

J. Murray. In January 1743, by the Scotch Stile: I staid some short Time in London; and from thence I went over privately to Paris; and, by means of one Mac Donald the Banker, I found out Drummond: He carried me that Evening to one Mr. Semple, who is there called my Lord Semple; and was the Person employed by the Pretender to manage his Affairs in France: They both joined in lamenting the Death of the Cardinal; and said, That, had he lived, in all Probability the Scheme would have been executed that Spring; that the Reason why it was not, was owing to the Marshal Mallebois having Orders from France to march his Army towards Hanover, instead of the Coast of Flanders, as the Cardinal intended; but that the Cardinal had been so extremely sanguine in the Pretender's Interest, that he had given all his Papers, Memorials, and the like, to M. Amelot, the then Secretary for Foreign Affairs. I proposed to see M. Amelot; and accordingly I went to Versailles, where I staid Two or Three Weeks. I was first presented by Drummond to Semple; and had an Audience of M. Amelot, whom I told I had been sent from Scotland, by the Persons who had signed the Memorial which I mentioned to your Lordships, and who were concerned in it, to know whether the King of France, his Master, was willing to put the Scheme in Execution. He told me, that Mr. Semple had acquainted him with the Reason of my coming: And thereupon he went to the King of France, and told him of it; and upon that I desired to know what Answer he had from the King of France. The Answer he gave me was, That the King told him, that I might assure those Gentlemen, that he had the Interest of their Master as much at Heart as they; and that, as soon as he had an Opportunity, he would put the Scheme they proposed in Execution. With this Answer I returned to Paris, where I only staid Two Nights. At first, I observed, that M. Amelot seemed very desirous to have such Assurances from England as the Cardinal had required; and he applied to Drummond and Semple on that Head. When I left Paris, Mr. Drummond determined to come over. I set out from Paris, and came privately to London. The Reason of Mr. Drummond's coming over, was to collect those Assurances which had been expected from England.

Lord High Steward. What Time was this?

J. Murray. It must have been the End of March, or Beginning of April.

L. H. S. In what Year was it?

J. Murray. In 1743.

I staid but a few Days in London after my Return; and Mr. Drummond desired me, that as soon as I arrived in Scotland, I would acquaint my Lord Traquair of his being come to London, and the Reason of it; and desired, that he would come and assist in procuring the Assurances from the Pretender's Friends. Upon my Return to Edinburgh, I stopt at York, where I met with the late Lord Perth, who then was at York; and I acquainted him with what had been done; who seemed extremely dissatisfied at it. I soon afterwards came to Edinburgh; and soon after my Arrival there, I met Lord Traquair, whom I acquainted with Drummond's being come over; and that he desired his Lordship to go to London to assist him in his intended Purpose. His Lordship went with that Intent (as he said) in about two Weeks after, about the Beginning of April, to the best of my Remembrance. On Lord Traquair's Return to Scotland, in Autumn, he acquainted me, That he had several Meetings with Drummond; and that he had endeavoured to get as many Assurances as he could from the Pretender's Friends, at least such as he thought so: The Persons he named were Lord Barrymore, Sir John Hinde Cotton, and Sir Watkin Williams Wynne: That he had several Meetings with these several Persons; and that Sir John Hinde Cotton seemed extremely shy, and unwilling to converse or meet on the Pretender's Affairs; and none of them were willing to give any such Assurances under their Hands and Seals as were given by the Seven in Scotland. The same Summer one Butler was sent from France, to know the State of the Jacobite Party in England.

Lord Talbot. My Lords, I object to the Witness's proceeding to give Evidence

Evidence which does not relate to the Point in Question: He has mentioned the Names of several Honourable Gentlemen, on a very extraordinary Occasion, which does not at all relate to the Trial of the Noble Lord at the Bar: He is calumniating the Characters of several Gentlemen, who are my worthy Friends: And therefore, if it is insisted that he should proceed, I think it will be worth our while to adjourn to the Chamber of Parliament, to consider how far it shall be permitted.

L. H. S. Gentlemen of the House of Commons, you hear what is said by the Noble Lord. It is objected, that the Witness is going on to give Evidence of a Fact not relating to the Noble Lord at the Bar, but to other Persons; and that this is an improper Kind of Evidence, and ought not to be given.

Mr. At. Gen. My Lords, we did not examine the Witness to those particular Facts which he has mentioned, that do not relate to the Noble Lord at the Bar; but in giving an Account of the Facts inquired into, he has himself entered into that Kind of Narrative; but as it is only what he heard my Lord *Traquair* say concerning other particular Persons, we do not insist on his proceeding in his Hearsay Account of what concerns those Gentlemen.

Mr. Noel. My Lords, what the Witness has dropt in respect of the Honourable Gentlemen he has named, does not affect them at all. It is nothing more than a Relation which he had from my Lord *Traquair*, and not from any Matter arising within his own Knowledge. And, my Lords, I may venture to assure your Lordships, for myself and all the Gentlemen concerned in this Prosecution, that we will not ask the Name of one Person immaterial to the present Trial: And therefore I must submit it to your Lordships, whether the Witness should not be suffered now to go on; and that for the future, when he comes to any Transaction of that Kind, he should not name any Persons till he comes to the Noble Lord at the Bar.

L. H. S. Your Lordships hear what is mentioned by the Managers, that they agree that the Witness, in mentioning these Transactions in general, should not name any Persons, till he comes to the Noble Lord at the Bar.

J. Murray. I was directed, that when I came to be examined here, I was to give a Narrative of the Springs, the Rise and Progress of the late Rebellion, as well as what related to the Noble Lord at the Bar; but if I have committed an Error, I readily submit to your Lordships Correction.

Earl of Cholmondeley. As the Witness says he was directed to give a Narrative, with regard to the whole Rise and Progress of the Rebellion, I beg he may be asked by whom he was directed?

L. H. S. My Lords, I did not at this Distance hear the Witness use the Word directed; but understood him only, that he was brought here to give an Account of the Rise and Progress of the Rebellion. Possibly it might escape me.

Earl of Chesterfield. I did not hear the Word directed; but I should be glad to have it cleared up.

L. H. S. *Mr. Murray*, when you spoke last of your giving a Narrative of the Rise and Progress of the Rebellion, did you make Use of the Word directed, or not?

J. Murray. My Lords, this is the first Time I ever spoke in Publick; I may have committed an Error; I cannot say whether I made use of the Word directed, or no.

Earl of Cholmondeley. My Lords, I had no other Intention in the Question, but to know the Meaning of the Person who spoke the Words; whether he apprehended that the general Question, asked him by the Managers, was a Direction to him, and whether that was what he meant?

J. Murray. My Lords, some Days after my Examination in the Tower, by the Honourable Committee of the House of Commons, a Gentleman, who I believed was their Secretary, came to me to take a further Examination; and to ask me as to any other Matter that had occurred since my last Examination: Some Days after that, he told me, that I should be called here before your Lordships, upon the Trial of my Lord *Lovat*; and that at the same time, it would be expected that I should give an Account of the Rise and Progress of the Rebellion in general.

Sir William Yonge. My Lords, now the Witness at the Bar has explained what he meant by the Word directed, I hope your Lordships will have no ill Impression of the Managers, from any thing that may have dropped from the Evidence. And, my Lords, I beg Leave to assert, that no Direction has been given to *Mr. Murray* by the Managers; and that they neither have given, or will give, any Direction to any Witness whatsoever. My Lords, we well know, that it does not become us to do any thing of that Kind; nor have we done it: So far from it, that when we first examined the Witness at the Bar, we examined him solely to the Point of the Conduct of the Noble Lord at the Bar. My Lords, we did afterwards determine among ourselves, that as it was our Duty to lay before your Lordships that Conspiracy wherein the Noble Lord at the Bar appeared to have acted a Part; we did therefore give *Mr. Murray* Notice, that he would be examined before your Lordships to that Point. My Lords, we never had any Information from him on that Subject; and this is the first Time I ever heard him give an Account of this general Conspiracy. My Lords, we were so careful in our Examination of the Witness in the Committee, that I well remember the Question's being asked him by the worthy Manager who sits near me; and it was in the most general Terms that we could conceive, in order to let your Lordships into the Knowledge of this Matter. And your Lordships will observe, through the whole Course of this Proceeding, that the utmost Candour will be made use of by the Managers, in their Examination of the Witnesses; and that they will put no leading Questions to them but general Questions, and such as they are to answer upon Oath, and according to the Truth.

Earl of Cholmondeley. My Lords, I beg Leave to say, that I did not conceive that the Managers, in their Examination of Witnesses, made use of the least Direction or Authority whatsoever. I have the greatest Sense of their Candour and Fairness; it is my Opinion of them, and of the whole Body by whom they are deputed; and it was upon that Principle I proposed my Question to the Witness.

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Lord Talbot. My Lords, I pray that the Witness may be asked, Whether he is, upon this Occasion, a voluntary or an involuntary Evidence?

Mr. At. Gen. My Lords, the Managers are now prosecuting for the whole Commons of Great-Britain; they are prosecuting upon the Foundation of Evidence, for a Treason of the greatest Magnitude; there is now a Witness at your Lordships Bar, whom they are examining to prove that Treason; and, while they are so, I hope they shall not be interrupted. There is no Doubt, but when they have done with the Examination of the Witness, if any Lord thinks proper to ask him any Questions, your Lordships have a Right to do it: But we are now examining the Witness on behalf of the Prosecution; and we hope we shall have Liberty to go through with it; and then your Lordships will permit him to be examined by any body else: But, my Lords, at present we are in Possession of the Witness; and we beg we may have Liberty to go on.

Earl Stanhope. My Lords, I beg the Question proposed may be asked; or that we may adjourn to the Chamber of Parliament.

L. H. S. My Lords, the Rule for the Examination of Witnesses in this Court, in either House of Parliament, and every where else, is, that if a Witness is produced by a Prosecutor, or Plaintiff, they have a Right to examine him first: But if any Objection is made to the Questions asked by the Prosecutors, whether they are Managers of the House of Commons upon an Impeachment, or Counsel upon an Indictment, the Objection is first to be considered; and if the Objection prevails, and is allowed, then the Question is not to be asked: But all Questions that are asked, whether touching the Matter of Fact to be tried, or the Credibility of the Witness, are to be asked at the proper Time. The Party who produces the Witness has a Right to go through the Examination first; and then the other Side cross-examines him; and after that is over, the Judge asks him such Questions as he thinks proper, unless, as I said before, there be any Objection to the Questions, or any doubtful Matter arises that wants immediately to be cleared up. The same Method is to be observed here; and the Reason of it, my Lords, is, that unless your Lordships observe this Method, you will be in perpetual Confusion.

Earl Stanhope. My Lords, the Question now proposed, arose from an Expression that just now dropped from the Witness.

The Witness proceeded in his Evidence.

J. Murray. My Lords, this *Butler*, whom I mentioned to your Lordships, was for some time in England during that Summer that my Lord *Traquair* was in London; when, to cover his Intention, he bought up a Number of Horses for the King of France's Use; and expressed himself so well pleased with the Encouragement he had from the Pretender's Friends in England, that he said, that, as soon as he went over, he would represent it in such a Light to the King of France, his Master, as he imagined, would induce him to send the Succours desired. Upon his Return to Versailles, where *Drummond* went with him, *Drummond* went to Rome, as he said, at the Desire of the French Court, to persuade the Pretender to send his Son to France. Accordingly he did persuade him to do it; but *Drummond* returned to France, before the Pretender's Son left Rome. After *Drummond* went to Paris, he came to London, to acquaint the Friends of the Pretender in England, that the King of France was determined to send over a Body of Troops in the Spring. This came to my Knowledge by two Letters from *Drummond*; the one written from Paris in December, and the other written from London. The first Letter he sent over, was not forwarded in time to my Lord *Traquair*; but when *Drummond* returned, he found it lying here: He inclosed it in another Letter; and they both came to my Lord *Traquair*'s Hands at Edinburgh. In the first Letter, he mentioned his intended Journey to Rome: In the second, he mentioned his Return to Paris, and the Reason of his coming to London; and that he found the Pretender's Friends there very backward: That with Difficulty he had persuaded them to agree to the French's Landing. In this Letter, there were a great many Contradictions and Absurdities, in regard to the landing a Body of Troops in Scotland and England at the same Time. It particularly mentioned, that *Earl Marshall* was to command the 3000 Men that were to come from Dunkirk to Scotland; and at the End of the same Letter he says, "But I do not know how my Lord *Marshall* is to be equipped; which, with other Circumstances, determined us to write a Letter to *Drummond*, to desire him to explain himself." My Lord *Perth*, and my Lord *Traquair*, shewed me the Letter, and desired I would prepare a Letter to *Drummond*, desiring him to explain himself. Accordingly I wrote a Letter in their Presence, which they both signed; and I believe, I cannot say positively, that I signed it myself. This Letter, as my Lord *Traquair* said, was sent to London, to be forwarded to *Drummond* at Paris; but the Person to whom the Letter was delivered in London, wrote to *Drummond*, and told him, That such a Letter was in his Hands; and desiring to know, whether he should send it to him at Paris, or not; *Drummond* said in Answer, That he should not send the Letter, lest it should be intercepted; but desired he would burn it.

Mr. Noel. What Time was this?

J. Murray. In the Month of January 1743.

Mr. Noel. According to what Style?

J. Murray. It was in the Year 1743, not long before the intended Imbarcation at Dunkirk.

Mr. Noel. When was that?

J. Murray. To the best of my Memory, in 1743.

Mr. Noel. Be pleased to recollect the Time; because it is very material.

J. Murray. It was about two Months before the intended Invasion.

L. H. S. You may possibly recollect the Time from the other Circumstances. Do you remember the Year of the Battle of Dettingen?

J. Murray. I believe it was in the Year 1743.

Mr. Noel. How long was this after the Battle of Dettingen that you speak of? Or was it in the January before, or after the Battle?

J. Murray. I believe it was the January following.

Mr. Noel. It would be proper for you to recollect from these Circumstances, if you can, whether it was in January 1743, or 1744, according to the Scotch Style?

4 R

J. Murray.

(*87) *Murray. January 1744, by the Scotch Stile.*

In Two Weeks after, there was another Letter came from *Drummond*, consisting of a few Lines only, wherein he said, That, in all Probability, before that Letter came to hand, the Pretender's Son would be landed in *England*, with the Troops under the Command of *Marshall Saxe*. From this time, to July following, so far as came to my Knowledge, there were no Accounts from Abroad. It was proposed to me, as I had then an Intention that Summer of going to *Flanders* to see the Army, that I should go the Length of *Paris*, to know in what Situation their Affairs then stood. The First time I declined it; but was afterwards brought to agree to it, upon being shewed a Letter of *Mr. Semple*, wherein he made a Number of Excuses for the intended Invasion's not taking Effect; and desired fresh Assurances from *Scotland*, and that Endeavours should be used in *England*. Upon which I was pressed to go. We then thought it extremely necessary that we should know upon what Footing Things really were. I accordingly came to *London*, and from thence I went to the Army in *Flanders*; staid only a few Days there, and then I went to *Holland*, and from thence, in a private Manner, to *Paris*. When I went to *Paris*, I was introduced to the Pretender's Son by *Drummond* and *Semple*. The First time I saw him, so far as I can remember, there was nothing essential passed. I desired to see him in private; which I accordingly did the next Day. My Design was to represent to him, that I thought the Persons employed by him at *Paris* were imposing upon him; and that they had no other Intention but to serve themselves, to keep up the Spirits of the Party in *Britain*, and thereby make themselves necessary to the Party. With this Intent, I explained the Letter wrote by *Drummond*, endeavoured to shew the Contradictions in it, and that *Drummond* endeavoured to serve himself, and not him. He said at that time, he was determined to come to *Scotland*.

Mr. Noel. Who are you speaking of?

J. Murray. The Pretender's Son. He mentioned the Association; and said, He was determined to come into *Scotland*, and did not doubt but the King of *France* intended an Invasion in the Spring; but that he was then preparing for it, and intended to execute it as soon as the Campaign was over; and that, if he did not do it before, he was determined to come into *Scotland*. I endeavoured to shew him, that the Undertaking was desperate; and that he could not propose having above 4 or 5000 Men, supposing all the Friends he could expect, should be ready to join him: And it was seen afterwards, that he had not so many. Notwithstanding which, he insisted upon coming. I was so much against it, that I spoke to *Sir Thomas Sheridan*, a Person who lived with him for many Years, and told him of the Danger of such an Attempt; and that it would be the Ruin of many Families, and the Destruction of the Country. *Sir Thomas Sheridan* said, he would endeavour to persuade him against it; and, upon his Arrival in *Scotland*, told me he had; but to no Purpose. After staying a few Days in *Paris*, I returned to *Scotland*, where I gave an Account, not to all, but to some of the Persons concerned in the Memorial, of what had passed; and every body, but my Lord *Perth*, declared against the Pretender's Son coming into *Scotland*. Upon which I wrote a Letter to him, representing the Opinion of his Friends in *Scotland*, and setting forth the bad Consequences of such an Undertaking. This Letter I committed to the Care of a Gentleman who was going to *London*, in the Month of *January* 1745, Scotch Stile. This was neglected to be forwarded, and was returned to me in the Month of *April* following. I, notwithstanding, endeavoured to forward that Letter several times; and there having been Occasion to send from the West of *Scotland*, by my Lord *Perth*'s Means, the Packet was sent to *France*; but could not arrive in time, before the Young Pretender set out. In *June*, I received a Letter from the Young Pretender, wherein he said, he was fully resolved and determined to come into *Scotland*; and that he was to set out in *June*, and proposed to come to the West of *Scotland*; and appointed Signals for his Landing. Upon the Receipt of this, I sent it, by an Express, to my Lord *Perth*; desiring him to forward the Letter, or the Contents of it, to *Cameron of Lochiel*'s House, because I began to reflect, that it would be necessary some Methods should be taken to inform the Gentlemen in the *Highlands*, who were supposed to be ready, and to see if they approved of it. Upon that, I went to *Cameron*'s House of *Lochiel*; who told me, That he had sent his Brother *Doctor Cameron*, with a Copy of that Letter, to the noble Lord at the Bar; *Doctor Cameron* returned the next Day, and said he had accordingly gone to the noble Lord's House; that he had told him he had Business of Consequence to impart to him; and that he had taken his Promise to mention nothing of what was to pass between them: Upon which, he shewed my Lord *Lovat* a Copy of the Letter. I cannot say these were the very express Words; but it was to this Effect: Upon which, the noble Lord at the Bar declared, That it was a foolish and rash Undertaking; and that he should not land; and, if he did, that none of the Men would join him. And this is what *Dr. Cameron* told me. And it was the Opinion of all those of the *Highlands*, that he should not land, but return. They desired I would write a Letter of the Opinion of these Gentlemen to the Pretender, and of the bad Situation the Country lay under; and to desire, as their utmost Wishes, that he would return to *France*; which Letter I did write: I wrote Two of them, and committed them to the Care of a Gentleman; and which Letters he received upon the Island.

Mr. Noel. Who received them?

J. Murray. The Pretender's Son. The First Notice I had of his Landing was by an anonymous Letter that I received about a Week after. It did not say expressly, that the Pretender was landed; but, by the Words of it, I judged it was so. I was desired to come to the House of Lord *John Drummond*: There I understood that he was landed; and, in a little Time after, joined him, at the House of *Mac Donald* of upon the West Coast. About Ten Days after that, he erected a Standard in a Place called *Glenгарie*; where he was joined by the *Camerons*, the *Mac Donalds* of *Keppoch*, and a few of the *Mac Donalds* of With those, he marched to the House of *Mac Donald* of *Glenгарie*. There was a Gentleman of the Name of *Frazer* of *Gortuleg*, whom he there applied to, and the Laird of *Lochiel*, as being Persons acquainted with the noble Lord at the Bar. *Lochiel* told me there was such a Person there; that there were Two Commissions granted by the Old Pretender

in favour of the noble Prisoner, which he desired the Young Pretender to send. Accordingly, I asked him for those Commissions. He said they were in a Trunk, with other Papers, which he had left up the Country, by reason of the Approach of General *Cope*, who was then expected in the Country; but desired, at the same time, that *Mr. Kelly* might write a Commission; whether it was of Lieutenant-General, or no, I cannot say; but I saw the Commission written by *Mr. Kelly*. I was also to make an Apology to my Lord *Lovat*, why the original Commissions had not been sent. Whether I made the Apology verbally to *Mr. Frazer* of *Gortuleg*, or whether I did it by Letter, I cannot say. I did not see it put into the Packet, or sent; and I did not inquire whether he had received it, because I did not doubt of the thing. After the Arrival of the Pretender's Son at *Edinburgh*, nothing material relating to the noble Lord at the Bar happened between the last Time I spoke of, and the Time of his Arrival there. Some time after the Battle of *Prifton-Pans*, *Cameron* of *Lochiel* came to me, and told me, That one *Hugh Frazer*, who had been Clerk, or Servant in some Capacity, to my Lord at the Bar, but was then an Attorney at *Edinburgh*, he was a fit Person to send to my Lord *Lovat*, to desire him to send out his Clan, and agreed that he should go; and he had Instructions to do so. Whether I wrote to my Lord *Lovat* by *Hugh Frazer*, or no, I cannot recollect; very probably I did; but cannot say positively I did. The next thing, in regard to the noble Lord at the Bar, that happened, was upon the Return of the *Highland Army* from *Derby* to *Glasgow*. There this *Hugh Frazer* came to *Glasgow*; and this was the First time I ever saw him after he left *Edinburgh*. He came at that time, as he said, from *Perth*, and was sent, by the Master of *Lovat*, to procure Arms for a few Men which he had under his Command, and to know where he should join the Army. It was then proposed to write to my Lord the Prisoner at the Bar, to endeavour to persuade him to appear publicly in favour of the Pretender. This was agreed to, and the Letter was wrote by *Cameron* of *Lochiel*, and signed by him, *Clunie Mac Pherson*, and myself. This Letter was delivered to *Hugh Frazer*, with one that was wrote by the Pretender's Son himself, a Letter of Compliment. I do not remember that there was any Commission, or any thing sent, save these Two Letters, and a Letter which I wrote to the Master of *Lovat*, which was sent by *Hugh Frazer*. If there were any more sent, it is more than I can remember. *Hugh Frazer* at the same time asked, if there had not been a Patent granted by the Old Pretender to create my Lord *Lovat* a Duke: To which *Lochiel* answered, That if there had been any such granted, it was in the Hands of his Father *John Cameron*, who was then at *Dumblain*. It was for this Reason that I did not address this Letter of Packet to my Lord *Lovat*; but left that to the Management of *Hugh Frazer*, if he should find the Patent creating my Lord *Lovat* a Duke, when he should come to *Dumblain*. *Hugh Frazer*, at the same time, answered, That my Lord *Lovat* had made a Proposal, that Lord *John Drummond* (it was either he, or my Lord *Strathbally*, who then commanded at *Perth*, or perhaps both of them) should march, with the Troops under his Command, to *Inverness*, and bring with him some more People of his own. The Proposal, if it came from my Lord *Lovat*, as *Hugh Frazer* said it did, was a very judicious one; and my Lord *Lovat* must have desired it to cover his Country from the Troops then under Lord *Louden*'s Command, as my Lord *Lovat* had left *Inverness* some little Time before that. And the next thing that occurs to me, with respect to the noble Lord at the Bar, is, that while I was at *Inverness*, I received a Letter from the Hands of *Frazer* of *Gortuleg*. This, he said, came from my Lord *Lovat*; but wrote to me seemingly in some Clerk's Hand. This Letter was produced; but, one Paragraph of it being very remarkable, I asked *Gortuleg* the Meaning of it; and he said, That my Lord *Lovat* was desirous of having that Patent creating him a Duke, which he expected some time before. I said, That I had no such Patent; and told him, That he ought to put my Lord *Lovat* off from any such Expectation.

Mr. Noel. You said, That this Letter came to you at *Inverness*; pray when did it come to you?

J. Murray. It was in the End of *February*, or Beginning of *March*.

Mr. Noel. In what Year?

J. Murray. In the Year 1746.

Mr. Noel. According to the Scotch Stile?

J. Murray. Yes.

I had no Occasion either to see or hear from the Lord at the Bar, from that time for some Weeks after the Battle of *Culloden*; and, when in Company with *Lochiel*, I was informed, that my Lord *Lovat* was in that Country, and that he lay at the Place called *Glenmely*; and there was a Boat sent to bring Lord *Lovat* to the other Side of the Lake, where a Meeting had been proposed by *Lochiel*. I believe that Meeting was accidental in regard to the noble Lord at the Bar, because *Lochiel* expressed great Satisfaction, that they should have Lord *Lovat*'s Advice and Assistance. Another Reason which induced me to think so was, that *Cameron* sent a Servant, with Two Horses, to procure Wine and Spirits from *Beaufort*, Lord *Lovat*'s Seat, there being neither in that Part of the Country. *Cameron* of *Lochiel*, with some others, and I, came to the Place where Lord *Lovat* was: He was then upon the Side of a Lake.

Mr. Noel. What is the Name of that Place?

J. Murray. I heard it is called *Morell*, or *Morlaig*; but whether that is the real Place, I cannot say.

The First Night we were together, or rather the only Night that I was there, I do not remember that any thing material passed; but, in general, we told my Lord *Lovat*, that there was a Meeting to be the next Day; and that we should be very proud of his Advice. Accordingly, the next Day there was a Meeting of about Twelve or Thirteen Gentlemen, where we did desire the noble Prisoner at the Bar to give his Opinion. There were present *Cameron* of *Lochiel*, *Barisdale*, *John Roy Stewart*, old *Glenbuckett*, *Dr. Cameron*, and a Nephew of *Keppoch*'s, and some few others. I cannot particularly remember them all.

Mr. Noel. You have not said whether the noble Lord at the Bar was there?

J. Murray. Yes: He was at that Meeting.

Mr. Noel. Did you see him there?

J. Murray.

Mr. Murray. Yes, I proposed in that Meeting, that my Lord Lovat should give his Opinion. My Lord Lovat said, That, in his Opinion, the only thing for the Gentlemen there to do, was, to raise a competent Number of Men to protect their Country, Families, and Cattle, and endeavour to defend themselves.

Mr. Noel. To protect their Country, from what?

Mr. Mur. To protect or defend their Country from the King's Forces, who were then at *Inverness*. There were no other Forces. The Number of Men then proposed to be raised was 3000, or 3500, a compact Body, whom it was easy to find Provisions for. This Proposal was agreed upon, and the particular Number of Men that each Gentleman should bring was agreed upon. Among the others, the Clan of the *Frasers* was named for 400, to be commanded by the Master of *Lovat*. But my Lord Lovat himself would not answer for his Son; but required *Lochiel* to answer for him. My Lord Lovat said, That he was an old Man, and not able to do any thing himself; and that he would not answer for his Son's Abilities; but desired they would let *Lochiel* answer for him; and that he did not doubt but he would do it. *Lochiel* accordingly answered for him.

There was a Sum of Money distributed there, and, I think, about Seventy *Loudors* given to the Servant of my Lord Lovat, to carry to his Son, as Ten Days Pay for the 400 Men which he was to bring out.

Mr. Noel. Was my Lord Lovat present, or not, at the Time you speak of, when that Money was given to his Servant?

Mr. Mur. I cannot say positively whether my Lord Lovat saw the Servant get the Money; but it was distributed by a Person who was my Clerk; and my Lord Lovat was at the other End of the Room.

Mr. Noel. Was it in the same Room?

Mr. Mur. Yes: My Lord Lovat was in the same Room that the Money was distributed in. There were several Persons there, to whom Money was paid.

Mr. Noel. Can you name the Servant who received it for Lord Lovat?

Mr. Mur. No: I think he was called the Steward of my Lord Lovat.

Mr. Noel. From whence came the Money?

Mr. Mur. From France.

Mr. Noel. What was the Sum that came from France?

Mr. Mur. Thirty-five thousand *Loudors* at that time.

Proclamation was made for Silence.

After this Meeting was over, so far as I can remember, I, with *Lochiel*, crossed over to the opposite Side of the Lake; and my Lord Lovat, as I understood, and he himself proposed, remained there all that Night. Four or Five Days after, I had Occasion to be at a Place called *Glen-duffrie*, when my Lord Lovat was on the opposite Side, at a House formerly belonging to the Brother of *Lochiel*. I went there to my Lord Lovat the next Day, with no Intention to speak to him of Business; but upon seeing his Servant, to whom the Money was given, I asked him, when he intended to send the Servant away with it? He said, he should go that Day, or the next; and then called a Person who was called his Secretary; and desired him to write a Letter to the Master of *Lovat*, in my Name: But what were the Contents of the Letter, or that I saw it, I cannot remember; but I took it in general, that the Contents of the Letter were to give the Master of *Lovat* the Reason why the Money was sent. I did not then stay above an Hour or Two with my Lord Lovat, but returned to *Lochiel*. What was agreed upon at the Meeting, and proposed to be done, did not take Effect so soon as was expected; neither indeed was there above Four or Five hundred Men in the Whole, that met, about Ten Days after the Time first proposed; that Handful of Men were Two Days at *Lochiel's* House before the King's Troops marched Northwards, in Pursuit of them: Upon Intelligence that the King's Troops were on their March, Two Men were ordered out, to see what Number of Men there were; and if we could make any Head: They saw a great Number of Men; upon which we retired to the Head of the Lake; when it was determined, that we should disperse, and every one do the best he could for himself. From thence I went into the Country that belongs to the Clan *Ronald*, where I received a few Lines by a young Man, who said he was Servant to my Lord at the Bar; wherein he said, It was necessary for him to have a Watch or Guard to attend him, of Twenty-two Men, and a Lieutenant; and desired, that I might send him Money, to pay those Men Twenty Days Pay, I think it was. I do not remember, that I wrote any Answer to this Letter, because I had no Pen, Ink, or Paper; but I gave the Servant Fifteen *Loudors*, having then not much Money; and desired him to give it to my Lord Lovat. After that I had a Message from the noble Lord at the Bar, by one *Bishop Mac Donald*, desiring, that I would see him before I left the Country; but so far as I remember, it was nothing farther than Compliments. Since that Time till Yesterday, I never had the Honour to see the noble Lord at the Bar, nor had any Letters from him, nor corresponded with him.

Mr. Noel. Were the Fifteen *Loudors* that you sent to my Lord Lovat, part of the French Money that was landed there?

Mr. Mur. Yes, it was Part of the French Money.

Mr. Noel. My Lords, He has told your Lordships already, that the Men that were to be raised were to defend the Country against the King's Forces: Now I beg to know, whether it was mentioned at that Meeting, where these Men were to march, or where to rendezvous?

Mr. Mur. It was proposed, that the general Rendezvous should be near the House of *Keppoch*. *Lochiel's* People, *Barisdale*, and *Clanronald's*, were to have rendezvoused upon the Lake, about two Miles above *Lochiel's* House, and then to proceed to the general Rendezvous, by *Lochiel's*.

Mr. Attorney General. Pray, had you any blank Letters from the Young Pretender, after he came to England; or that were sent to you?

Mr. Mur. I had Letters that were sent to me, and were not directed, but with me, to deliver to such Persons as I thought willing to support the Cause.

Mr. At. Gen. Please to give an Account to my Lords, what those Letters were, and the Import of them.

Mr. Mur. I do not remember the exact Number of Letters, but I did receive a Number of Letters; they were not directed, but left to be directed

to such People in Scotland as were thought the best Friends to the Pretender, and proper to cultivate a Party for him in the Country.

Mr. At. Gen. Please to give an Account to my Lords, at what Time these Letters were delivered to you, and by whom.

Mr. Mur. There were some of the Letters, either Two or Three of them, that I brought with me from Paris; and the others were sent to me; but who delivered them to me, I cannot particularly remember.

Mr. At. Gen. Please to mention to my Lords, who delivered you the Letters you received at Paris.

Mr. Mur. The Young Pretender himself.

Mr. At. Gen. What were the Directions he gave then?

Mr. Mur. There was a Credential attached to every Letter, and they were to be delivered to such Persons as were disposed to promote his Interest in the Country.

Mr. At. Gen. And what was the Meaning of the Credential? Was it signed by the Young Pretender, or by any body?

Mr. Mur. Yes, by him.

Mr. At. Gen. Please to give an Account to my Lords, to whom you delivered those Letters.

Mr. Mur. One of those Letters, together with the Credential, I delivered at *Edinburgh*, to the Laird of *MacLeod*.

Mr. At. Gen. Please to give an Account to my Lords, to whom you delivered any of those Letters.

Mr. Mur. There was another of those Letters sent to *Sir Alexander MacDonald*.

Mr. At. Gen. You say it was sent; then you did not deliver it yourself?

Mr. Mur. No.

Mr. At. Gen. Do you know whether it was received or no?

Mr. Mur. No, I never heard it was.

Mr. At. Gen. Please to give an Account to my Lords, of any other of these Letters which you delivered.

Mr. Mur. The other Letters, so far as I can remember, were put into the Custody of *Lochiel*, who was the proper Person to send them to the People who were to have them: As to those who had them, I cannot distinctly name them all; but my Lord *Perth* had one, I am sure.

Mr. At. Gen. What Time was it, that those several and respective Letters were delivered?

Mr. Mur. They were delivered in the Months of November and December, 1744.

Mr. At. Gen. Was that after the Time you came from Paris?

Mr. Mur. Yes, it was.

Mr. At. Gen. Were they delivered, in order to forward the intended Invasion from France, which you gave an Account of before?

Mr. Mur. They were designed by the Pretender as Letters to be given to People who were most his Friends, to know whether or no they were ready to join him; and the Credential annexed was for them to forward his Interest in the Country.

Mr. Noel. You have told us, that a Computation was made at that Meeting, of the Number of Men that could be raised; please to give an Account to my Lords, whether any particular Person, and who, mentioned the Number of Troops that might be raised?

Mr. Mur. It was the general Opinion, that 3000 Men should be raised; and my Lord Lovat said, that such a Number would be sufficient.

Mr. Noel. Did he mention any Proportion of Men that were to be raised by the Master of Lovat?

Mr. Mur. He mentioned 400 *Frasers*, to be raised by the Master of *Lovat*.

Lord High Steward. Gentlemen of the House of Commons, Have you done with the Examination of this Witness?

Mr. At. Gen. My Lords, we have done with this Witness at present.

L. H. S. My Lord Lovat, The Managers for the House of Commons declare, that they have done with this Witness at present: Will your Lordship ask him any Questions?

Lord Lovat. My Lords, I beg Leave to tell your Lordships, that I am the most incapable Man of the three Kingdoms to make my Defence, because, as I mentioned to your Lordships before, I want both my Sight and my Hearing; and I therefore begged of your Lordships to allow my Counsel to examine my own Witnesses, and counter-examine the Witnesses against me; but your Lordships were not pleased to allow that. Your Lordships are much more capable of examining the Witnesses than I am; and therefore I shall refer it to your Lordships; and beg Leave to sit down. I will ask this Witness no Questions now.

Lord Talbot. My Lords, I beg Leave to ask this Question: Did you voluntarily surrender yourself to the King's Forces? or was you taken by the King's Forces?

Mr. Mur. I did not intend, at that particular Time, to surrender myself; and I presume it is not necessary for me to say now, whether I ever did intend it or not: But at the Time that the Party of Dragoons came to the House where I then was, the Doors were shut, and I was in such a Position, as that I could have killed two of them myself; but I rather chose to submit myself, and throw down my Arms.

Lord Talbot. My Lords, The Question that I ask is, Whether he did, or did not, voluntarily surrender himself; and whether his Intention was then to submit to the King's Forces?

Mr. Mur. I did say, that it was not my Intention then particularly to submit myself; it was not my Intention till I saw the Dragoons.

Lord Talbot. Did you use any Means to make your Escape afterwards?

Mr. Mur. I never did.

Lord Talbot. Have you ever taken the Oaths of Allegiance and Fidelity to the King?

Mr. Mur. I never did.

Lord Talbot. Did you never take those Oaths; or Oaths of the same Nature to any body else?

Mr. Mur. No.

Sir William Yonge. My Lords, we hope the Witness shall not be obliged, to answer Questions of this Nature; it is a Question that tends to accuse himself of High-Treason.

Lord Talbot. My Lords, I did not ask him any Question to accuse himself of any Crime which he had not himself before confessed; and as he had

had before accused himself of that Crime, this may be said to be a Continuation of it, but cannot be said to be a fresh Accusation. I should not have asked him the Question, if he had not before accused himself.

Lord High Steward. My Lords, There is no Reason to spend your Lordships Time upon this Point; for the Gentleman has already answered the Question.

Lord Talbot. Are you at present a Prisoner, or under Confinement?

J. Mur. Yes, I am, and have been ever since I came to the Tower.

Lord Talbot. Are you, upon this Occasion, a voluntary Evidence?

J. Mur. I should be glad to have the Meaning of that Question explained; and to know what is meant by a voluntary Evidence.

Lord Talbot. My Lords, The Meaning of the Question is, Whether the Witness is not an Evidence in Hopes of a Pardon? and whether, if he himself was pardoned, he would be an Evidence at all?

Mr. At. Gen. My Lords, On behalf of this Prosecution, I must oppose that Question's being asked. The Question, as I understand it, is, Whether the Gentleman under Examination is a Witness in Hopes of a Pardon? and whether he would be a Witness, if his Pardon had been obtained? My Lords, This is a Question, as I apprehend, not proper to be asked, because it is no Question as to any Matter of Fact at all, but only a Question concerning what the Witness would do, upon Supposition of a Fact which has not happened. I do not apprehend, that any Question can be asked of a Witness, but what concerns a Matter of Fact; not what a Witness would, or would not do, upon a future Contingency. The Question must tend to a Fact, and the Witness either is, or is not capable of giving Evidence; but, my Lords, to ask Questions of this Kind, is entering into the Recesses of a Man's Heart, which Nobody has a Right to enquire into; and it is such a Sort of Question as I do not remember ever to have heard asked in a Court of Justice; and, perhaps, it is what the Witness is incapable of answering; for, till the Event happens, he cannot say what he would, or would not do. We therefore hope your Lordships will think, that this is an improper Question; and that the Thoughts, Inclinations, or Wishes of a Witness ought not to be enquired into here, where Matters of Fact only are to be tried.

Lord Talbot. My Lords, I asked the Question for this Reason, that I might know with what View his Evidence was given; and so judge of the Credibility of it. Do you believe your Life depends upon the Conformity of the Evidence that you shall give on this Trial, to former Examinations which you have undergone?

Sir William Yonge. My Lords, I presume, without troubling your Lordships with any Argument, that all that has been said by the worthy Manager who spoke last to oppose the former Question, is much more applicable to the Question now proposed to be asked; and, therefore, without adding any thing more why this Question should not be asked, I shall submit it to your Lordships; and humbly apprehend, it is our Duty to oppose the asking of this Question.

L. H. S. Gentlemen of the House of Commons, Do you oppose this last Question being asked?

Mr. At. Gen. I should beg that the Question might be a little more fully explained; I do not remember to have ever heard the like.

Lord Talbot. My Lords, The Question to me seems extremely clear and plain; and I beg Leave to repeat it to your Lordships; and if you have any Difficulty about it, I will readily submit. My Lords, The Question is, Whether you (the Witness under Examination) believe your Life depends upon the Conformity of the Evidence you shall give upon this Trial, to your former Examinations? I suppose the Gentleman was examined as well by the Managers for the House of Commons, as their Clerk.

Lord Halifax. My Lords, All that the Noble Lord, who asked this Question, means by it, is comprehended in the former Question that he asked; and that is, Whether the Witness is a voluntary Witness, or not?

L. H. S. The Witness said, He did not know what was meant by the Word *voluntary*; and desired it might be explained.

Lord Talbot. My Lords, I urged the other Question only as explanatory to that; and all that I meant by it was to know, whether the Witness at the Bar is governed by Hope or Fear?

J. Mur. My Lords, If your Lordships please, I will answer the Question: I am upon my Oath, and obliged to tell the Truth; and I say, that possibly, and very probably, had I been in another Situation of Life, I should not have appeared before your Lordships as a Witness against the Noble Lord at the Bar.

Lord Talbot. My Lords, I am extremely well satisfied with the Gentleman's Answer to the Question; and it gives me a much better Opinion of his Evidence than I had before.

Lord Barrington. My Lords, I beg Leave to ask this Witness a Question explanatory to the last Question. If you had a full Pardon, and was at this Bar, and was obliged to answer upon Oath, would you not have given the same Evidence that you now have given?

Lord Talbot. My Lords, I apprehend that is only asking the Witness, whether he would come here voluntarily, and perjure himself?

Lord Barrington. My Lords, The Question I proposed is not, Whether the Witness would come voluntarily to this Bar? but whether, if he had a full Pardon, and was brought to this Bar (as every Man may, whether free or not free), if he had a free Pardon, and was compelled to give Evidence, whether he would give the same Evidence upon Oath as he has now given?

Lord Talbot. My Lords, This is a Question that no Man alive, in this Gentleman's Circumstances, can possibly answer.

J. Mur. My Lords, I beg Leave to answer the Question. If I was in such a Situation as has been now stated to your Lordships, and brought here with a Pardon in my Pocket, but brought here to give Evidence against the Noble Lord at the Bar, I would not add to, or impair a Syllable of, or vary in the least from, what I have now said.

L. H. S. Is the Evidence you have here given upon your Oath true?

J. Mur. Yes, it is.

Sir John Strange. My Lords, I beg Leave to ask this Gentleman a Question, relating to a Transaction which has been lately mentioned. He was asked, Whether he did, or did not, surrender himself voluntarily

to the King's Forces? His Answer was, That he could, he believed, have dispatched two of the Dragoons, but that he did not make any Resistance. Now I desire he may acquaint your Lordships, whether that was, or was not, before the 12th Day of July last?

J. Mur. It was upon the 28th of June last.

Sir J. Strange. My Lords, I desire to know, Whether or not, from that Time till now, he has not been in Custody, and amenable to Justice?

J. Mur. I have been in Custody ever since that Time.

Mr. At. Gen. My Lords, I desire to know, Whether he was then brought before any Judge or Justice of the Peace, and whom?

J. Mur. I was carried to my Lord Justice Clerk in Edinburgh, the Day I was taken into Custody.

Mr. At. Gen. Was you then committed, or no, by the Justice Clerk?

J. Mur. I was that Night committed, by the Justice Clerk, to the Castle of Edinburgh.

Mr. At. Gen. On the 28th of June?

J. Mur. Yes.

Mr. At. Gen. Did you continue in the Castle of Edinburgh from that Time till you was sent from thence to London?

J. Mur. I did continue there till I came to London.

Mr. At. Gen. Did you ever make, or endeavour to make, any Escape all that Time?

J. Mur. I never did.

A Lord. Did you at any Time since you have been in Custody, receive any Hopes or Promise of a Pardon?

J. Mur. I have never, since I have been in Custody, been promised a Pardon, nor have heard a Word of Pardon mentioned to me since I was in Custody.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

Sir Richard Lloyd. My Lords, The next Witness we beg Leave to produce, is *Hugh Fraser of Dumballoch*: Who was called in, and sworn.

Proclamation for Silence.

Sir Rich. Lloyd. Do you know the Noble Lord at the Bar?

Hugh Fraser. Yes, I do.

Sir Rich. Lloyd. How long have you known him?

H. Fras. I have known him many Years ago.

Sir Rich. Lloyd. Do you remember whether you was sent for at any Time, and when, to the House of my Lord Lovat?

H. Fras. I got a Message from *Peter Fraser of Belladrum*: It was he that brought me the Message.

Sir Rich. Lloyd. From whom was that Message brought?

H. Fras. From Lord Lovat, as he told me.

Sir Rich. Lloyd. When was that?

H. Fras. I think it was about the End of September 1745.

Sir Rich. Lloyd. Was you sent for at any other Time about this Part of the Year?

H. Fras. I did not go upon the first Message.

Sir Rich. Lloyd. Did you go upon the second?

H. Fras. Yes, I did.

Sir Rich. Lloyd. What Distance of Time was there between the First and Second Message?

H. Fras. I believe there might be a Day or two: Thereabouts, to the best of my Memory.

Sir Rich. Lloyd. When you came to my Lord Lovat's House, pray what passed between my Lord Lovat and you?

H. Fras. Upon my Word, I cannot remember particularly.

Sir Rich. Lloyd. Do you remember whether any particular Paper was shewn you at that Time, and what it was?

H. Fras. No, I don't remember seeing any particular Paper at that Time?

Sir Rich. Lloyd. Was there any Paper read, or talked of, by any body at that Time relating to the Pretender's Son?

H. Fras. There was a Conversation there about that Time, and, to the best of my Remembrance, it was about the Troubles in the Country.

Sir Rich. Lloyd. Did you ever see or read a Paper said to be a Manifesto from the Pretender's Son? Or did you ever hear it read?

H. Fras. Yes, I did.

Sir Rich. Lloyd. Where did you hear it read?

H. Fras. I read that Paper in a back Room at my Lord Lovat's.

Sir Rich. Lloyd. Who gave it you to read?

H. Fras. I cannot remember who gave it me to read.

Sir Rich. Lloyd. Do you remember who first shewed it you?

H. Fras. My Lord Lovat directed some Person in the Room to give it me: Whether it was *Robert Fraser*, or not, I cannot say.

Sir Rich. Lloyd. Do you remember to have heard my Lord Lovat say any thing of that Paper?

H. Fras. I have heard him say it was a pretty well wrote Paper.

Sir Rich. Lloyd. I beg you'll inform their Lordships, whether at that Time you heard any Conversation about the Clan of the *Fraser's*?

H. Fras. Upon my Word, I cannot remember whether I did or not, at that particular Time.

Sir Rich. Lloyd. Did you about that Time hear any Thing about the Clan of the *Fraser's*?

H. Fras. I heard them spoken of several Times.

Sir Rich. Lloyd. Did you hear it spoken of, at any of those Times, who was to command them?

H. Fras. Yes; I heard that the Master of Lovat was to command them.

Sir Rich. Lloyd. Who did you hear say that?

H. Fras. I heard my Lord Lovat say it.

Sir Rich. Lloyd. To what Purpose did my Lord Lovat say he was to command them?

H. Fras. It was to go South.

Sir Rich. Lloyd. To join whom?

H. Fras. To join the Pretender.

Sir Rich. Lloyd. What did he call the Pretender? by what Name?

H. Fras. He called him the Prince.

Sir Rich. Lloyd. Were there any other of the Clans expected at that Time to join the *Frasers* to march Southwards?

H. Fras. I heard my Lord Lovat say, That he was uneasy about an Answer to a Letter, which he or his Son had wrote to the Isle of Skye.

Sir Rich. Lloyd. From whom was that Answer expected?

H. Fras. From the Laird of *MacLeod*.

Sir Rich. Lloyd. Did you hear my Lord Lovat say what sort of Answer he expected, or hoped for?

H. Fras. By all that I could learn of the Letter, it was a Letter desiring that Laird *MacLeod's* Men should come and join them.

Sir Rich. Lloyd. A Letter from whom, desiring that *MacLeod's* Men might come and join them?

H. Fras. I cannot be positive, whether it was from my Lord Lovat, or his Son.

Sir Rich. Lloyd. From whom did you learn the Contents of the Letter?

H. Fras. I heard my Lord Lovat speak of it.

Sir Rich. Lloyd. Was any Application made to you concerning the Raising of the Men, or their joining?

H. Fras. My Lord Lovat asked me what Number of Men I could raise.

Sir Rich. Lloyd. Of what Clan were you to raise them?

Sir William Yenge desired, that the last Question might be repeated: Which was done; and he made the same Answer as before.

Sir Rich. Lloyd. What Men did he speak of, and what Clan?

H. Fras. The *Frasers*: There are no other Men in that Part of the Country.

Sir Rich. Lloyd. With what View were these Men to be raised?

H. Fras. To join the rest of the Clan of the *Frasers*, which were to be commanded by the Master.

Sir Rich. Lloyd. Did you tell my Lord Lovat what Number of Men you thought you could raise?

H. Fras. No; upon my Word, I did not.

Sir Rich. Lloyd. Did you hear my Lord Lovat say any thing about the raising his Clan, and who was to raise them, or did raise them?

H. Fras. I heard my Lord Lovat say, That the Master was the Man that was to raise the Clan, and to head them.

Sir Rich. Lloyd. Was he to do that by his own Power or Inclination, or by Advice from any body else?

H. Fras. That is a Thing I can give but an Opinion upon.

Sir Rich. Lloyd. What is your Opinion upon it?

H. Fras. That the Master could not have raised the Men, except my Lord Lovat had countenanced the Thing, and it had been done by his Permission.

Sir Rich. Lloyd. Have you heard my Lord Lovat say any Thing in regard to his Son's being active; or not, in raising the Men?

H. Fras. I have heard my Lord Lovat say more than once, That his Son was very slow in raising of the Men.

Sir Rich. Lloyd. And did he say so as praising him for his Slowness in raising the Men, or as in dispraising him?

H. Fras. I thought it was to dispraise it.

Sir Rich. Lloyd. Did you hear my Lord Lovat say any Thing of his own Abilities or Inabilities to raise Men, and head them?

H. Fras. I have heard my Lord Lovat say, That he was a tender, infirm Man, and not able to go about those Things himself.

Sir Rich. Lloyd. Have you heard him with himself younger?

H. Fras. I have heard him say, He wished himself younger, that he might go and command the Men himself.

Sir Rich. Lloyd. Command them in whose Service?

H. Fras. In the Pretender's Service, that he was talking of.

Sir Rich. Lloyd. Do you know what they mean by the Firy Crosses in that Country?

H. Fras. I remember the Firy Crosses when it went about my Father's Ground. It was a long Pole, with two crosses Sticks burnt at the Fore-end; and the Design of it was to raise the Men, and to threaten them with Fire and Sword; that their Houses should be burnt, if they did not rise.

Sir Rich. Lloyd. Was the Firy Crosses carried through the Clan, that you know of, or have heard?

H. Fras. I have heard, that it was carried through the Clan: I did not go about all the Country.

Sir Rich. Lloyd. You say you saw it at your Father's?

H. Fras. Yes; I did.

Sir Rich. Lloyd. By whose Order is it that those Crosses are usually carried about to raise Men in the several Clans?

H. Fras. Order is given by the Person that wants the Men.

Sir Rich. Lloyd. Is it not always ordered by the Chief of the Clan? Does any body but the Chief of the Clan take upon them to order it?

H. Fras. I am an intire Stranger to that: I never saw the Thing before.

Sir Rich. Lloyd. When you were at Lord Lovat's House at the Time you speak of, did you observe any Tents there?

H. Fras. Yes; I observed some Bell-Tents there.

Sir Rich. Lloyd. What Number of them?

H. Fras. I cannot be positive, whether Two or Three.

Sir Rich. Lloyd. Were they new or old Ones?

H. Fras. They were new: They seemed to me to be new.

Sir Rich. Lloyd. What Arms were upon them?

H. Fras. My Lord Lovat's Crest was upon them.

Sir Rich. Lloyd. Did you see any Colours?

H. Fras. I saw Colours at the House of *Castle-Downey*.

Sir Rich. Lloyd. What Arms were upon them?

H. Fras. There was upon one large Pair of Colours my Lord Lovat's Arms, to the best of my Memory.

Sir Rich. Lloyd. Do you know if my Lord Lovat saw them?

H. Fras. I cannot tell.

Sir Rich. Lloyd. Was any thing said to you, and by whom, to induce you to join the Pretender, more than you have given an Account of already?

H. Fras. There were several Things dropped in Conversation; but it is such a Distance of Time, that I cannot remember what they were.

Sir Rich. Lloyd. Was any Person present there, besides yourself and my Lord Lovat, when you was at his House?

H. Fras. There were several Persons there.

Sir Rich. Lloyd. Did any Conversation then pass or not about throwing off the Mask?

H. Fras. Yes; Mr. *Alexander MacLeod*, and several others of the Country there, were speaking about the Pretender; and Mr. *Alexander MacLeod* said, That much depended upon my Lord Lovat's throwing off the Mask, or Words to that Purpose.

Sir Rich. Lloyd. To whom did he say these Words?

H. Fras. To my Lord Lovat.

Sir Rich. Lloyd. What Answer did my Lord Lovat make to that?

H. Fras. My Lord Lovat I saw take off his Hat, and put it upon the Ground, and heard him say, There it is then.

Sir Rich. Lloyd. Do you remember any particular Healths that were drank then?

H. Fras. I have heard the Prince's Health drank several Times there at the Table at *Castle-Downey*.

Sir Rich. Lloyd. Was my Lord Lovat present, or not? Or did he drink it?

H. Fras. My Lord Lovat was present at the Table.

Sir Rich. Lloyd. Do you know of any Force that was made use of in that Clan to make them rise?

H. Fras. I know there went Parties about.

Sir Rich. Lloyd. Did you hear my Lord Lovat say any thing about his Expectation which Side would prevail?

H. Fras. I heard my Lord Lovat say, He was sure the Prince would prevail.

Sir Rich. Lloyd. Who did he mean? Who did he call the Prince? Who was he speaking of?

H. Fras. Of the Young Pretender.

Sir Rich. Lloyd. Do you know of any Subsistence that was given by Lord Lovat to any body?

H. Fras. I have heard my Lord Lovat say, That he had ordered his Factor to give an Allowance monthly or weekly to the Wives and Children of the Men.

Sir Rich. Lloyd. Of whom?

H. Fras. Of those that went with his Clan.

Sir Rich. Lloyd. Upon what Occasion did they go?

H. Fras. Those Men that were to go South with the Young Pretender.

Sir Rich. Lloyd. Was it all, or only those that were to be in his Clan?

H. Fras. There were a great many in the Country, that perhaps had nothing to support their Families in their Absence, when they were gone South.

Sir Rich. Lloyd. Do you know of any Letter that was shewn you from the Young Pretender, dispensing with my Lord Lovat's personal Presence?

H. Fras. Yes; I remember to have read the Letter.

Sir Rich. Lloyd. Who gave it you to read?

H. Fras. My Lord Lovat.

Sir Rich. Lloyd. From whom was that Letter?

H. Fras. He said it was from the Marquis of *Tullibardin*.

Sir Rich. Lloyd. How was the Letter signed?

H. Fras. The Letter was signed *Athal*, in large Letters.

Sir Rich. Lloyd. What were the Contents of it?

H. Fras. I don't remember the particular Contents of it. To the best of my Memory, it appeared to be in Return to another Letter, which had been sent by my Lord Lovat; and it was to excuse his personal Attendance.

Sir Rich. Lloyd. Whose personal Attendance?

H. Fras. My Lord Lovat's.

Sir Rich. Lloyd. His Attendance where?

H. Fras. To go South in the Pretender's Service.

L. H. S. Where is that Letter?

H. Fras. I don't know.

L. H. S. You say my Lord Lovat gave it you?

H. Fras. Yes.

L. H. S. What did you do with it?

H. Fras. I returned it again.

L. H. S. To whom did you return it?

H. Fras. To my Lord Lovat, or his Secretary; I don't know which.

Sir Rich. Lloyd. Do you know whether there was any Reward given to the Clans, when they were raised, for their Subsistence?

H. Fras. I know there was Meal, Cows, and Mutton given them.

Sir Rich. Lloyd. For what was it given them?

H. Fras. To maintain those Men.

Sir Rich. Lloyd. Where were they then?

H. Fras. There were several of them about *Castle-Downey*.

Sir Rich. Lloyd. By whose Order were those Things given?

H. Fras. That I don't know, indeed.

Sir Rich. Lloyd. Did you ever hear my Lord Lovat say any thing about their being maintained by his, or any body else's Order?

H. Fras. I don't remember, indeed.

Mr. Noel. My Lords, the Witness has already told your Lordships what the Noble Prisoner at the Bar declared about the Person's Success, whom he called the Prince: I beg he may inform your Lordships, whether my Lord Lovat, when he spoke about that Success, did, or did not, say any thing about his sending for Men, and for what Purpose?

H. Fras. I don't remember what he said at that particular Time.

Mr. Noel. Do you at any other Time?

H. Fras. Yes, indeed: I heard my Lord Lovat say, He would send his Son and Men.

Mr. Noel. For what?

H. Fras. To serve the Prince.

Mr. Noel. Who did you understand he meant by the Prince?

H. Frazer. The Pretender's Son.

Mr. Noel. You mentioned the Particulars about pulling off the Mask: You said, that Mr. Alexander MacLeod said, That much depended on Lord Lovat's throwing off the Mask; that my Lord Lovat, upon that, threw his Hat upon the Floor, and said, Then there it is: Pray what was the Subject-Matter of the Conversation when that was done?

H. Frazer. The Subject-Matter of the Conversation was the Young Pretender's Cause; and it was about that they were speaking at that Time.

Mr. At. Gen. My Lords, the Managers have done with their Examination of this Witness.

L. H. S. My Lord Lovat, has your Lordship any Questions to ask this Witness?

Lord Lovat. My Lords, there have been such Proceedings against me since I was ordered to be tried, as never were heard of in Scotland or England.

L. H. S. In what respect does your Lordship mean?

Lord Lovat. I mean, that after I was brought up to be tried before your Lordships, the Impeachment had been read against me, my Answer put in to it, and the Commons had replied to it, and after I had Leave to summon Witnesses in my Defence, I had summoned a great many Witnesses out of Scotland to come here in my Defence, I did not imagine there would be the least Difficulty in their coming up: But, my Lords, I find there was a Person there, who was a kind of a Deputy-Sheriff, but never was known as an Officer of Justice, went to several private Meetings, and endeavoured to prevent my Witnesses coming up.

L. H. S. My Lord Lovat, I would not interrupt you, if it were not for your own Sake. If your Lordship has any Matter of Complaint, my Lords will be ready to hear you at a proper Time, upon a proper Application; but this is not a proper Time for such an Application. You have Counsel to advise you as to the proper Method and Time of doing it, with whom you must advise.

Lord Lovat. My Lords, I was going to object to this Witness before he was sworn, because he had been called in by that Deputy-Sheriff, who threatened the Men, if they offered to come up to give Evidence for me; and some were put in Prison, and driven from their Houses, particularly those they thought would favour me; after I had your Lordships Order to summon my Witnesses: And therefore, I shall object to any Witness that shall come from that Little Court. I beg this Witness may be asked, whether he was examined at Inverness before he came here?

H. Frazer. Yes, I was.

Lord Lovat. My Lords, I thought, as I was to be judged in a Court of the Supreme Judicature, and was innocent, that I was safe in such Hands; but I cannot think myself safe, when such Officers as those shall manage the Witnesses, and threaten those who will not say as they say.

L. H. S. I have already told your Lordship, that if you have any Complaint to make, you must make it at a proper Time, and in a proper Manner; and my Lords will hear it. You may go on to ask this Witness any Questions concerning any Practices that he knows of.

Lord Lovat. My Lords, I beg this Witness may be asked, if he was examined upon Oath, in December or January last, and by whom?

H. Frazer. Yes, I was examined at Inverness by one Killravock.

Lord Lovat. What is Killravock?

H. Frazer. He is a Gentleman that lives about four Miles from Inverness.

Lord Lovat. What is he?

H. Frazer. He had Substitution from the Sheriff-Depute.

Lord Lovat. Did you see Chevis of Murtoun? What Part did he act there?

H. Frazer. This Gentleman had got a Copy of the Charge sent into the Country; and he came in Obedience to that Charge, among the rest.

Lord Lovat. What is a Charge?

H. Frazer. A Kind of Summons.

Lord Lovat. Was you threatened by any Person, to give Evidence against me? and by whom?—H. Frazer. I was not, indeed.

Lord Lovat. Was you promised any Favour, or Reward, for being Evidence against me?—H. Frazer. No, indeed.

Lord Lovat. By whom have you been maintained since you came to London?

H. Frazer. I have been, since I came to London, in the Custody of a Messenger.

Lord Lovat. By whom was you maintained?

H. Frazer. I do not know at whose Expence it was: I have had Victuals and Drink, and a Bed; and never was asked for any thing.

Lord Lovat. Have you been in Custody by any Order, Force, or Compulsion?

H. Frazer. No, not at all: I have not been under any Order, Force, or Compulsion.

Lord Lovat. Since you have been at the House of the Messenger, have you been at Liberty to go where you pleased?

H. Frazer. I have gone abroad, walked in the Park, and about Kensington; and I go out at Night to take a Glass.

Lord Lovat. When you went out, did not a Messenger attend you?

H. Frazer. Yes, he went to take a Walk with me.

A Lord. When was it that you were at Lord Lovat's House, that he said he would send his Son and Clan into the Pretender's Service?

H. Frazer. I think it was the Beginning of October 1745; it was after the Rebellion broke out.

A Lord. Where was it? and what Persons were then present?

H. Frazer. It was in my Lord Lovat's Room, at Castle-Downey.

Sir John Strange. My Lords, I would beg leave to ask this Witness one Question for Form-sake: Pray what County is Castle-Downey in?

H. Frazer. It is in the County of Inverness.

A Lord. Pray, which of the Prisoner's Servants was present then?

H. Frazer. Upon my Word, I can't remember that.

Lord Lovat. Did you receive any Money, or were you promised any Money, for your Expences in coming to London, to be a Witness against me?—H. Frazer. There was Money given to bear our Expences.

A Lord. Pray, Who was present, when my Lord Lovat said, that he would send his Son, with his Men, into the Pretender's Service?

H. Frazer. I think there were several present; but I cannot condescend upon whom they were.

A Lord. Name any one of them: Was Alexander MacGloed there?

Hugh Frazer. I don't remember.

Lord High Steward. My Lord Lovat, Have you any more Questions to ask this Witness?

Lord Lovat. Not till I make my Defence; and then I hope your Lordships will give me Liberty.

L. H. S. Does your Lordship mean, that when you come to your Defence, you would ask this Witness any Questions?

Lord Lovat. No, I don't mean that.

L. H. S. Your Lordship will be at Liberty to ask any other Witness what Questions you please.

Mr. Sol. Gen. Was the Proposal of my Lord Lovat, to send his Son and Clan into the Pretender's Service, as you have mentioned, before or after the News of the Battle of Preston-Pans came into that Country?

H. Frazer. It was after.

Mr. Sol. Gen. Did you observe any Difference in the Behaviour of my Lord Lovat, in regard to his raising his Clan, or taking any Steps towards it, after the News of that Battle, from what his Behaviour was before?

H. Frazer. I did not see my Lord Lovat before the Battle of Preston-Pans.

Mr. Sol. Gen. How long was it after the Battle of Preston-Pans that you saw him?

H. Frazer. I don't remember.

Mr. Sol. Gen. Was it before the News came to Castle-Downey, of the Troops from France being landed?

H. Frazer. Upon my Word, I don't remember.

[Then the Witness, by Order of the Lord High-Steward, withdrew.]

Lord Lovat. My Lords, I beg your Lordships Leave to withdraw for a little Time.

The Prisoner was carried from the Bar accordingly.

Serj. at Arms. Our Sovereign Lord the King strictly charges and commands all Manner of Persons to be uncovered, on Pain of Imprisonment.

In about a Quarter of an Hour, the Prisoner was again brought to the Bar.

Mr. Att. Gen. My Lords, The next Witness we shall beg Leave to produce, is John Riddell: Who was called in, and sworn.

L. H. S. My Lord Lovat, Have you any Objections against this Witness John Riddell?—Lord Lovat. No.

Mr. Att. Gen. My Lords, I beg this Witness may give your Lordships an Account, whether he knows the noble Lord at the Bar?

Riddell. Yes, I do.

Mr. Att. Gen. Do you remember if you were at Castle-Downey soon after the Battle of Preston-Pans?

Riddell. Yes, I was.

Mr. Att. Gen. Did you before that Time see Barisdale, or any other Person, there?—Rid. Yes.

Mr. Att. Gen. Did he come there first by himself, or not?

Rid. I saw Kinloch Moidart there.

Mr. Att. Gen. At that Time?

Rid. I cannot remember whether it was the same Time, or not.

Mr. Att. Gen. How long was Barisdale there?

Rid. Two Nights.

Mr. Att. Gen. Did he bring any Horses with him?

Rid. Four Dragoon Horses.

Mr. Att. Gen. Whose Arms were upon the Furniture?

Rid. The King's Arms were upon them, and R and G, or a G and an R.

Mr. Att. Gen. Did you see any of the Clan of the Frasers there?

Rid. At the same time some of them were there.

Mr. Att. Gen. Was my Lord Lovat there at that Time?

Rid. Yes.

Mr. Att. Gen. Did you ever see any of the Chiefs of the Clans dine at my Lord Lovat's Table?—Rid. Yes.

Mr. Att. Gen. Did you hear any Healths drank there?

Rid. Yes.

Mr. Att. Gen. Whose Health did you hear drank?

Rid. Prince Charles's Health.

Mr. Att. Gen. Was my Lord Lovat present at the Time, or not?

Rid. Yes.

Mr. Att. Gen. Did you ever hear my Lord Lovat drink any of those Healths?

Rid. I cannot say that; I'm not sure, 'tis so long since.

Mr. Att. Gen. Did you ever hear my Lord Lovat drink any other Healths relating to the Rebel Army?

Rid. Never, to the best of my Knowledge.

Mr. Att. Gen. Did you ever hear him say any thing, relating to his countenancing the Rebel Army?

Rid. No, I do not remember.

Mr. Att. Gen. Pray give my Lords an Account, whether you ever saw any Meal delivered out at my Lord Lovat's.

Rid. My Lord Lovat has given Precepts for Meal several times.

Mr. Att. Gen. What do you mean by Precepts?

Rid. Precepts for so much Oats for the Horses, or Meal.

Mr. Att. Gen. Do you mean by that an Order?—Rid. Yes.

Mr. Att. Gen. Pray, what was done with the Meal that was ordered to you?

Rid. I got a Precept for Two Bolls of Meal, in Part of my Wages.

Mr. Att. Gen. Do you know of any Precept that was given to Thomas Frazer?

Rid. Yes, for Four Bolls.

Mr. Att. Gen. For what?—Rid. It is more than I can tell.

Mr. Att. Gen. Do you know any thing of Bell-Tents being made?

Rid. Yes, I saw them made.

Mr. Att. Gen.

Mr. Att. Gen. Where were they made?
 Rid. At Castle-Downey.
 Mr. Att. Gen. Was my Lord Lovat there?—Rid. Yes.
 Mr. Att. Gen. What were they made for?—Rid. I can't tell.
 Mr. Att. Gen. By whose Order were they made?
 Rid. I can't tell.
 Mr. Att. Gen. What became of them?
 Rid. I heard they were sent to Perth.
 Mr. Att. Gen. For whose Use? for what Purpose were they sent there?
 Rid. They went there with a Company of Men; I don't know for whose Use they were.
 Mr. Att. Gen. Who were the Company of Men?
 Rid. They were the Frasers.
 Mr. Att. Gen. What were they collected together for?
 Rid. They marched Southward, with a Design to go to Perth, as I heard.
 Mr. Att. Gen. Whose People were at Perth then?
 Rid. The Rebel Army.
 Mr. Att. Gen. Did they march to join them?
 Rid. 'Tis more than I can tell.
 Mr. Att. Gen. Had you any Orders from my Lord Lovat, concerning the preparing yourself, and Horses, to go with my Lord Lovat, or his Son?
 Rid. Yes; he ordered me to get myself ready to go.
 Mr. Att. Gen. Where was you to go to?
 Rid. With the Master.
 Mr. Att. Gen. Did not my Lord Lovat tell you where he was to go to?
 Rid. No, he did not, to the best of my Knowledge.
 Mr. Att. Gen. Where did you understand he was to go to?
 Rid. To Perth.
 Mr. Att. Gen. For what Purpose?—Rid. To join that Army.
 Mr. Att. Gen. What Army do you mean; the King's Army, or the Rebel Army?—Rid. I can't tell that.
 Mr. Att. Gen. How did you understand it? As you was to go to Perth, don't you know what Army you was to join?
 Rid. There was no Army at Perth but the Rebel Army.
 Mr. Att. Gen. Do you remember any Number of Men passing by Lord Lovat's House?—Rid. Yes, very well.
 Mr. Att. Gen. Did you see my Lord Cromartie, or his Officers, there?
 Rid. Yes.
 Mr. Att. Gen. How long did they continue there?—Rid. One Night.
 Mr. Att. Gen. What Time of the Year was it?
 Rid. Hallowmass, or thereabouts.
 Mr. Att. Gen. Did you hear my Lord Lovat say any thing to these Gentlemen, concerning his Men being, or not being ready?
 Rid. I did not hear from my Lord Lovat; I heard it from some of his Servants.
 Mr. Att. Gen. What did you hear?
 Rid. I heard the Servants say, that my Lord Lovat mentioned something about the Men's not being ready.
 Mr. Att. Gen. Did you hear my Lord Lovat say any thing about it in the Chamber?
 Rid. No; if it was spoken, it was in the Erse Language; and I did not understand it.
 Mr. Att. Gen. Was my Lord Lovat present in the House when Lord Cromartie was there?—Rid. Yes.
 Mr. Att. Gen. Did you see them together at Table?—Rid. Yes.
 Mr. Att. Gen. Did you hear any of the Conversation that passed betwixt them?—Rid. No.
 Mr. Att. Gen. Did you hear nothing concerning the drinking of any Healths?—Rid. No, not at that Time I did not.
 Mr. Att. Gen. At what Time did you hear it?
 Rid. A good while before.
 Mr. Att. Gen. What Healths were drank? and by whom?
 Rid. The Chieftains of the Clans drank Prince Charles's Health.
 Mr. Att. Gen. Was my Lord Lovat present?—Rid. Yes.
 Mr. Att. Gen. Did he contradict the Health?
 Rid. I did not hear he did.
 Mr. Att. Gen. Was you present, or near, when a Number of Frasers were drawn up?
 Rid. I saw 700 Men together once.
 Mr. Att. Gen. Where were they?—Rid. In the Aird.
 Mr. Att. Gen. Is that Place near my Lord Lovat's House?
 Rid. It is within half a Mile.
 Mr. Att. Gen. Was my Lord Lovat there at that Time?
 Rid. No, I never saw my Lord Lovat there.
 Mr. Att. Gen. Was he at home then?—Rid. Yes.
 Mr. Att. Gen. By whom were they drawn up?
 Rid. By my Lord Lovat's Chamberlain.
 Mr. Att. Gen. Were there any Officers among them?—Rid. Yes.
 Mr. Att. Gen. Where did the Officers lodge?
 Rid. They went through into the Country, to Farmers Houses, Change-Houses, and Ale-Houses.
 Mr. Att. Gen. Did any of them ever dine at my Lord Lovat's House?
 Rid. Sometimes they did.
 Mr. Att. Gen. Did they dine with my Lord Lovat himself?—Rid. Yes.
 Mr. Att. Gen. Did he know, that there were 700 Men drawn up there, or near that Place?
 Rid. I cannot tell, whether he knew, that there were 700 of them; but believe he knew they were there.
 Mr. Att. Gen. Do you know what Kind of Mark they had upon their Bonnets?—Rid. They had a Cockade, and Sprigs of Yew.
 Mr. Att. Gen. What Kind of Cockades had they?
 Rid. White Cockades.
 Mr. Att. Gen. Was not that the distinguishing Mark of the Rebel Army?
 Rid. Yes.
 Mr. Att. Gen. Did they make use of the Sprigs of Yew as a distinguishing Mark?—Rid. Yes.

Mr. Att. Gen. Did you see any Companies of those Men there?
 Rid. Yes, Three or Four Companies.
 Mr. Att. Gen. Where did they march to?—Rid. To the Southward.
 Mr. Att. Gen. Did you, at any time, see any of the Officers take Leave of my Lord Lovat?—Rid. Yes, I did.
 Mr. Att. Gen. What passed upon that Occasion? Which way did they take Leave of one another?
 Rid. My Lord Lovat shook Hands with them, kissed them; and bid them Farewell.
 Mr. Att. Gen. Did my Lord Lovat wish them any thing?
 Rid. I cannot say I heard that.
 Mr. Att. Gen. Do you remember, that, at any time after, one Fraser of Byerly was with my Lord Lovat?
 Rid. Yes, that Man was always with my Lord Lovat.
 Mr. Att. Gen. Did you hear my Lord Lovat ask him any Questions about the Pretender's Son?—Rid. No, I never did.
 Mr. Att. Gen. Recollect yourself, whether you did, or no?
 Rid. I cannot mind, indeed; if I did, it is out of my Memory.
 Mr. Att. Gen. Did you ever hear my Lord Lovat ask any other Person concerning the Pretender's Son?
 Rid. I heard my Lord Lovat once ask what sort of a Man he was.
 Mr. Att. Gen. Of whom did he ask that Question?
 Rid. Some of the Chieftains, some of them that had been at Falkirk; I do not know who they were.
 Mr. Att. Gen. Do you remember what Answer was given my Lord Lovat to that Question?—Rid. I do not.
 Mr. Att. Gen. Do you remember, whether my Lord Lovat mentioned any thing to him concerning the Pretender's Son's Preservation?
 Rid. I do not.
 Duke of Bedford. You say, that my Lord Cromartie's Men were at Castle-Downey, my Lord Lovat's House: Pray were they received there as Friends; or did they come there by Force?
 Rid. The Men did not come to Castle-Downey; only Lord Cromartie, his Son, and the Officers.
 Duke of Bedford. Did they come there by Force; or were they received as Friends?—Rid. They were in the House all Night.
 Duke of Bedford. Were they entertained as Friends?
 Rid. I did not hear any thing to the contrary; they were lodged there all Night.
 Mr. Att. Gen. You say you heard my Lord Lovat ask, what sort of a Man the Pretender's Son was? Pray, when was it that he asked that?
 Rid. I cannot name the Time certainly.
 Mr. Att. Gen. My Lords, we have done with this Witness.
 Lord High Steward. My Lord Lovat, The Gentlemen of the House of Commons have done with this Witness; will you ask him any Questions?
 Lord Lovat. When was you brought to Town; and by whose Order was you sent to Town?
 Rid. I have been brought to Town since the 24th of August; and was sent up by the Judge-Advocate.
 Lord Lovat. What is the Judge Advocate's Name?
 Rid. David Bruce.
 Lord Lovat. Was you examined at Inverness, after the Battle of Culloden? and by whom?
 Rid. I was examined by the Judge-Advocate, in the Duke of Cumberland's Lodgings.
 Lord Lovat. When was you so examined?
 Rid. It was the 24th of April last.
 Lord Lovat. Was you threatened by any Person to give Evidence against me? and by whom? And what was the Expression used on that Occasion?
 Rid. I was threatened to deliver up my Money, but not about my being an Evidence.
 Lord Lovat. What were the Threatenings?
 Rid. That they would put me in Prison, and hang me next Morning.
 Sir John Strange. My Lords, I would not interrupt the noble Lord at the Bar; but I would be glad to know who the Witness speaks of.
 Rid. After I was examined, they heard I had some Money: Brigadier Mordaunt demanded the Money: and Mr. Bruce threatened, that if I did not give up the Money to the Brigadier, I must go to Prison.
 Lord Lovat. Was you a Servant of mine?
 Rid. I served you for five Years.
 Lord Lovat. In what Capacity?—Rid. As a Groom.
 Lord Lovat. Was you taken Prisoner?
 Rid. I delivered myself up to the Duke of Cumberland, at Inverness, Eight Days after the Battle of Culloden.
 Lord Lovat. Who was it that threatened to hang you?
 Rid. The Judge-Advocate.
 Lord Lovat. Did any Person come to you, since you came to London, with a pretended Letter, said to be signed by me?
 Rid. Yes; there was a Man, whose Name is Lesly, who came to see if I knew my Lord Lovat's Hand.
 Lord Lovat. What was desired of you by that Person? And what Answer did you give him?
 Rid. I said, that I did not know, whether it was my Lord Lovat's Hand, or not; but that it did not look like it.
 Sir William Yonge. My Lords, I beg to know of this Witness, whether he did, or did not, surrender himself a Prisoner to the Duke, at Inverness?
 Rid. Yes; I did: I delivered up myself to the Duke, to get a Pass to go to Edinburgh; but never was in the Rebellion in my Life.
 Sir W. Yonge. Did you come to Inverness on Horseback?
 Rid. Yes: There were Two of us.
 Sir W. Yonge. Whose Horses had you?—Rid. My Lord Lovat's.
 Sir W. Yonge. You say there were Two of you; and that you were both on my Lord Lovat's Horses: and that you were threatened to have your Money taken from you?
 Rid. Yes.

Sir W. Yonge.

Sir W. Yonge. Pray how came you by that Money?
 Rid. By selling the Horses.
 Sir W. Yonge. Do you know, or was you informed of, the Contents of the Letter, which Mr. Lefly asked you, whether it was Lord Lovat's Hand?

Rid. I never saw the Letter, but the Subscription; and he shewed me that, to see if I knew it.

Sir W. Yonge. Did not Lefly inform you what were the Contents of the Letter?

Rid. No: To the best of my Remembrance, he said it was signed by my Lord Lovat in 1738.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Sir W. Yonge. My Lords, The next Witness we beg Leave to produce is William Walker: Who was called in, and sworn.

Lord High Steward. My Lord Lovat, Has your Lordship any Objection to this Witness?

Lord Lovat. No; I have none.

Sir William Yonge. My Lords, I beg leave to ask this Witness, If he lived in my Lord Lovat's Family? and how long?

Walker. Yes; for three Years and an half.

Sir W. Yonge. Do you remember any Persons coming to him after the Battle of Preston-Pans? and who were they?

Walker. Yes: There was Alexander MacLeod, and Mac Donald of Barisdale.

Sir W. Yonge. Was Kinloch Moidart there?—Walker. Yes.

Sir W. Yonge. Was young Glengary there?

Walker. Yes; He was there one Day; I think on a Sunday.

Sir W. Yonge. Did they dine at my Lord Lovat's Table?

Walker. Yes; all except Glengary.

Sir W. Yonge. Do you remember any Healths that were drank?

Walker. Yes: I heard Barisdale drink the young Pretender's Health.

Sir W. Yonge. By what Name?—Walker. By the Name of the Prince.

Sir W. Yonge. Was my Lord Lovat present then?—Walker. Yes.

Sir W. Yonge. Do you know one Thomas Fraser, a Baker?

Walker. Yes.

Sir W. Yonge. During the Time that those Persons were at my Lord Lovat's House, did he give them any Advice? and what was it?

Walker. I never heard it: It was always in my Lord's Room; and I never went in, but at Dinner.

Sir W. Yonge. Did you hear them say any thing about the Young Pretender, and the Clan of the Frasers?

Walker. I heard my Lord Lovat say, That they must take care not to let the Young Pretender run into an Engagement.

Sir W. Yonge. Do you know Thomas Fraser the Baker?—Walker. Yes.

Sir W. Yonge. Was he at my Lord Lovat's then?

Walker. He came to Castle-Downey, with some Colours they were to make at Inverness.

Sir W. Yonge. What Colours were they?

Walker. Two Standard Colours, four Bell-Tents, and two painted Flags.

Sir W. Yonge. What were they painted with?

Walker. My Lord Lovat's Arms were upon the Flags.

Sir W. Yonge. What became of those Things?

Walker. Cameron sent them away, after my Lord Lovat was taken.

Sir W. Yonge. Do you remember the Marching of Two Companies to Perth?—Walker. Yes.

Sir W. Yonge. Do you remember soon after the Master of Lovat's coming into the Room where you was?

Walker. Yes.

Sir W. Yonge. Was my Lord Lovat there?—Walker. Yes.

Sir W. Yonge. What passed there between them?

Walker. When the Master came into the Room, my Lord Lovat was speaking to him: I don't know what it was about.

Sir W. Yonge. What did the Master do then?

Walker. The Master rose up, and took his Bonnet, and threw it upon the Floor, and threw the White Cockade in the Fire, and damned the Cockade.

Sir W. Yonge. What did the Father do upon that Occasion?

Walker. He rose up in a Passion, and said, What could he do! and was forcing his Son out.

Sir W. Yonge. I beg you'll inform their Lordships, upon what Occasion it was that the Master of Lovat threw his Cockade into the Fire; and what his Father had said to him to occasion it?

Walker. I don't know that, indeed.

Sir W. Yonge. Did you hear his Father say any thing to him?

Walker. His Father spoke to him in Erse.

Sir W. Yonge. Do you understand Erse?

Walker. No; I do not. The Master of Lovat went to the Door; and Mr. Fraser the Minister stood up in the Master of Lovat's Behalf: Upon which, Mr. Fraser of Byersfield rose up, and said, What have you to do with it? You have no Estate to forfeit.

Sir W. Yonge. What said my Lord Lovat upon that?

Walker. I do not know what he said upon that.

Sir W. Yonge. Did they say nothing in English after that?

Walker. They spoke in a Language I did not understand.

Sir W. Yonge. Did my Lord Lovat say nothing in English?

Walker. Not that I know of: Only he said, What could he do more! He was forcing his Son out, the very Life of him.

Sir W. Yonge. Pray do you know upon what Account that was said?

Walker. It was an Answer he gave to Byersfield.

Sir W. Yonge. To whom did Byersfield speak, when he said, He had no Estate to forfeit?

Walker. To Donald Fraser the Minister.

Sir W. Yonge. Do you remember any Thing about a Smith and a Tinker repairing any Arms?

Walker. Yes; There was one Hugh Menno, and another.

Sir W. Yonge. How long was it that they were at Castle-Downey?

Walker. About a Fortnight, I think.

Sir W. Yonge. Were there any Arms where they were?

Walker. Yes; in the Ward-Room.

Sir W. Yonge. Where was the Key kept of that Room?

Walker. The Key was very often in my Lord Lovat's Room, in his Custody.

Sir W. Yonge. Did my Lord Lovat usually give out that Key to any body that went into the Ward-Room? Or did he use to go there himself?

Walker. My Lord always gave the Key out to any body that wanted it, to get Shoes for the Horses, or the like: My Lord never went there himself.

Sir W. Yonge. Do you know any thing of the Smith and the Tinker's going into my Lord's Room?

Walker. Yes.

Sir W. Yonge. What passed there? Did my Lord give them any thing?

Walker. A Dram.

Sir W. Yonge. Have you ever been in the Ward-Room?

Walker. Yes.

Sir W. Yonge. What was usually kept there?

Walker. Several Sorts of Things; 'tis more than I can tell how many.

Sir W. Yonge. Did you see any Number of Men rendezvoused in that Neighbourhood?

Walker. Yes.

Sir W. Yonge. What Number? How many Companies did you see?

Walker. I don't know how many Companies; the First of the Rendezvous, we reckoned there were 7 or 800 Men.

Sir W. Yonge. Were they armed?

Walker. Some of them were armed, and some not.

Sir W. Yonge. How far from Castle-Downey did you see those Men?

Walker. About a Mile from it.

Sir W. Yonge. Did you ever see them afterwards?

Walker. Yes; I saw a Company of them drawn up on the Green.

Sir W. Yonge. Was my Lord Lovat at home then? Did he see them drawn up?

Walker. He was at home; but I believe did not see them.

Sir W. Yonge. How near is that Green to my Lord Lovat's House?

Walker. About 100 or 200 Yards.

Sir W. Yonge. Do you know of any Violence or Force that was used to make the Men rise?

Walker. The Chamberlain forced them, and young Inverallachy.

Sir W. Yonge. In what Manner did they force them?

Walker. They threatened to burn their Houses, after the Battle of Culloden, if they did not rise.

Sir W. Yonge. But, before that, how did they threaten them?

Walker. That they would take their Cattle and Plaids from them, if they did not rise. Lord Lovat was then a Prisoner to my Lord Loudon, and was then in his Custody.

Sir W. Yonge. Do you remember when my Lord Cromartie marched by my Lord Lovat's?

Walker. Yes.

Sir W. Yonge. Was Lord Cromartie, or his Son, or any of the Officers, at my Lord Lovat's?

Walker. Yes; my Lord Cromartie and Lord MacLeod were there all Night.

Sir W. Yonge. Did you hear my Lord Lovat make use of any Expressions, or Excuse, that his Men were not ready?

Walker. My Lord Lovat said, It was a Shame to see Lord Cromartie's Men go by his Nose: But what it was for, I can't tell.

Sir W. Yonge. My Lords, We have done with our Examination of this Witness.

Lord High Steward. My Lord Lovat, Would your Lordship ask this Witness any Questions?

Lord Lovat. Was you threatened by any one to give Evidence against me? and by whom? And what were the Expressions used on that Occasion?

Walker. No, I was not.

Lord Lovat. Was you examined at Inverness? and by whom?

Walker. I was examined at Inverness by Mr. Bruce and Brigadier Menzies.

Lord Lovat. What passed between you and Mr. Bruce?

Walker. I was examined: Nothing passed between me and Mr. Bruce at that time.

Lord Lovat. Or at any time afterwards?

Walker. Nor afterwards.

Lord Lovat. Was any Force used to get out the Men, while I was a Prisoner, or while I was at home, or after my Return from Inverness?

Lord High Steward. First, Was there any Force used to get out the Men, while my Lord Lovat was at home?

Walker. I cannot truly tell that: It is more than I can tell.

Lord High Steward. Was any such Force used while he was a Prisoner at Inverness?

Walker. Lord Lovat was with Lord Loudon when the Force was used to raise the Men.

Lord High Steward. Did you say, that the Dispute between Lord Lovat and his Son happened after the Frasers had marched Southwards, or not?

Walker. It was the Frasers of Stratharick that had marched; there was not a Man marched out of the Aird at that time.

Lord Lovat. Did I know of the Marching of the Men?

Walker. My Lord Lovat knew nothing of it: It was Fraser of Byersfield that took as many of the Frasers as he could get to the Castle of Culloden, in order to take the Lord President Prisoner: But my Lord Lovat knew nothing of that; for when he heard of it, he was like to go mad.

Lord Lovat. Was that the Occasion of my Quarrel with my Son?

Walker. No; my Lord Lovat, nor the Master of Lovat, knew nothing of it; for this Byersfield, as I heard, was designed to raise the Men without my Lord Lovat's Authority; and, if he had got the Command

of the House of Culloden, he would have kept them there: It was he that marched with the Stratbarick Men to Pentb.

A Lord. Did my Lord Lovat, or his Son, know nothing of this?

Walker. No; they were Twenty-four Miles off.

A Lord. What was the Occasion of the Quarrel between Lord Lovat and his Son?

Walker. I cannot tell.

A Lord. Was you present in the Room, when the Dispute began between my Lord Lovat and his Son?

Walker. No; I was not in the Room: I came in with a Dish in the mean time; and there was this little John Fraser of Byersfield speaking to my Lord: My Lord Lovat fell foul of the Master, who rose up, and took his Cockade off the 'Scriptore, and threw the Cockade into the Fire, and damned it.

A Lord. What Language did they talk in?

Walker. They talked in Erse, when I heard it first.

A Lord. You say, that Fraser the Minister took part with the Master?

Walker. Yes.

A Lord. Did he talk in Erse?

Walker. Yes.

A Lord. Then how do you know he spoke in favour of the Master?

Walker. The Reason why I knew it was, that little John Fraser flew up to Donald Fraser, and said, He had no Estate to forfeit; and that, if he had got a Stipend, it was all he had to take care of.

Lord Lovat. Do you know whether I used my Endeavours to get my Men home after they were taken out by Fraser of Byersfield, or any other Person?

Walker. Mac Donald of Barisdale would have my Lord Lovat's Men out, and was never away from the House; and there came on a great Snow, that my Lord Lovat's Men did not go out at that time; but about Two Days after that, some of them went up to a Hill with Barisdale's Men; and they would take Cattle, to maintain them upon the Road: When my Lord Lovat sent for them from Urquhart, and brought them all back again. When there was any of them risen at all, then my Lord was Prisoner with Lord Loudon.

A Lord. Pray what kind of Servant is a Chamberlain?

Walker. The Steward, who gathers in the Rents.

A Lord. Did you ever hear of the Crofs being carried about the Country?

Walker. I never either saw it, or heard of it.

Lord Lovat. Do you know, whether Fraser of Dumballock, that was here To-day, went out in Arms, at the Head of a Company, to Urquhart, till I brought him home?

Walker. I saw him that Day at Lord Lovat's Table; but whether he got to Urquhart, or no, I cannot tell.

A Lord. Did the Men that went to Urquhart dine with my Lord Lovat?

Walker. Yes.

[Then the Witnesses, by the Direction of the Lord High Steward, withdrew.]

Mr. Yorke. My Lords, The next Witness we shall produce, is Hugh Monro.

Hugh Monro called in.

Lord High Steward. My Lord Lovat, Has your Lordship any Objection against Hugh Monro's being examined as a Witness?

Lord Lovat. Yes; he is my Tenant.

Lord High Steward. Would your Lordship have him examined upon that Point?

Lord Lovat. Yes.

The Witness was sworn upon a Voire dire.

Lord High Steward. My Lord Lovat, What Questions would you ask him?

Lord Lovat. Have you any Lands, Houses, or Yard, that you hold of me?—Monro. Yes.

L. H. S. What Lands do you hold of my Lord Lovat?

Monro. Six Bolls a Year.

L. H. S. How do you hold it of my Lord Lovat, as Vassal, or by Lease or Tack?

Monro. While I was a Servant, I had it from him.

L. H. S. Do you hold it of my Lord Lovat now?

Monro. Another Man hath taken Possession there.

L. H. S. Have you the same Tenure under my Lord Lovat as you had before?

Monro. Yes.

Mr. Attorney General. My Lords, I beg this Witness may be asked, If he holds any Lands of my Lord Lovat at this time.

Monro. I have the same Land that I had before; but another Man hath it in Possession ever since Whitsunday.

Mr. Att. Gen. What is that other Man's Name?

Monro. Kilbocky.

Mr. Att. Gen. How does he hold it of my Lord?

Monro. I don't know.

Lord Lovat. Do you think you have any Right to hold this Land, though another Man is in Possession of it?

Monro. No, I have no Right to hold it.

Lord Sandys. Why do you say you have no Right to hold it?

Monro. Because the Superior Lord may turn me out of the Land at any time.

Lord Sandys. Has the Superior Lord turned you out of the Land?

Monro. No.

L. H. S. Who do you take to be your Superior Lord?

Monro. My Lord Lovat.

Sir W. Yonge. Had you any Wages from my Lord Lovat, while you was his Servant?

Monro. Yes; I had.

Sir W. Yonge. What were the Wages you had?

Monro. Five Pounds a Year.

Sir W. Yonge. Was it paid in Money, or in Lands of any Rent?

Monro. It was paid in Land.

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Sir W. Yonge. Was that the Land you now speak of which you hold of my Lord Lovat?

Monro. Yes.

Sir W. Yonge. Have you any Title to that Land, now you are not his Servant?

Monro. I don't know what Way it is.

Sir W. Yonge. Do you think you have any Claim to the Land, now you are not his Servant?

Monro. No; I have none.

Sir W. Yonge. How long have you left my Lord Lovat's Service?

Monro. I was always his Servant: I did not leave his Service.

Lord Lovat. The Person that now is in Possession of that Land, has he it by my Consent?

Monro. I don't know: The Man that is in Possession says he must have the Rent this Year.

Mr. Att. Gen. Did you ever hold this Land by any Writing?

Monro. No.

Mr. Att. Gen. Did you ever hold it by any Contract for any certain Term?

Monro. I had the Land from my Lord Lovat, for what I worked for him in the Year.

Lord Lovat. Was you turned out of this Land by Force, or against your Will?

Monro. No; I was not.

A Lord. By what Means was you dispossessed of this Land?

Monro. I have the same Land yet.

Mr. Grenville. In what Capacity was you a Servant to my Lord Lovat?

Monro. I was his Blacksmith.

Mr. Grenville. Do you know the Person, who, you say, is now in Possession of that Land?

Monro. Indeed do I.

Mr. Grenville. What is he? Is he a Servant to my Lord Lovat?

Monro. No; He is a Gentleman.

Lord Halifax. My Lords, I submit it to your Lordships, as this Witness has already contradicted himself several times, whether he should not be ordered to withdraw.

Sir J. Strange. I stood up to acquaint your Lordships, that we should not insist on the Examination of this Witness; but desire it may be understood, that we only do that from the Manner of his answering the Questions which have been asked him; and do not thereby submit to the Objection that has been made against him by the noble Lord at the Bar.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

The Duke of Newcastle moved to adjourn to the Chamber of Parliament.

Lord Lovat. My Lords, I have most humbly represented to your Lordships every Day of my Trial, that I am so weak and feeble, that I am not able to attend your Lordships. I fainted away thrice this Morning, before I came up to your Lordships Bar; but yet was determined to shew my Respect to your Lordships, or die upon the Road. My Lords, it is impossible for me to come up in the Manner I have done for these Three Days past. I am every Day obliged to get up by Three or Four o'Clock in the Morning; and therefore I beg your Lordships to have Compassion on me, and to give me a later Hour, and a Day's Respite, that I may try to recover myself.

The Lord High Steward went back to his Chair: And then the House adjourned to the Chamber of Parliament; and the Lords, and others, returned in the same Order as before.

The House being there resumed,

Ordered, That this House will proceed further in the Trial of Simon Lord Lovat in Westminster-Hall, on Friday next, at Eleven of the Clock in the Forenoon.

A Message was sent to the House of Commons, by Mr. Elde and Mr. Thurston, to acquaint them therewith.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do take back the said Lord Lovat, and bring him again to the Bar of this House in Westminster-Hall, on Friday next, at Eleven of the Clock in the Forenoon.

Friday the 13th Day of March, 1746,

The Fourth Day.

ABOUT Eleven of the Clock in the Forenoon, the Lords, and others, came from the Chamber of Parliament, in the same Order as on Monday last, into Westminster-Hall: Where the Commons and their Managers were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court; and the Lord High Steward in his Chair.

L. H. S. The House is resumed. Is it your Lordships Pleasure that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serj. at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, Bring forth your Prisoner, Simon Lord Lovat, to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy-Governor of the Tower brought the Prisoner to the Bar, in the like Form as before. And then he kneeled down.

L. H. S. Your Lordship may rise.

The Lord High Steward desired Leave to go down to the Table: And went down accordingly.

L. H. S. Gentlemen of the House of Commons, You may proceed.

Mr. Yorke. My Lords, the next Witness we shall produce to your Lordships is Thomas Fraser.

THOMAS FRASER called into Court.

Mr. Yorke. My Lords, We desire this Witness Thomas Fraser may be sworn.

4 T

L. H. S.

L. H. S. My Lord Lovat, has your Lordship any Objection against Thomas Frazer being sworn as a Witness?
 Lord Lovat. My Lords, I have no Objection to him; but, my Lords, I am not able to rise up, and sit down, having been ill all Night, and am very ill now. I hope your Lordships will excuse my rising up and down.
 Thomas Frazer sworn.

Mr. Yorke. My Lords, I would ask this Witness, If he knows my Lord Lovat? And I desire he would speak out.

T. Fras. Yes, my Lords, as well as I do myself.

Mr. Yorke. How long have you known him?

T. Fras. Ever since I was a Child.

Mr. Yorke. Have you been employed to work for my Lord Lovat at any time about September 1745; and upon what Occasion was you so employed? Answer the Question distinctly.

T. Fras. No; I never was employed by him.

Mr. Yorke. Was you employed at Castle-Downey about that Time?

T. Fras. Yes, I was at Castle-Downey, and was employ'd by my Lord's Chamberlain.

Mr. Yorke. About what Business?

T. Fras. About mending some old Colours.

Mr. Yorke. And what else was you employed in?

T. Fras. About some Camp-Colours.

Mr. Yorke. Was you employed in any thing else?

T. Fras. Yes: There were some Bells for Arms that I was employed about.

Mr. Yorke. Who gave you Directions about making these Things?

T. Fras. John Frazer, my Lord Lovat's Chamberlain or Steward; and he paid me for my Pains when I had done.

Mr. Yorke. At what House was this Work done?

T. Fras. Most of it was done at my own House at Inverness.

Mr. Yorke. Was none of the Work done at Castle-Downey?

T. Fras. There was a Camp-Colour, and some other Things, done at Castle-Downey.

Mr. Yorke. Whose Arms were put upon these Colours, or Bells for Arms?

T. Fras. There was no Arms upon them, but the Crest of Lord Lovat's Family, the Deer's Head.

Mr. Yorke. Was that Crest put both upon the Bell-Tents and Colours?

T. Fras. It was upon the Camp-Colours, and Bells of Arms.

Mr. Yorke. Were the Arms upon the Colours?

T. Fras. They were a Stand of old Colours that were done by Frazer.

Mr. Yorke. Where were these Colours set up afterwards? Or, were they set up at all?

T. Fras. Yes, I stuck them up on the Green of Castle-Downey.

Mr. Yorke. Did my Lord Lovat ever see them there?

T. Fras. To my Knowledge, he never did.

Mr. Yorke. What were those Bell-Tents and Colours, which you painted, intended for? What was to be the Use of them?

T. Fras. I cannot tell that, upon my Faith.

Mr. Yorke. Did my Lord Lovat know of your being employed about these Things?

T. Fras. No; he did not, to my Knowledge, as I shall answer.

Mr. Yorke. Who paid you for them?

T. Fras. The Chamberlain, or Steward.

Mr. Yorke. Do you think the Chamberlain would have paid you for them, without my Lord Lovat's Order?

T. Fras. I can't tell that: Let the Judges determine that.

Mr. Yorke. Pray who used to pay you for Work that you had done for my Lord Lovat before that? ---T. Fras. The Chamberlain.

Mr. Yorke. Was my Lord Lovat in the House at the same Time?

T. Fras. Yes; he was in the House: He was very sick.

Mr. Yorke. Did you observe my Lord Lovat ever look at these Colours that you set up?

T. Fras. I saw him one fair Morning take a Walk upon the Green, and take an old Colour in his Hand.

Mr. Yorke. Did he see there the Colours which you set up?

T. Fras. Yes, the Bells of Arms and Colours.

Mr. Yorke. Did he say any thing to you about them?

T. Fras. Yes: He seemed to be very ill pleased.

Mr. Yorke. What was he ill pleased with?

T. Fras. I don't know whether it was with the Manner of doing the Work, or because it was done at all.

Mr. Yorke. When his Lordship expressed himself ill pleased, did he direct you to take them away, or not?

T. Fras. No: They were to stay there till they were dried by the Wind.

Mr. Yorke. When he expressed himself to be ill pleased, did he order them to be taken away?

T. Fras. He did not speak a Word to me afterwards about them.

Mr. Yorke. Do you know what became of those Colours?

T. Fras. No: I went home to Inverness, which is the Place of my Residence: But, when I am employed by any Man, I must answer and obey.

Mr. Yorke. My Lords, We have done with this Witness.

L. H. S. My Lord Lovat, Will your Lordship ask this Witness any Questions?---Lord Lovat. No, my Lords.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Mr. Att. Gen. My Lords, the next Witness we shall produce is Hugh Frazer, who was Secretary to my Lord Lovat from 1741 to 1744, when Robert Frazer, who was before examined, became Secretary in his Room.

Hugh Frazer was called in.

L. H. S. My Lord Lovat, Have you any Objection to this Witness?

Lord Lovat. No, my Lords.

Lord Halifax. My Lords, As the noble Lord at the Bar has complained, that he is sick and faint, I move, That your Lordships may dispense with his rising up.---Lords. Ay, ay.

Hugh Frazer sworn.

Mr. Att. Gen. Do you know the noble Lord at the Bar?

Hugh Frazer. Yes.

Mr. Att. Gen. How long have you known him? and raise your Voice.

H. Fras. I've known my Lord Lovat for about Five Years.

Mr. Att. Gen. Did you ever serve my Lord Lovat, and in what Capacity?

L. H. S. Raise your Voice, Mr. Frazer.

Mr. Att. Gen. In what Capacity did you serve Lord Lovat?

H. Fras. I served my Lord Lovat in the Capacity of a Secretary.

Mr. Att. Gen. When did you first come into his Service? and when did you quit it?

H. Fras. I came into Lord Lovat's Service in April or May 1741, and left it towards the End of December 1744.

Mr. Att. Gen. Give an Account to my Lords, whether you was at Edinburgh in the Month of September 1745?---H. Fras. I was.

Mr. Att. Gen. Do you know one William Frazer of Beluain? Was he then at Edinburgh?

H. Fras. Yes.

Mr. Att. Gen. Had you and he any, and what, Conversation together? And did you come to any Resolution upon it, in order to your going to my Lord Lovat's?

H. Fras. I had a Conversation with Mr. Frazer.

Mr. Att. Gen. Did you Two come to any Resolution together concerning your going to my Lord Lovat's, in relation to his Son the Master of Lovat?---H. Fras. We did.

Mr. Att. Gen. Please to tell my Lords what that Resolution or Agreement between you was.

H. Fras. The Resolution between Mr. Frazer and me was this, That as there had, at that Time, a Rebellion broke out in the North of Scotland, it was agreed between us to be proper, that I should go into the North Country, in order to converse with my Lord Lovat upon the Subject of his Son's going out of Scotland, to avoid any Censure, or wrong Interpretation that might be put upon his Conduct, as he was then in that Country.

Mr. Att. Gen. Had you and this Frazer, at that Time, any Apprehensions that he might be prevailed upon to go into the Rebellion?

H. Fras. We had no Grounds for any Apprehensions, further than the spreading Contagion there was at that Time.

Mr. Att. Gen. Was there any Proposals made by William Frazer, or you, to prevent his being infected with that Contagion?

H. Fras. The Proposal made by Mr. Frazer, and agreed to by me, was, that he should be removed, and go abroad.

Mr. Att. Gen. Did you, or did you not, propose that he should go abroad?

H. Fras. The Thing was unanimous: I don't know which of us proposed it.

Mr. Att. Gen. To what Place was he to go?

H. Fras. We intended that he should go to *Liden*.

Mr. Att. Gen. At whose Expence was he to go to *Liden*?

H. Fras. The Expence in the End was to fall on my Lord Lovat; but it was to be defrayed by Mr. Frazer for a Year, to be advanced by him.

Mr. Att. Gen. What was agreed upon, with respect to making any Proposals of this Kind to my Lord Lovat?

H. Fras. It was agreed, That it should be proposed to my Lord Lovat, and his Son; and was not to be done without my Lord's Consent.

Mr. Att. Gen. Was it agreed upon, that you should go to my Lord Lovat upon this Proposal?

H. Fras. Yes; it was.

Mr. Att. Gen. And did you go to him?---H. Fras. Yes.

Mr. Att. Gen. And did you deliver the Message to him?

H. Fras. I did.

Mr. Att. Gen. And what Answer did he give you?

H. Fras. He approved very much of the Proposal, and agreed to the Thing.

Mr. Att. Gen. How long did he continue in that Agreement to this Proposal?

H. Fras. Some Days after, he said, He did not think it quite so convenient a Thing; and that he had altered his Mind in regard to That.

Mr. Att. Gen. Pray did he say any thing concerning his Intention about the Master his Son's going into the Rebellion?

H. Fras. He communicated his Design to me, when he talked to me on the Subject; which was, that the Master should.

Mr. Att. Gen. Should do what?

H. Fras. Should go into the Rebellion; that is, to head the Clan of the Frasers.

Mr. Att. Gen. Did you hear my Lord Lovat say any thing, or no, concerning his own Intentions originally to head the Clan in the Rebellion?

H. Fras. My Lord Lovat told me then, That he had intended to head them himself; but that he had altered his Resolution.

Mr. Att. Gen. For what Purpose, or with what View, did he alter his Resolution?

H. Fras. In order to stay himself at home, I suppose.

Mr. Att. Gen. And who was intended to go in his room?

H. Fras. I said before, That the Master was to head the Frasers.

Mr. Att. Gen. Did you mean, by saying he altered his Resolution, that he had resolved the Master should go?

H. Fras. Yes.

Mr. Att. Gen. Did you hear my Lord Lovat say any thing concerning the Number of Men that he had thought might have been raised, or that would rise?

H. Fras. My Lord Lovat did talk to me of a greater Number of Men he thought might be raised, than was likely to rise.

Mr. Att. Gen. What Number did he mention?

H. Fras. If I remember right, he talked of Four or Five thousand.

Mr. Att. Gen. Did he give any Reason, in relation to his Resolution, concerning the Master's going out, instead of himself?

H. Fras. He told me, That he had once intended to have headed them himself, in Expectation that there would be a Rising of Four or Five thousand Men; but, as that was not then likely to happen, he intended that the Master of Lovat should go with the Clan, to head them.

Mr. Att. Gen.

Mr. At. Gen. Please to give an Account to my Lords, If he, at that Time, told you of any Disappointment he met with from other People?

H. Fras. He talked in general, That some People had not acted up to their Engagements, or to that Purpose.

Mr. At. Gen. Please to give an Account to my Lords, If you remember the Time when the Battle of *Preston-Pans* happened?

H. Fras. Yes: I remember the Time very well.

Mr. At. Gen. Was you at *Castle-Downey* after, or before that?

H. Fras. After that Battle.

Mr. At. Gen. How long were you there after that Battle?

H. Fras. It may be about Eight Days after.

Mr. At. Gen. Did any body come to *Castle-Downey* when you was there, and give an Account to my Lord *Lovat* of that Battle; and who was it?

H. Fras. There were several Gentlemen came to *Castle-Downey* while I was there; who said they had been in that Action.

Mr. At. Gen. What did they say concerning it?

H. Fras. What they said of it was, giving a History of the Matter of Fact.

Mr. At. Gen. Who did they give the History to?

H. Fras. To the Company, where I was present: I don't know to whom in particular.

Mr. At. Gen. Was Lord *Lovat* present at any Conversation of that Kind?—*H. Fras.* I do not doubt but he was.

Mr. At. Gen. Do you remember whether he was, or not?

H. Fras. I believe he was.

Mr. At. Gen. Did you hear Lord *Lovat* say any Thing, and what, concerning that Battle?

H. Fras. I remember to have heard my Lord *Lovat* say, That it was a Victory obtained, not to be paralleled in History.

Mr. At. Gen. I beg you will give an Account to their Lordships, Who the Persons were that came to my Lord *Lovat*'s with this Account of the Battle? Please to name them.

H. Fras. That they came with an Account of the Battle, is more than I can say.

Mr. At. Gen. Who were the Persons that told it? and who were there?

H. Fras. *Mac Donald* of *Barisdale* was there,

Mr. At. Gen. Was any other Person there?

H. Fras. There were with him Servants, and one Gentleman, I think, that was in Company.

Mr. At. Gen. Was young *Glengarie* there?

H. Fras. Yes: The Son of *Glengarie* was there.

Mr. At. Gen. Were *Barisdale* and *Glengarie* in the Rebellion, or no?

H. Fras. So they said themselves.

Mr. At. Gen. Are these the Persons that said they had been in the Battle?

H. Fras. They said they had been there; and gave an Account of their own Conduct in it.

Mr. At. Gen. What did they say they came Northward for?

H. Fras. That they told their real Business, I cannot affirm. What they gave out was, That they intended to levy more Men, in order to prosecute the Affair they had undertaken.

Mr. At. Gen. What Affair do you understand that to have been?

H. Fras. The Rebellion, sure enough.

Mr. At. Gen. Was my Lord *Lovat* present, or no, at the Time when they declared what they came into the North for?

H. Fras. He must have been present; because, where I heard them speak of it, was in his Room.

Mr. At. Gen. Do you remember my Lord *Lovat* said any Thing, and what, upon his being told of the Views of *Barisdale* and *Glengarie*'s coming into the North?

H. Fras. He said, They might raise Five thousand Men: And I don't remember I heard him say any more upon this Subject.

Mr. At. Gen. How long did you continue at *Castle-Downey* this Time that you went there?

H. Fras. For a matter of Twelve or Fourteen Days, I believe, at first.

Mr. At. Gen. Whither did you go to when you went from *Castle-Downey*?—*H. Fras.* I returned to *Edinburgh*.

Mr. At. Gen. Did my Lord *Lovat* charge you with any Thing to be communicated at *Edinburgh*, as from him?

H. Fras. I am sorry to say he did.

Mr. At. Gen. What was that Charge my Lord *Lovat* gave you to communicate? and to whom was you to communicate it?

H. Fras. What my Lord *Lovat* gave me in Charge to communicate, was in Import, the Conversation I before mentioned to have passed at *Castle-Downey*, That he had once intended to have raised and headed such a Number of Men as I mentioned.

Mr. At. Gen. What Number was that?

H. Fras. Four or Five thousand, the Number I have mentioned already.

Mr. At. Gen. Pray give an Account to my Lords, of the Remainder of the Messages which my Lord *Lovat* sent by you to *Edinburgh*.

H. Fras. It was this: That he intended to have headed such a Number of Men; but that his Age and Infirmities would not allow him to do that; and that he had resolved his Son should head the *Frasers*, and go into the Rebellion.

Mr. At. Gen. Did my Lord *Lovat* add any Thing to what you have now mentioned? Did he give any Reason why he chose to send his Son rather than go himself?

H. Fras. I have given the Reason already: To the best of my Remembrance, that was the principal Reason.

Mr. At. Gen. Did he give any other? Did he mention any Thing relating to his Marks of Affection for the Cause?

H. Fras. He said, the Master of *Lovat*'s going, for whom he had such Regard, was a greater Mark of his Attachment and Affection, than if he had gone himself.

Mr. At. Gen. Did he, at that Time, mention any Thing of the Danger there might be of his going himself personally? and what Danger was it?

H. Fras. He talked much of the Inconvenience and Danger that would attend it; and mentioned the Inconvenience of crossing the *Forth*; and that it could be done no other Way than by the Bridge of *Stirling*.

A Lord. I desire to know to whom the Message was sent?

Mr. At. Gen. I intended to ask the Question the noble Lord mentions. You were giving an Account of some Inconveniences that Lord *Lovat* had mentioned; go on with it.

H. Fras. I have given the Reason why he did not go himself; I mentioned *Stirling* Bridge; and that he said it was impossible for him to cross the *Forth* elsewhere; and that might be very dangerous to him.

Mr. At. Gen. To whom did he charge you with that Message? or to whom was it to be delivered?—*H. Fras.* To the Pretender's Son.

Mr. At. Gen. Did you, or did you not, deliver that Message to the Pretender's Son?—*H. Fras.* I did deliver it to him.

Mr. At. Gen. What Answer did the Pretender's Son give you to it?

H. Fras. The Answer he gave, was no more than that it was very well, or to that Purpose.

Mr. At. Gen. Who was it gave that Answer to you?

H. Fras. The Pretender's Son.

Mr. At. Gen. How long did you continue at *Edinburgh* after this, before you went from thence?

H. Fras. I continued at *Edinburgh* from that Time, which was the Time of my Arrival from the North, in the Beginning of *October*, till the Beginning of *November* after.

Mr. At. Gen. Before you left *Edinburgh*, did any Person, in Behalf of the Pretender's Son, come to you, and who, in order to employ you upon any Message to my Lord *Lovat*?

H. Fras. I left *Edinburgh* twice; which of the Times is meant?

Mr. At. Gen. When you left *Edinburgh* at the Beginning of *November*.

H. Fras. Before I left *Edinburgh* in *November*, I was called upon by one who appeared to me to be in the Service of the Pretender, and by him carried to *Holyrood-House*.

Mr. At. Gen. Who was at *Holyrood-House* then?

H. Fras. The Pretender's Son was the principal Tenant.

Mr. At. Gen. When you came to *Holyrood-House*, who was the Person you was brought before? and what Conversation passed between you?

H. Fras. I was brought before Mr. *Murray*.

Mr. At. Gen. Who is he?

H. Fras. *John Murray* of *Broughton*, who then took upon him the Name of Secretary to the Pretender's Son.

Mr. At. Gen. Was any body with Mr. *Murray* at the Time you had this Meeting with him, when you went to *Holyrood-House*?

H. Fras. There were two or three Gentlemen in the House.

Mr. At. Gen. Can you name them?—*H. Fras.* Some of them I can.

Mr. At. Gen. Who were they?—*H. Fras.* *Cameron* of *Lochiel* was one.

Mr. At. Gen. Who was there else?

H. Fras. *Mac Donald*, and *Stuart* of *Ardshields*; these Three were in the Room with Mr. *Murray*.

Mr. At. Gen. Was *Mac Donald* of *Keppoch* there?—*H. Fras.* Yes.

Mr. At. Gen. What did Mr. *Murray* say to you upon that Occasion?

H. Fras. He told me, that there had been a Letter intercepted from the North, which was directed to me; and that he understood, from that Letter, that it was owing to me that the *Frasers* had not already marched.

Mr. At. Gen. Marched whither?

H. Fras. Marched, and gone into the Rebellion; and that the Letter bore, that none of them would march till I should go into the North Country.

Mr. At. Gen. Was any Thing said concerning my Lord *Lovat* upon that Occasion?

H. Fras. I believe Mr. *Murray* told me, that he had heard from a Gentleman who was one of their own Party, that my Lord *Lovat* was very well disposed towards supporting the Cause.

Mr. At. Gen. Did he say any Thing concerning my Lord *Lovat*'s Intention to raise Men, or no?—*H. Fras.* I can't tell.

Mr. At. Gen. In the Letter was any Thing of it mentioned?

H. Fras. The Letter I never saw: it was not given to me: I asked for a Sight of the Letter, and asked from whom it was written; and they told me it was from one of the *Frasers*.

Mr. At. Gen. Did you give any Answer to this, or no?

H. Fras. The Answer I gave was, That it was a Misrepresentation of me, and a Falshood.

Mr. At. Gen. In what respect was it a Misrepresentation?

H. Fras. Because the moving, or not moving, of the *Frasers*, no way depended on me.

Mr. At. Gen. Please to give an Account, and go on with what passed between Mr. *Murray* and you.

H. Fras. Mr. *Murray* said, That it was possible it might be so; but that it was necessary for the Vindication of my Character, that I should go into the North Country.

Mr. At. Gen. Go on.

H. Fras. I told him, that my Business would not allow me to do it.

Mr. At. Gen. What was agreed upon then?

H. Fras. That I should write such an Account of the Situation of the Rebel Army at *Edinburgh*, as he then gave me; and they would be satisfied with such Account.

Mr. At. Gen. Did you, or did you not, agree to this?

H. Fras. I did agree to it.

Mr. At. Gen. What was the Consequence of that Agreement?

H. Fras. I agreed to it, and obtained a Pass for the Bearer of it; and, in Consequence of that Pass, I meant to send what I took to be the real State of the Matter on both Sides.

Mr. At. Gen. Did you, or did you not write, according to this Proposal?

H. Fras. I went to write, and was about doing it, when I was called upon a second Time by the same Person who had called upon me before, and was brought by him to the same Place.

Mr. At. Gen. What passed when you was thus brought back to the same Place?

H. Fras. I was told that Writing would not do, but I must go myself.

L. H. S. Who told you so?—*H. Fras.* Mr. *Murray*.

Mr. At. Gen.

Mr. At. Gen. Be pleased to inform their Lordships, what was done upon that. Did you, or did you not agree to go?

H. Fras. In the End, I did agree to it, because I understood, if I had not, I must have expected a worse Service.

Mr. At. Gen. What was the Message you was to go upon?

H. Fras. The Message I was charged with was to give such an Account of their own Situation as they had given me.

Mr. At. Gen. Was you charged with any Letter for my Lord Lovat? and from whom?

H. Fras. There was a Letter from Mr. John Murray delivered to me, and directed to my Lord Lovat.

Mr. At. Gen. Was it delivered to you open or sealed?

H. Fras. The Letter was open when it was delivered to me.

Mr. At. Gen. Did you or did you not read it?

H. Fras. I did read it.

Mr. At. Gen. Who delivered it to you?

H. Fras. Mr. Murray.

Mr. At. Gen. Pray, give an Account to my Lords of the Contents of that Letter that was thus delivered to you by Mr. Murray.

H. Fras. The Import, or Contents of the Letter, was, to the best of my Remembrance, that Mr. Murray was extremely glad of the Accounts he had received, with respect to my Lord Lovat's Intentions; and that he begged of him to persevere in them; and that he earnestly desired, that the *Frasers* should march forthwith: And I think, to the best of my Remembrance, there was a Route directed for them.

Mr. At. Gen. Was there any Place mentioned where they were to meet the Army?

H. Fras. The Place where it was intended, according to that Route, they should join the Rebel Army, was about *Moffat* or *Carlisle*.

Mr. At. Gen. Did you go with that Letter or not to my Lord Lovat?

H. Fras. I went into the North Country; and some time after my Arrival at that Place, I delivered that Letter.

Mr. At. Gen. To whom did you deliver that Letter?

H. Fras. To my Lord Lovat.

Mr. At. Gen. When you delivered Lord Lovat that Letter, did you give him any Account of the Situation either of the Rebels, or the King's Army, or of the Affairs relating to the Rebellion?

H. Fras. I gave him the Account, which I intended to have wrote, of the Situation on both Sides of the Question, so far as I knew of it.

Mr. At. Gen. What was that Representation that you made, and did, in Fact, deliver or give to my Lord Lovat?

H. Fras. The Representation I delivered to my Lord Lovat at that time was this, That with respect to the Government, there were above 21 Battalions of Forces arrived from *Flanders*: That there were two Regiments arrived from *Ireland*: That the *Dutch* Auxiliaries were expected: And that the Rebels did not seem to be a Party sufficient, according to their Number, to engage with such a Number of regular and well-disciplined Forces.

Mr. At. Gen. What did my Lord Lovat say to this Representation of yours, that you thus made to him?

H. Fras. My Lord Lovat said, that he conceived what I had said, with respect to the Situation of Affairs on both Sides of the Question, to be very true.

Mr. At. Gen. What did he say, as the Consequence of that Belief of his?

H. Fras. He further said,—But that he thought himself too far engaged to look back.

Mr. At. Gen. Did he say any thing else relating to that Matter?

H. Fras. Yes, I believe it was Part of the Conversation, that he forbid me to mention or intimate any thing of the Conversation that had thus passed between us to his Son.

Mr. At. Gen. Can you tell the Reason why he was unwilling that his Son should know of it?

H. Fras. As for the Reason, that must depend upon my own Conjecture, since Lord Lovat expressed none.

Mr. At. Gen. Did you continue at my Lord Lovat's House after this for any, and what Time?

H. Fras. I continued from my Arrival there, which was the Beginning of November, till the Middle or towards the End of December.

Mr. At. Gen. You had by that an Opportunity of seeing some of my Lord Lovat's Conduct, and hearing his Conversation: Please to give an Account to my Lords, whether there was any Rendezvous of the *Frasers*, my Lord Lovat's Clan, during the Time you were there?

H. Fras. I heard there was a Rendezvous before I came into the Country, but I was present at none, nor saw any while I was there. I suppose by the Word Rendezvous, you mean a Gathering of Men.

Mr. At. Gen. Have you ever seen any of them?

H. Fras. I never saw an universal one, or general one: Perhaps I might see forty or fifty Men together at a Time.

Mr. At. Gen. Have you seen forty or fifty Men at a Time gathered together there, as a Body of Men in Arms?

H. Fras. No, I cannot say I did see, or was present at any Gathering of Men in Arms.

Mr. At. Gen. Did you ever see a List of the Officers appointed out of my Lord Lovat's Clan?

H. Fras. I have seen such a List.

Mr. At. Gen. By whom was that List shewn to you?

H. Fras. It was shewn to me by the Master of Lovat.

Mr. At. Gen. Do you know, whether my Lord Lovat saw that List?

H. Fras. I do not know that, indeed.

Mr. At. Gen. Was you yourself appointed or named as one of the Officers in that List?

H. Fras. I was.

Mr. At. Gen. What was the Office or Post you had there?

H. Fras. I was named there a Captain-Lieutenant.

Mr. At. Gen. Did my Lord Lovat call you by that Name or Title, or by any other, after this Time?

H. Fras. My Lord Lovat has called me by that Name after this.

Mr. At. Gen. Was it or was it not the usual Name he called you by?

H. Fras. Yes, very often.

Mr. At. Gen. Did he ever call you by the Name of Captain before that Time?

H. Fras. No.

Mr. At. Gen. What did you understand by your being called by that Name by my Lord Lovat? Did you understand by that, that he looked upon you as a Captain or Officer in his Son's Regiment?

H. Fras. I understood by that, that my Lord Lovat apprehended it was so wrote in that List.

Mr. At. Gen. Did my Lord Lovat understand by it, and so express himself, that you were actually a Captain, as well as wrote so in that List?

H. Fras. Actually a Captain I was not; he could not understand what was not, because as I had not undertaken or done any thing, all the Foundation he had for calling me Captain, was owing to my Name being in that List.

Mr. At. Gen. Have you had any Conversation with my Lord Lovat concerning his Dissatisfaction at his Son's Backwardness in raising the *Frasers*?

H. Fras. I have heard my Lord Lovat complain sometimes of his Son's Backwardness to raise the Clan, and sometimes of his too much Forwardness.

Mr. At. Gen. Did you ever hear him say any thing concerning the Consequence of this Engagement of his in the Rebellion, in respect to himself?

H. Fras. I have heard him say, that he apprehended the Conduct of his Clan, upon this Occasion, would be his Ruin, and very probably cost him his Life.

Mr. At. Gen. I beg you will inform their Lordships, whether the Officers of this Clan, or of the Master of Lovat's Regiment, did or did not to live or dine with my Lord Lovat?

H. Fras. I have dined at my Lord Lovat's Table several Times, with the Officers who were named in that List.

Mr. At. Gen. Did you ever hear the Pretender's Son spoken of at Dinner, or at any other Time, in my Lord Lovat's House?

H. Fras. Any particular Conversation, with respect to the Pretender's Son, I cannot recollect; but that he has been spoken of, there is little Reason to doubt, because it was the Topick of Conversation in all the Country.

Mr. At. Gen. By what Name or Title was the Pretender's Son usually called, in the Conversation between my Lord Lovat and those Officers?

H. Fras. To the Conversation between my Lord Lovat and those Officers, I cannot answer; but in the Conversation upon that Subject, in my Lord Lovat's Presence, I can say he was called Prince Charles.

Mr. At. Gen. Now, my Lords, I will beg Leave to ask the Witnesses concerning another Matter of Fact: Did you ever hear my Lord Lovat say any thing concerning a Patent to create him Duke of *Fraser*, by the Pretender?

H. Fras. I have heard him say there was such a thing in being.

Mr. At. Gen. Did he ever say, whether he had or had not seen the original Patent, or any Copy of it?

H. Fras. He did not say that he had seen the Patent; I think he said he had never seen it.

Mr. At. Gen. Did you ever hear him say any Thing concerning any Copy of it which he had?

H. Fras. He shewed me half a Sheet of Paper, whereon was wrote what had been shewn or given to him, as a Copy of such a Patent.

Mr. At. Gen. What Patent do you mean?

H. Fras. The Patent to create him a Duke.

Mr. At. Gen. By whom was that Patent said to be granted?

H. Fras. The Copy that I saw was in the Name of one whom I took to be the Old Pretender, who called himself *James the VIIth*.

Mr. At. Gen. How was that subscribed, do you recollect?

H. Fras. I don't remember it was subscribed, or superscribed.

Mr. At. Gen. Was there any Name at the Top of it?

H. Fras. I really cannot say.

Mr. At. Gen. That Copy which you saw, by whom was it shewn to you?

H. Fras. It was shewed me by my Lord Lovat.

Mr. At. Gen. You was saying, that you continued with my Lord Lovat, from the second Time you came to *Castle-Downey*, to the latter End of December: Please to inform their Lordships, if during that Interval of Time, any of the Men of the *Frasers* did actually march, in order to go to the Pretender's Army, or to join them?

H. Fras. Yes; there were Men that marched: About six or seven Companies of Men marched about six or seven Miles from their own Country, to an adjacent Country.

Mr. At. Gen. What Place was that they went to?

H. Fras. It was a Place called *Urquhart*.

Mr. At. Gen. What became of those Men? How far did they march?

H. Fras. I said before, about six or seven Miles.

Mr. At. Gen. Were they afterwards recalled?

H. Fras. They were.

Mr. At. Gen. Who were they recalled by?

H. Fras. They were recalled by a Letter from my Lord Lovat, directed to his Son, the Master of Lovat.

Mr. At. Gen. Did, or did not, they comply with that Letter which recalled them?

H. Fras. The Son complied; and they, in Consequence, I suppose complied with the Son's Orders.

Mr. At. Gen. Did the whole Clan comply?

H. Fras. All, except about 25 of them.

Mr. At. Gen. Did they return to their own Habitations?

H. Fras. They returned.

Mr. At. Gen. At or about what Time was this?

H. Fras. I believe it was in the Month of November.

Mr. At. Gen. Now, Sir, I would ask you, Did you take it, that the Master of Lovat marched with them, by Order of my Lord Lovat; or was it out of his own Head that he thus marched?

H. Fras.

H. Fras. The Men had marched, and were in that Country, before the Master of *Lovat* went from *Castle-Downey*: When he went from *Castle-Downey*, it was not with a View to proceed upon that March, in case he should be able to prevail on the Men to return. I went along with the Master; and after we came where the Men were, we called the Officers together, and proposed to them that they should return: The only Reason we gave them for this Advice was, a Storm of Snow which then fell, and which would probably render their March very troublesome: But, by the Influence of *Mac Donald of Barisdale*, it was carried against the Master's Sentiments that they should march. Upon that Resolution, I returned to *Castle-Downey*; and a few Hours after my Return, my Lord *Lovat* wrote the Letter I mentioned himself; which occasioned their coming back.

Mr. At. Gen. Please to inform their Lordships, whether you was sent at any Time, by my Lord *Lovat*, to the President of the Session of Scotland: Or mention first, if my Lord President was at *Inverness*.

H. Fras. He then was at his own House at *Culloden*.

Mr. At. Gen. Was my Lord *Lovat* there?

H. Fras. He was at *Inverness*.

Mr. At. Gen. Was you sent by my Lord *Lovat* to the Lord President, or to my Lord *Lovat*, with any, and what Message?

H. Fras. I was sent by my Lord *Lovat* to my Lord President and my Lord *Lovat* both.

Mr. At. Gen. What was the Message that you was sent with?

H. Fras. The Intention of the Message was, to see to discover from those Gentlemen, what would be the Result of the *Frasers* marching, and going into the Rebellion.

Mr. At. Gen. Was that the Intention of the Message?

H. Fras. Yes; it was.

Mr. At. Gen. Did you carry any Letter or Letters from my Lord *Lovat* to the Lord President, or my Lord *Lovat*?

H. Fras. There was a Letter I carried from my Lord *Lovat* to the Lord President.

Mr. At. Gen. Did you know what was the Contents of that Letter? Did you read it?

H. Fras. I did.

Mr. At. Gen. What were the Contents of it?

H. Fras. The Contents of it were, informing my Lord President, That the Master of *Lovat* had gone off in a headstrong Way, and carried the *Frasers* into the Rebellion.

Mr. At. Gen. What did my Lord *Lovat* mean by the Word *headstrong*?

H. Fras. I suppose he meant, that it was contrary to his Advice.

Mr. At. Gen. When you came to my Lord President, did you deliver that Letter? — *H. Fras.* Yes; I did.

Mr. At. Gen. What Answer did my Lord President give to it?

H. Fras. He told me by Word of Mouth, That the Consequence that would arise to my Lord *Lovat* from such a Step taken by his Clan, would in all Probability be the Seizing of his Person, and making an Inquiry into his Conduct.

Mr. At. Gen. Did you, or did you not, return with that Answer of my Lord President, and deliver it to my Lord *Lovat*?

H. Fras. I returned with that Answer of Lord President, and with an Answer to the same Purpose from my Lord *Lovat*; and delivered them both to my Lord *Lovat*.

Mr. At. Gen. Was you likewise charged with a Letter from my Lord President to Lord *Lovat*?

H. Fras. My Lord President did write to my Lord *Lovat*, in Return to his Letter.

Mr. At. Gen. Did you see that Letter?

H. Fras. I saw it.

Mr. At. Gen. Can you give my Lords an Account of the Contents of it?

H. Fras. The Import of it was what I already told their Lordships.

Mr. At. Gen. Did you, or did you not, go to my Lord *Lovat* with those Messages and this Letter? — *H. Fras.* I did.

Mr. At. Gen. Before you delivered this Letter, or these Messages, had you any Meeting with the Master of *Lovat*?

H. Fras. I had a Meeting with the Master of *Lovat* upon the Way. It was concerted between him and me before I set out upon that Message, that he should meet me privately by the Way in my Return, in order to know what passed between my Lord President and me, and my Lord *Lovat* and me.

Mr. At. Gen. Had you that Meeting before your Return?

H. Fras. Yes, I had.

Mr. At. Gen. What passed between you Two at that Meeting?

H. Fras. I made a Report to the Master of *Lovat* of all the Conversation I had with those two Gentlemen.

Mr. At. Gen. Was there any thing concerted or agreed between you Two upon that Occasion?

H. Fras. The Result of our comparing our Sentiments on that Meeting was, that the Master of *Lovat*, if it was possible, should be got immediately sent over to *Holland*; and that the Scheme which he had proposed some Months before, should then be put in Execution, with respect to the Master of *Lovat*'s following his Education at *Leiden*, or some other University in the *Low Countries*.

Mr. At. Gen. What Answer did you return to my Lord *Lovat* in regard to these Messages?

H. Fras. I reported what was agreed upon between the Master and me, and agreeable to my Lord President's Letter, and to my Lord *Lovat*'s verbal Message by me: I say, we had agreed, that there was a Report to be made agreeable to this Resolution between the Master and me, to my Lord *Lovat*.

Mr. At. Gen. Please to inform their Lordships, in the first Place, Whether you delivered my Lord President's Letter to my Lord *Lovat*?

H. Fras. I did.

Mr. At. Gen. And did you make a Report to my Lord *Lovat*, according to what was agreed upon between his Son and you? — *H. Fras.* I did.

Mr. At. Gen. Please to repeat them again to my Lords; and state what was the Message you delivered to my Lord *Lovat*, besides the Letter.

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H. Fras. The Report I delivered to my Lord *Lovat*, besides delivering the Letter, was this, That it was my Lord President's Belief, that an Order would be immediately sent down from *London* for the seizing his Person, and inquiring into his Conduct; and that it was my Lord *Lovat*'s Determination to put that Order in Execution, as soon as ever it came into his Hands.

Mr. At. Gen. Do you recollect any thing more concerning it? Do you remember whether it was to be put in Execution, in case the *Frasers* did, or in case they did not march?

H. Fras. In case the *Frasers* did march.

Mr. At. Gen. Is this the whole Substance of the Report that you made to Lord *Lovat*? — *H. Fras.* Yes, so far as I remember.

Mr. At. Gen. What Answer did my Lord *Lovat* make you upon that Occasion?

H. Fras. When I made the Report, I do not remember any particular Conversation that passed upon it.

Mr. At. Gen. Did he give you any Answer to it at any other Time? and when?

H. Fras. There was a Conversation between us soon after about it: I believe it was the next Day after my Return to *Castle-Downey*.

Mr. At. Gen. What did my Lord *Lovat* then say to you relating to those Messages, or to that Report which you made?

H. Fras. I believe my Lord *Lovat* said, That he thought the Report of securing his Person, and inquiring into his Conduct, was to be considered rather as a Bugbear.

Mr. At. Gen. Was the Master of *Lovat* present at that Time?

H. Fras. Yes, he was.

Mr. At. Gen. What did my Lord *Lovat* say to his Son upon that Occasion?

H. Fras. My Lord *Lovat* told his Son what I have already said, That he looked upon it to be rather a Bugbear; And that it was his Opinion, he should proceed in the Undertaking he was engaged in.

Mr. At. Gen. Did he, upon that Occasion, give or make any Orders concerning what was to be done?

H. Fras. Yes, that the Men should march immediately.

Mr. At. Gen. Did he give any Orders for it?

H. Fras. Not in the Way of an Order.

Mr. At. Gen. What did he say upon the Occasion?

H. Fras. That it was his Opinion, That the Men should march immediately.

Mr. At. Gen. What Men did you understand by that, were to march immediately?

H. Fras. The Clan of the *Frasers*.

Mr. At. Gen. What March did you understand it was to be? Or, whether were they to march?

H. Fras. To join the Rebel Army.

Mr. At. Gen. Was there any other Company present at this Conversation, besides my Lord *Lovat*, and the Master, and you?

H. Fras. Yes, there were two other Gentlemen.

Mr. At. Gen. Did Lord *Lovat* then say any thing to them concerning it, by way of asking their Opinion, or their Agreement to it?

H. Fras. He asked the Opinion of all the Gentlemen present, after he had given his own, by saying, That it was his Opinion; and that he hoped all the Gentlemen present agreed to it.

Mr. At. Gen. What did you understand by that?

H. Fras. That he hoped all present agreed to the Opinion which he had delivered himself.

Mr. At. Gen. Did you give any Answer to that? or any Opinion concerning it? — *H. Fras.* Yes, I did.

Mr. At. Gen. What was it?

H. Fras. So far as I remember, the Answer I made was, That my Opinion had not been asked; but that, notwithstanding that, I thought myself obliged to give it: And it was this, That if the Affair could not be entirely dropped, that it should be put off for some Time.

Mr. At. Gen. Did my Lord *Lovat* give any Answer to that?

H. Fras. When I said, That my Opinion had not been asked, he told me, That some People's Opinion might be easily read in their Countenances, or Words to that Purpose.

Mr. At. Gen. What Answer did you make upon that?

H. Fras. The Answer I have already given.

Mr. At. Gen. What Answer did Lord *Lovat* give as to the putting off the March for a while?

H. Fras. No Answer at all, so far as I remember. The Master of *Lovat*, upon that, burst out into Tears; and said, He had been made a Fool of, and a Tool from first to last.

Mr. At. Gen. Did he say any Thing more?

H. Fras. Yes; he said, That he had been one Day doing, and another Day undoing; but that now he was determined, that whatsoever Resolution Lord *Lovat* should come to, that he would execute it, let the Consequence be what it would with respect to himself, and other People.

Mr. At. Gen. Was there any Thing more passed? Did Lord *Lovat* say any Thing upon this Occasion?

H. Fras. My Lord *Lovat* said, That he had given his Opinion already; and that he would not alter it; or to that Effect.

Mr. At. Gen. You have seen my Lord *Lovat* and his Son pretty often together, and were at his House for two or three Months together; pray what was your Opinion as to the Backwardness of the Master of *Lovat*? or as to his Obedience or Disobedience to his Father, in respect to his going into the Rebellion? Do you think that the Master was guilty of Obstinacy and Disobedience to his Father in going into the Rebellion? or that, by so doing, he complied with his Father's Orders and Inclinations?

H. Fras. If I am to form my Opinion, with respect to the Master of *Lovat*, upon his own good Sense and Understanding, or his avowed Principles, I should apprehend, that he would not have gone into the Rebellion, had he been left to himself: And if I am to form my Opinion upon the private Conversation I had with him, and particularly one, which I remember I had in *Urquhart*; I say, if I am to form my Opinion upon what he declared with respect to his Intentions and Sentiments declared

to me, it is my Belief, that he would not have had any Concern in this Rebellion, had he been entirely left to himself.

Mr. Att. Gen. I desire to ask you, Sir, Whether, from your Knowledge of the Situation of the Clan of the *Frasers*, and of the Power and Influence which either my Lord *Lovat* or the Master had over them, do you think, that the Master of *Lovat* could have raised the Clan, without the Concurrence and Order of my Lord *Lovat*?

H. Fras. I believe, had the Lord *Lovat* and the Master acted in direct Opposition the one to the other, that the Clan would have been divided; and Part would have gone with one, and Part with the other; but what Part to either of them, is what I cannot determine.

Mr. Att. Gen. About what Time was it that the News came first to *Castle Drunwherry* of the Landing of Lord *John Drummond* with Soldiers from France?

H. Fras. It was about a Day before I went to my Lord President, or that Day.

Mr. Att. Gen. I desire to know, Whether, in your Opinion, that News had any Influence to determine my Lord *Lovat*'s Conduct at that Time?

H. Fras. I cannot take upon me to say what it was that determined my Lord *Lovat*'s Conduct.

Mr. Att. Gen. Did you hear my Lord *Lovat* say any Thing about that particular Event of Lord *John Drummond*'s landing then?

H. Fras. I have heard my Lord *Lovat* report what Intelligence had been returned to him on account of that Landing.

Mr. Att. Gen. Please to give an Account to my Lords when the Master of *Lovat* and the *Frasers* did march? and where they marched to?

H. Fras. Some Part of the *Frasers* marched at one Time, and some at another: Some of them marched a short Time after this Conversation passed between my Lord *Lovat* and the Master, at which I was present.

Mr. Att. Gen. Where did they march first?

H. Fras. They marched first to *Perth*; but the Master of *Lovat* did not go along with them.

Mr. Att. Gen. Did my Lord *Lovat* know, or not know, of their marching? — H. Fras. That I don't know of my own Knowledge; but that my Lord *Lovat* must have heard of their March, is certain.

Mr. Att. Gen. Did they, or did they not, march against his Orders?

H. Fras. Truly that is what I cannot easily answer: He certainly gave Orders for them not to march sometimes, and it was sometimes given out, that he gave Orders for their marching; but I did not see either of these Orders.

Mr. Att. Gen. Please to give my Lords an Account when the *Frasers* did march to *Perth*; and be as correct as you can.

H. Fras. The Times that they marched were different.

Mr. Att. Gen. Did they march in large Numbers?

H. Fras. They marched in very small Numbers, not, I believe, above fifty at a Time; and the Number that marched in all was but very small.

Mr. Att. Gen. What Number do you suppose might march?

H. Fras. When they were strongest at *Perth*, they were between Two and Three Hundred at most.

Mr. Att. Gen. Please to give an Account to my Lords, Whether my Lord *Lovat* was apprehended by Lord *London*'s, or my Lord President's Order? and when?

H. Fras. The next Morning after the Conversation passed between the Lord *Lovat* and the Master, as I mentioned already, I left *Castle Drunwherry*.

Mr. Att. Gen. Were the *Frasers* then gone, or were they going to *Perth*?

H. Fras. I believe there were none of them gone at that time; but I cannot say that I remember positively; but their March was then resolv'd on.

Mr. Att. Gen. Do you remember when it was precisely that you came from my Lord President's to my Lord *Lovat*?

H. Fras. I do not remember the precise Day of the Month.

Mr. Att. Gen. About what Time of the Month was it?

H. Fras. I dare say it must be about the Beginning of December.

Mr. Att. Gen. You say, That you went to *Perth* with the Master of *Lovat*; pray who was with you?

H. Fras. The Master and I went to *Perth* by ourselves alone.

Mr. Att. Gen. When you came there, where was the Body of the Rebel Army?

H. Fras. I believe it was in England.

Mr. Att. Gen. How soon after that did they come into Scotland again?

H. Fras. About Two or Three Weeks at most, after the Master and I had got to *Perth*, there came an Account, that the Rebel Army had returned to *Glasgow*.

Mr. Att. Gen. Had you any Orders from the Pretender's Son about marching?

H. Fras. There were Orders given by Mr. *Murray*, that the Rebel Forces should march to *Stirling*, to join those coming from *Glasgow*.

Mr. Att. Gen. Did the *Frasers* go thither?

H. Fras. They did.

Mr. Att. Gen. How far did they go?

H. Fras. To *Stirling*.

Mr. Att. Gen. Was there any Message sent to *Glasgow*, or any Place thereabouts, by the Master of *Lovat*, relating to the *Frasers*?

H. Fras. Yes, there was: It was sent from *Perth* to *Glasgow*.

Mr. Att. Gen. For what Purpose was it sent?

H. Fras. In order to procure Firelocks for the *Frasers*.

Mr. Att. Gen. Did you yourself go to *Glasgow*?

H. Fras. I did.

Mr. Att. Gen. To whom did you apply there?

H. Fras. To Mr. *John Murray*.

Mr. Att. Gen. Please to give an Account to my Lords what was the Effect of that Application of yours?

H. Fras. The Effect of it was, that an Order was sent to Lord *John Drummond*, in the Name of one that called himself the French Ambassador, that Lord *John Drummond* should deliver Arms for the *Frasers* out of the Arms that he had in Charge, that were the King of France's Arms, as he himself said.

Mr. Att. Gen. How long did you stay at *Glasgow*?

H. Fras. About Twenty-four Hours.

Mr. Att. Gen. Before your Return from thence, had you any Conversation or Meeting with Mr. *Murray* of *Broughton*, the Pretender's Secretary?

H. Fras. I called upon him there, and saw him in his own Room.

Mr. Att. Gen. What was the Import of your Conversation at that Meeting?

H. Fras. The Business that brought me there was, to desire him to send the Arms I mentioned.

Mr. Att. Gen. Was that the only Subject of your Conversation?

H. Fras. No: We talked with respect to the Situation of Matters in the North Country, and with respect to the Imprisonment of my Lord *Lovat*, and his Escape from *Inverness*, which I had then heard of.

Mr. Att. Gen. Was there any Proposal then made concerning the Army's going into the North Country to take *Inverness*?

H. Fras. There was a Proposal then made, that a Detachment should be sent from the Army, in order to make themselves Masters of *Inverness*.

Mr. Att. Gen. What more passed between you relating to this Proposal?

H. Fras. That Proposal was agreed to, and a Resolution formed upon it, in a Council that was called in the Afternoon.

Mr. Att. Gen. Did you at that time hear any things, or receive any thing, from my Lord *Lovat*?

H. Fras. No: I had no Charge from my Lord *Lovat* when I went to *Glasgow*.

Mr. Att. Gen. But, when you was there, did you receive any Order from Lord *Lovat*?

H. Fras. I received no Order or Letter from my Lord *Lovat*, while I was at *Glasgow*.

Mr. Att. Gen. Had you any Orders or Letters from Lord *Lovat* at all relating to the sending any Men Northward; I do not mean while you was at *Glasgow*, but in *Stratherrick*, or any other Place?

H. Fras. Before I went to *Perth*, there was a Letter delivered to me.

Mr. Att. Gen. You say it was concerted to send a Detachment to *Inverness*, or that a Detachment of the Army should go thither: What was done in pursuance of that Resolution?

H. Fras. Nothing at all.

Mr. Att. Gen. You say, that you received a Letter from my Lord *Lovat* at *Stratherrick*; pray what were the Contents of it?

H. Fras. I did say so: There was a Letter delivered to me: It was not signed; but it appeared to me to be the Hand-writing of *Robert Fraser*, who then acted as Secretary to my Lord *Lovat*; but it had no Name subscribed to it.

Mr. Att. Gen. What was the Import of that Letter?

H. Fras. The Request of the Letter was, That I should have gone to *Perth*, in order to have prevailed with the Gentlemen who commanded at that Place, to send a Number of Forces to *Inverness*, in order to make themselves Masters of that Place, by dislodging my Lord *Louden*, and to rescue my Lord *Lovat*.

Mr. Att. Gen. Was any thing done upon this?

H. Fras. Nothing: I refused to do it.

Mr. Att. Gen. Before you went from *Glasgow*, and returned with the Answer to the Message you had delivered there, did you receive any Message from Mr. *Murray* the Secretary, or any Packet? and what was it?

H. Fras. Mr. *Murray* proposed me to carry a Packet from *Glasgow* to *Perth*.

Mr. Att. Gen. Did he deliver you any Packet?

H. Fras. I refused to take it; because, I told him, that very probably his Packet would require Dispatch; and that I rid my own Horses, and did not incline to abuse them.

Mr. Att. Gen. Did you, or did you not, receive the Packet?

H. Fras. When he told me afterwards, That he had no other Person to carry it, and that it did not require Dispatch, I accepted of the Packet.

Mr. Att. Gen. Do you know what that Packet contained?

H. Fras. I came to know it afterwards.

Mr. Att. Gen. And what were the Contents of it?

H. Fras. There was a separate Letter, directed to the Master of *Lovat* only, with respect to the Army; and there was a large Packet of Papers, not directed to any Person, but which, Mr. *Murray* told me, I was to deliver to the Master of *Lovat*.

Mr. Att. Gen. Do you know what that Letter, or Packet, did contain?

H. Fras. Upon my Return to *Perth*, as the Master of *Lovat* happened not to be there at that time, another Gentleman and I took the Freedom to open the large Packet.

Mr. Att. Gen. What did you find in it?

H. Fras. There was in it a Commission of Lieutenant-General to my Lord *Lovat*, that is, in my Lord *Lovat*'s Name; and it was granted in the Name of *James the VIIIth*.

Mr. Att. Gen. What was there in it else?

H. Fras. There was another Commission in it, to my Lord *Lovat*, of Lieutenant of some Northern County, granted in the same Manner.

Mr. Att. Gen. Did that appear to be signed and sealed by the Pretender? — H. Fras. It had a Subscription and Superscription, and a Seal.

Mr. Att. Gen. Was there any thing else contained in that Packet?

H. Fras. There was another Commission to a Gentleman of the Name of *Fraser*.

Mr. Att. Gen. What did that Commission import to be?

H. Fras. It was a Colonel's Commission.

Mr. Att. Gen. Do you recollect to whom it was made?

H. Fras. The Gentleman was named *Fraser*: One who was called *Inverlacky*, and a Gentleman of that Name was then acting in that Capacity among the *Frasers*.

Mr. Att. Gen. Did that Commission appear, upon the Face of it, to be signed and sealed? and by whom?

H. Fras. Yes, it was signed and sealed in the same Manner as the other Commissions were.

Mr. Attorney

Mr. Attorney General. Was there any thing else in the Packet?

H. Fras. There was a Letter under the Hand of the Pretender's Son.

Mr. Att. Gen. To whom was that directed?

H. Fras. It was directed to my Lord Lovat.

Mr. Att. Gen. Was there any other Paper there?

H. Fras. Yes; there was a Letter from Mr. Murray, Cameron of Lochiel, and Mac Pherson of Clanric.

Mr. Att. Gen. To whom was that Letter directed?

H. Fras. That Letter had no Direction, or Cover; it was in the large Cover.

Mr. Att. Gen. Were those all that were in the large Cover?

H. Fras. All that I remember.

Mr. Att. Gen. Was the large Cover addressed to any body?

H. Fras. No.

Mr. Att. Gen. What was the Reason of that?

H. Fras. The Reason given me by Mr. Murray was, That it was intended for my Lord Lovat; but could not be directed, because he could not ascertain by what Title to write it.

Mr. Att. Gen. What was the doubted Title?

H. Fras. The doubted Title was that of a Duke.

Mr. Att. Gen. Duke of what?

H. Fras. Duke of Fraser, or Beaufort: Fraser, I believe.

Mr. Att. Gen. Does not my Lord Lovat's House go by Two Names?

H. Fras. Yes, by the Name of Castle-Downey and Beaufort.

Mr. Att. Gen. Do you know, whether that Letter, that was signed by Clanric Mac Pherson, Lochiel, and Mr. Murray, was referred to in the Letter that was sent by the Pretender's Son?

H. Fras. I don't know that it was.

Mr. Att. Gen. Do you recollect the Substance of the Letter from the Pretender's Son to my Lord Lovat?

H. Fras. The Substance of the Letter, as far as I can recollect, was requesting my Lord Lovat to come and join with him in Person.

Mr. Att. Gen. My Lords, These are all the Questions we have to ask of this Witness.

Lord High Steward. My Lord Lovat, The Gentlemen of the House of Commons have done with this Witness: Would your Lordship ask him any Questions?

Lord Lovat. My Lords, I have told your Lordships already, that I am so ill that I am not able to speak, or to get up, or sit down; and therefore hope your Lordships will indulge me to retire a little, and refresh myself.

Lord High Steward. My Lords, my Lord Lovat desires Leave to withdraw for a little while.

Lords. Ay, ay.

Upon which Lord Lovat withdrew for a little while: And being returned,

Lord Lovat. I desire, that your Lordships will indulge me in permitting your Clerk to read the Questions I would ask.

Lords. Ay, ay.

Lord Lovat. Was not you taken Prisoner by the King's Forces, after the Battle of Culloden?—H. Fras. I was.

Lord Lovat. Have you not been in Custody ever since? and are not you so now?—H. Fras. I have been, and I am.

Lord Lovat. Have you as yet obtained any Pardon?

H. Fras. I know of none.

Lord Lovat. Are you in Expectation of a Pardon from what you shall depose against me?

H. Fras. I will answer that Question very readily. I do not expect Punishment will be inflicted; but I assure your Lordship, it is no Condition or Paction made with me.

Lord Lovat. Have you ever had any Offer made to you of a Pardon, upon this or any other Condition? and what was that Condition?

H. Fras. I have had no Offers made to me of a Pardon, upon any Condition whatever.

Lord Talbot. My Lords, I have taken a particular Account of the Evidence of this Witness; which I beg Leave to repeat to your Lordships, in the Presence of the Witness, that, in case I misrepresent any Part, he may correct it, I having been already accused of Unfairness, in the Manner of stating my Questions. My Lords, The Witness says, that the Men marched before the Master of Lovat went from Castle-Downey: That he and the Master of Lovat followed the Men, and endeavoured to prevail upon them to return; but that Barisdale prevailed upon them to advance, contrary to the Desire and Advice of the Master of Lovat: That my Lord Lovat afterwards wrote a Letter to them to return, and that they did return: That my Lord Lovat certainly gave Orders sometimes, that they should not march. Am I right in this State of the Evidence?

H. Fras. Yes; my Lord Lovat certainly gave Orders for them sometimes not to march; and, I believe, he gave Orders, at other times, for them to march.

Lord Talbot. My Lords, he says, That he believes that, at other times, my Lord Lovat ordered them to march: But, my Lords, this might be only a general Report, without any Foundation, as it might be the Report of Barisdale, in order to prevail on them to march.

Lord High Steward. My Lords, The noble Lord is in the right, to state the Evidence to the Witness, in order to introduce Questions, by way of Explanation; but to observe upon that Evidence now, is not regular.

Lord Talbot. My Lords, All that I mean is to come at the Truth; which I cannot do from my own Knowledge.

Lord Talbot. You have said, that you have heard my Lord Lovat say, that the Conduct of his Clan might cost him his Life.—H. Fras. I did.

Lord Talbot. Now, my Lords, the Question I would ask him, from all this put together, is, Whether he did understand, by these Expressions of my Lord Lovat, that he disapproved of the Conduct of his Clan?

H. Fras. That my Lord Lovat disapproved to me in private, and that I have heard him disapprove, and condemn in publick, the Conduct of his Clan, is Truth: That I affirm before Almighty God.

Lord Talbot. Have you been examined by any body relating to this Trial, since you was a Prisoner, before you came to this Place?

H. Fras. I have.

Lord Talbot. My Lords, I will beg Leave to ask him, Whether the Confessions he made upon that Examination, or the Answers he gave there, proceeded from the Hope of a Pardon?

H. Fras. I cannot say that I would have done it, had I been convinced that I should meet with no Mercy; though, at the same Time, I had no Assurance given me of Mercy; neither had I any Promise of Pardon.

Lord Talbot. Do you believe, that your Pardon may depend upon the Consistency of the Evidence you shall give here, with what you have said upon those former Examinations?

Duke of Bedford. My Lords, I do not think that is a proper Question to be asked of any Witness; and, if it is insisted upon to be asked, I shall beg your Lordships may adjourn to the Chamber of Parliament, to determine that Question: And I will there give my Reasons against it.

Lord Talbot. My Lords, I have no Partiality for the noble Lord at the Bar; but what I have said proceeded from a Principle of Humanity, a Principle of Honour, and a Principle of Justice.

L. H. S. You have spoke of different Orders that were given at different Times: Sometimes my Lord Lovat ordered the Men to march, and, at other Times, not to march. Do you know, of your own Knowledge, of any of these Orders being given?

H. Fras. I have already said, that I saw an Order under his Hand, for the returning of seven Companies of Men, from Urquhart, whither they had marched.

L. H. S. Whither were they to return?

H. Fras. To their own Houses.

L. H. S. When was that Order given?

H. Fras. In the Month of November.

L. H. S. What Orders did you ever see, or hear, from my Lord Lovat, for the Men to march?

H. Fras. I never saw any Order of my Lord Lovat for the Men to march.

L. H. S. Then why did you speak of those Orders?

H. Fras. I have given my Reason for that, That I heard such Orders talked of; but that I heard them given, I never did say, and never will.

Lord Orford. When my Lord Lovat declared himself dissatisfied with the Conduct of his Clan, was it for their being too forward, or too backward, in going into Rebellion?

H. Fras. I have said already, That I have heard him dissatisfied for their too great Forwardness, and I have likewise heard him dissatisfied for their too great Backwardness.

Mr. Att. Gen. My Lords, In consequence of some Questions that have been asked, I beg Leave to know of this Witness, Whether what he has said in Evidence before your Lordships, notwithstanding his having said it under the Circumstances of his being now a Prisoner, is, or is not true?

H. Fras. I say, that what I have said, is literally Fact.

Mr. Att. Gen. Then I beg he may inform your Lordships, Whether, supposing he had been called on to be a Witness, and had not been a Prisoner, but had been, by Virtue of your Lordships Summons, obliged to come before you, to give Evidence upon this Trial, would he have given any other Evidence than what he hath given before your Lordships?

H. Fras. If I would give Evidence in any Case, it should be the Truth; and, if the Truth were such as I did not choose to disclose, I would declare positively, that I would give no Evidence at all.

Mr. Att. Gen. Was not you in so dangerous a Condition, in point of Health, when you were at Fort Augustus, that your Life was not expected?

H. Fras. At Fort Augustus I was past all Hopes of Recovery, and at Inverness.

Mr. Att. Gen. During that Time, did not you give, in Substance, the same Account of these Transactions as you have given now?

H. Fras. There were Questions asked me then; and the Answers I gave to them were the real Truth: Matters were not then so fully explicated as they have been since; so that those Declarations were not so complete as the Account I have given now: But the Answers that I made there, were still the real genuine Truth, as to those Questions that I was asked; and so is the Account I have now given.

Mr. Att. Gen. I beg he may inform your Lordships, if, so far as his Examination then went, it was not the same as his Examination is now?

H. Fras. So far as the Examination was then extended, it was the same as now: Truth is always the same; it will never vary from itself.

Mr. Att. Gen. Did you not then expect to die?

H. Fras. I expected not to live, sure enough.

Mr. Att. Gen. Was it from the Condition you were in by your Distemper, that you expected not to live?

H. Fras. It was from my Wounds, and the Ailments that I laboured under.

Mr. Att. Gen. My Lords, We have done with this Witness.

A Lord. I beg this Witness may inform your Lordships, If the Packet which he carried from Mr. Murray, containing the Papers that he has mentioned, was ever delivered? and to whom?

H. Fras. That Packet was never delivered to my Lord Lovat.

A Lord. I beg he may inform your Lordships, to whom that Packet was delivered?

H. Fras. When I came to Perth, a Gentleman, who then commanded among the Frasers, and I, opened the Packet, to see what it contained; and, while I was intending to shut it up again, and to forward it to the Master of Lovat, the Master himself came into the Room; and I told him the Freedom we had used with those Letters and Packets: He said, that we might always use that Freedom, and were welcome. All those Papers which I have mentioned to have been contained in that Packet, were then lying upon the Table where we stayed: I told the Master, in general, what they were; and he threw them from him; and there they continued to lie till I went from Perth to Stirling: And, as that March was made a little precipitately, those Papers, and every Thing else that belonged to me, that were in the Room, were thrown into my Cloak-Bag, and they

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and my Cloak-Bag continued in my Possession till some few Days before the Battle of Culloden, when I lodged them in a House at Inverness, and went myself to the Field of Battle.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

Sir William Yonge. My Lords, The next Gentleman we beg Leave to call, is Lieutenant Alexander Campbell.

Lieutenant Campbell called into Court.

L. H. S. My Lord Lovat, Have you any Objection to Lieutenant Campbell being a Witness?

Lord Lovat. I don't know him: I never heard of him.

Alexander Campbell sworn.

Sir W. Yonge. My Lords, We beg Leave to ask this Witness, Whether, at any Time, in the Year 1745, he went to Castle-Downey?

A. Camp. Yes, I did.

Sir W. Yonge. About what Time was it that you went?

A. Camp. I don't remember particularly: It was some Time in October.

Sir W. Yonge. Upon what Account did you go there?

A. Camp. To require some Cattle that were carried off from some People in the Shire of Ross.

Sir W. Yonge. By whom were these Cattle carried off?

A. Camp. By some of my Lord Lovat's People: I don't know whether it was done by his Orders, or not.

Sir W. Yonge. When you came near Castle-Downey, did you see any Number of armed Men?—A. Camp. Yes, I did.

Sir W. Yonge. How was you received by those armed Men? with Acclamations? or in what Manner? and how many were there of them?

A. Camp. I cannot condescend upon the Number of Men.

Sir W. Yonge. How was you received by them? with Acclamations? or how?—A. Camp. Yes.

Sir W. Yonge. How was you received? in what Manner?

A. Camp. They were all out with their Arms; some of the MacLeod's Defenders that came from Inverness.

Sir W. Yonge. How were you received there by those Men? in what Manner?—A. Camp. Some of them took off their Bonnets.

Sir W. Yonge. Were there any Shouts, or Huzzas, made use of?

A. Camp. Yes; some of them did.

Sir W. Yonge. Upon what Account?—A. Camp. I can't tell.

Sir W. Yonge. Did not they say any Thing to you of the Reason of it?

A. Camp. No; they spoke nothing to me.

Sir W. Yonge. Did you go to dine with my Lord Lovat, at Castle-Downey?—A. Camp. No; I did not.

Sir W. Yonge. Was you at Castle-Downey with him?—A. Camp. Yes.

Sir W. Yonge. Had you any Conversation with my Lord Lovat there?

A. Camp. Yes.

Sir W. Yonge. What Conversation had you with him?

A. Camp. I told him, I came to require the Cattle; and he told me, the Cattle were not brought there by his Order, but his Son's.

Sir W. Yonge. My Lords, The Witness had better go on with the rest of the Conversation: I know he can, without being asked particular Questions; for I would not lead him.

A. Camp. I do not remember what passed.

Lord Talbot. My Lords, I must take Notice to your Lordships, that I think it is a very odd Expression to make use of to a Witness, That he had better answer the Questions; for I know he can: It is a kind of threatening the Witness.

Sir W. Yonge. My Lords, I stand here as a Manager, on this Trial, for the Commons of Great-Britain; and I hope I say nothing that is offensive to your Lordships; and that the Manner in which I asked the Witness the Question, shewed that it proceeded from a Fairness in stating of it. My Lords, I think, as a Manager, I ought to know what a Witness can say; and the whole Tendency of what I said, was advising the Witness, without giving your Lordships unnecessary Trouble, to tell all he knew, fairly and impartially, without my being obliged to put any leading Questions to him: And I hope, I shall have your Lordships Liberty to go on.

L. H. S. My Lords, Every body knows, that it is the constant Course and Usage of Parliament, that, when a Committee of Managers is appointed by the House of Commons, upon an Impeachment, it is their Duty to examine, and they always do examine the Witnesses beforehand: And the same Method is used by Prosecutors for the Crown, upon Indictments. If this was not done, it would be impossible to know, whether a Witness could speak materially to the Facts in Question, or not.

Lord Talbot. My Lords, Though they are Managers, I am a Judge. I have as high a Veneration for the Representatives of this Kingdom, as any Man in the World; I sat some Time among them myself: But I am sure, my Lords, the Representatives of England do not desire a Language may be used to a Witness, that may seem threatening. And, my Lords, I took the Expression used by the Manager in this Light. The Expression was, That he had better speak; which, I apprehend, was as much as to say, That, if he hoped for Mercy, he must tell it. My Lords, I desire a fair Examination, that I may form a true Judgment. My Honour depends upon it.

L. H. S. My Lords, I desire this may be forborn. It is my Duty to acquaint your Lordships, that it is irregular, and contrary to all Rules of Proceeding. The Honourable Manager explained his Words in a very proper and candid Manner, that he thought it was fairer in him to ask the Witness general Questions, to declare what he knew of the Fact, than any particular Questions, which might tend to lead him; and he was in the right.

Mr. At. Gen. My Lords, in order to clear up this Matter, I beg Leave to ask the Witness, Whether he is now a Prisoner?—A. Camp. No.

Mr. At. Gen. Was you ever a Prisoner?

A. Camp. Yes; I was a Prisoner with the Rebels.

Mr. At. Gen. Had you then the King's Commission?

A. Camp. Yes; when I was a Prisoner.

Mr. At. Gen. Was you engaged in the King's Behalf against the Rebels, when you was taken?—A. Camp. Yes.

Sir W. Yonge. Your Lordships now see, That the Witness is no Prisoner, nor under any Terror or Apprehension, but has now the King's Commission in his Pocket; and therefore I beg Leave to ask him, What

the Conversation was that passed between my Lord Lovat and him about the Cattle?

A. Camp. As I did not expect to be called here as a Witness, so I do not remember what passed upon that Occasion.

Sir W. Yonge. Did my Lord Lovat persuade you to join the Rebels, or not?—A. Camp. He did not.

Sir W. Yonge. Did he say nothing to induce you to it?

A. Camp. He said nothing at all to induce me to join them.

Sir W. Yonge. Or his Son?

A. Camp. No.

Sir W. Yonge. My Lords, I don't know whether it be so proper: But have you never said so?

A. Camp. No; I never did say so.

Mr. Neil. My Lords, I beg Leave to ask him, Whether any Discourse passed between my Lord Lovat and him touching the Rebellion?

A. Camp. Yes.

Mr. Neil. Pray tell my Lords what that was?

A. Camp. He said, His Son was engaged in the Rebellion, not him; and that he was a very loyal Person.

Mr. Neil. My Lords, We have done with this Witness.

L. H. S. My Lord Lovat, Would you ask this Witness any Questions?

Lord Lovat. No; I have no Questions, my Lord, to ask this Witness: I never saw him before in my Life.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Mr. Lyttelton. My Lords, The next Witness we shall produce, is Peter Frazer, Tutor of Belladrum.

Peter Frazer was called into Court.

Lord Lovat. My Lords, I have a material Objection to this Witness: He is my Tenant in all that he possesses.

L. H. S. Would your Lordship ask him that Question? Or, would you prove it upon him by Witnesses?

Lord Lovat. I humbly think he will not deny it. If he does, I have Witnesses to prove it.

Mr. At. Gen. My Lords, I beg the noble Lord at the Bar may explain what he means by saying, If he denies it, that he has Witnesses to prove it; for, if the noble Lord puts it to the Oath of the Witness, and he denies it, then he cannot, without the Consent of the Commons, call a Witness to prove it.

L. H. S. My Lords, The Rule is, That, upon an Objection made to the Competency of a Witness, the Party objecting may either put it to the Oath of the Witness produced, or call Witnesses to prove it. If he put it to the Oath of the Witness produced, then he is concluded as to the Point of Competency, by the Answer he gives to it, unless the other Side consents to wave that. My Lord Lovat, Do you choose to put this to the Oath of Peter Frazer, or to call a Witness to prove it?

Lord Talbot. My Lords, I desire to know, if this Witness should deny it, whether my Lord Lovat may not give Evidence of this Man's being his Tenant, when he comes upon his Defence.

L. H. S. Gentlemen of the House of Commons, You hear what the noble Lord says; what do you say to it?

Mr. At. Gen. My Lords, To be sure my Lord Lovat may give such Proof by way of Objection to the Credit of the Witness; but not to his Competency.

L. H. S. My Lord Lovat, Do you choose now to put this Question to the Oath of the Witness himself, or to call a Witness to prove it?

Lord Lovat. I will put it to his own Oath.

Then the Witness was sworn upon a Voire Dire.

Lord Lovat. My Lords, I desire to ask him, Whether or no the Lands he possesses are not my Lands?

P. Fras. Yes; they are: I possess them in virtue of my Nephew's Right, who hold a Tack under my Lord Lovat.

L. H. S. How do you hold them in virtue of your Nephews? Is it as their Manager, or Tutor?

A. Lord. My Lords, I will beg Leave to ask a Question to explain that; which is, Whether or no the Witness pays the Rents of those Lands to my Lord Lovat's Chamberlain or Steward?

P. Fras. I do.

Lord Lovat. Do you pay any Part of that Rent in your own Right?

P. Fras. No; I do not. I only pay it in virtue of my Nephews, taking Care of them.

Mr. At. Gen. My Lords, The Question, which the noble Lord at the Bar has now put to the Witness, is that which I intended to have put to him; which is, Whether he holds any Lands in his own Right, or only as Tutor? He has told your Lordships, That he holds none in his own Right, but only as Tutor to his Nephews.

Mr. Lyttelton. My Lords, We pray the Witness may be sworn in Chief.

Peter Frazer sworn in Chief.

Lord Lovat. My Lords, I beg to ask him, Whether he does not hold a Tack of Land within the Lordship of Lovat, of Aird, or Strathaird?

P. Fras. I do not.

Mr. Lyttelton. I beg this Witness may inform your Lordships, Whether, in the Year 1745, he was at my Lord Lovat's House at Castle-Downey?

P. Fras. Yes; I was.

Mr. Lyttel. And whether he remembers to have seen any of my Lord Lovat's Men rendezvous there about that Time?—P. Fras. Yes; I did.

Mr. Lyttel. Did you see any of the Officers that headed those Men go to my Lord Lovat's House, and converse with him there?

P. Fras. Yes; I did.

Mr. Lyttel. Who did you see there?

P. Fras. Simon Frazer of MacLeod.

Mr. Lyttel. Did he talk to my Lord Lovat about the Regiment? or did any Orders from him?

P. Fras. I never heard him say any Thing; only that my Lord Lovat desired him to go to their Colonel: That is all I heard.

Mr. Lyttel. Who did he call their Colonel?

P. Fras. His Son, the Master of Lovat.

Mr. Lyttel. How came he to be their Colonel? Had not the Lord Lovat the absolute Power over his Clan?

P. Fras. Yes; he had.

Mr. Lyttelton

Mr. Lyttelton. Do you imagine or believe, that the Master of *Levat* could have carried the *Frazer* into the Rebellion, if his Father had been against it?

P. *Frazer*. No; he could not; I am sure he could not.

Mr. Lyt. Had the Master of *Levat* any Manner of Foundation to think he could raise the Men himself? Or did he, at his own Charge or Cost, pay those Men when they went into the Rebellion? Or, had he Money to do it?

P. *Frazer*. I suppose he had no Money of his own.

Mr. Lyt. Who do you think furnished him with the Money necessary for that Purpose?

P. *Frazer*. Really I know nothing of the Money: I saw no Money given.

Mr. Lyt. Do you know any thing of *Barisdale's* keeping a Party of Men upon my Lord *Levat's* Ground?—P. *Frazer*. Yes.

Mr. Lyt. What were they to do?

P. *Frazer*. To overawe the Country.

Mr. Lyt. To do what?

P. *Frazer*. To rise in Arms.

Mr. Lyt. In Arms for whom?—P. *Frazer*. For the Pretender.

Mr. Lyt. Had he got any of them to rise in Arms then?—P. *Frazer*. Yes.

Mr. Lyt. Did he make any of my Lord *Levat's* Vassals rise in Arms at that Time?

P. *Frazer*. They staid in the Country till they saw some of the Men did converse.

Mr. Lyt. Do you know of any body's giving the Men any Cattle or

Meal?—P. *Frazer*. Yes: My Lord *Levat* gave them some Cows.

Mr. Lyt. To whose Men? To *Barisdale's* Men?

P. *Frazer*. No; to my Lord *Levat's* Men.

Mr. Lyt. Those that join'd with *Barisdale*?—P. *Frazer*. Yes.

Mr. Lyt. Did you see *Barisdale* converse with my Lord *Levat* then?

P. *Frazer*. Yes; I did.

Mr. Lyt. Did my Lord *Levat* know that he was then in the Rebellion?

P. *Frazer*. No doubt of it.

Mr. Lyt. Did he wear any Mark of Distinction to shew it?

P. *Frazer*. He wore a white Cockade.

Mr. Lyt. Do you remember any Part of the Conversation between *Barisdale*, *MacLeod*, and my Lord *Levat*, concerning my Lord's declaring openly for the Pretender?

P. *Frazer*. I remember one Day, that *Alexander MacLeod* said, That all would be well, if my Lord *Levat* would pull off the Mask: Upon which my Lord *Levat*, by way of Reply, pulled off his Hat, and said, There it is then.

Mr. Lyt. What did that Conversation relate to?

P. *Frazer*. I heard no more of it.

Mr. Lyt. What were they talking about?

P. *Frazer*. I only heard, that he said, All would be well, if my Lord *Levat* would pull off the Mask.

Mr. Lyt. What did that Conversation mean? What meant, All would be well?—P. *Frazer*. I can't tell.

Mr. Lyt. What did my Lord *Levat* mean by pulling off his Hat?

P. *Frazer*. All that they said was, That all would be well, if my Lord would pull off the Mask: Upon which my Lord *Levat* pulled off his Hat, and said, Here it is then.

Mr. Lyt. Did he throw his Hat down?

P. *Frazer*. I did not see that.

Mr. Lyt. Did my Lord *Levat* offer you to be an Officer?

P. *Frazer*. No; he never did.

Mr. Lyt. My Lords, We have done with this Witness.

L. H. S. My Lord *Levat*, Would you ask this Witness any Questions?

Lord *Levat*. Was you examined at *Inverness*? and by whom? and who were the Persons you saw there?

P. *Frazer*. I was examined at *Inverness* before one *Kilravock*: He was a Depute. And I was examined before my Lord *Laudon*.

Lord *Levat*. Was you examined upon Oath?

P. *Frazer*. Yes: I was summoned, and strictly deponed.

Lord *Levat*. Upon Oath?—P. *Frazer*. Upon Oath.

Lord *Levat*. Who were the Persons you saw at *Inverness*, when you was examined?

P. *Frazer*. We were examined but one by one: As soon as one was examined, another was called; and no other Person heard what the Examinations were.

Lord *Levat*. Who were present at the Examinations?

P. *Frazer*. Lord *Laudon*, *Kilravock*, and a Clerk.

Lord *Levat*. At what Time was you examined at *Inverness*?

P. *Frazer*. I don't remember the Day of the Month, indeed.

Lord *Levat*. What Month was it?

P. *Frazer*. It was in *January*; the latter End of *January*.

Lord *Levat*. In *January* last?

P. *Frazer*. Yes, in *January* last.

L. H. S. You say you were at *Castle-Downey* in 1745, and saw all the Men rendezvous there: In what Month was that?

P. *Frazer*. In *November*.

Then the Prisoner begged Leave to withdraw a little: Which was granted; and he soon after returned to the Bar again.

Mr. Legge. The next Witness we shall call is *John Farquhar*.

At the Prisoner's Request, he was sworn upon a Voire Dire.

Lord *Levat*. Are you Tenant to me?—J. *Farquhar*. No.

Lord *Levat*. What is your Name?—J. *Farquhar*. *John Farquhar*.

Lord *Levat*. What Employment are you of?

J. *Farquhar*. I was Servant to Mr. *Murray*.

John *Farquhar* sworn in Chief.

Mr. Legge. My Lords, We propose to examine this Witness to the steps taken by my Lord *Levat* subsequent to the Battle of *Culloden*, in order to revive and restore the Pretender's Cause in *Scotland*.

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Mr. Legge. Was not you Servant to Mr. *Murray* of *Broughton*?

J. *Farquhar*. Yes.

Mr. Legge. In what Capacity did you serve him?

J. *Farquhar*. I was his Groom.

Mr. Legge. For what Space of Time did you serve him? From what Time, and to what Time?

J. *Farquhar*. From *Michaelmas* till the Ninth of *June* last.

Mr. Legge. In what Year?—J. *Farquhar*. In 1745.

Mr. Legge. Was there a Meeting of the Chieftains in the Rebel Army after the Battle of *Culloden*?

J. *Farquhar*. Yes.

Mr. Legge. When was that Meeting?

J. *Farquhar*. On the 10th of *May* last.

Mr. Legge. Who were the Persons that met on that Occasion?

J. *Farquhar*. Mr. *Murray* of *Broughton*, *Lochiel*, Young *Clanronald*, *Cameron* of *Dungallan*, Doctor *Cameron*, and several others that I did not know, and my Lord *Levat*: They met at the Island of *Mortlaig*.

Mr. Legge. Did you hear of any French Ships having landed any Money in *Scotland* then?

J. *Farquhar*. Yes.

Mr. Legge. Upon what Day did you hear that they landed that Money?

J. *Farquhar*. Upon the 4th of *May*.

Mr. Legge. What did you imagine was the Subject-Matter of the Meeting you mentioned?

J. *Farquhar*. In order to have a Second Gathering of the Rebel Army.

Mr. Legge. Did you hear any, and what Orders given to any body, and to whom, upon that Occasion?

J. *Farquhar*. There was an Order for the Men to be gathered together at a Place called *Glenmany*.

Mr. Legge. Who were the Persons that gave those Orders?

J. *Farquhar*. There was *Lochiel*, and the several other Persons that were present at the Meeting.

Mr. Legge. How did Lord *Levat* behave on that Occasion? Did he express any Satisfaction on that Head?

J. *Farquhar*. He was present during all the Time I was there.

Mr. Legge. Did he say any thing about the Number of Men that were to be raised?

J. *Farquhar*. The next Morning, when the Parties were going away, my Lord *Levat* said, They had no need to fear; and he did not doubt raising Eight or Ten thousand Men presently.

Some Lords desired the last Answer to be repeated: Which was accordingly done by the Witness, as follows:

J. *Farquhar*. The next Morning, when the Parties were going away, Lord *Levat* said, that there was no Need to fear; for that he did not doubt to raise Eight or Ten thousand Men presently; and that those, with the Highland Men, would be able to fight the Elector of *Hanover's* Troops. He said this to *Lochiel's* Officers: When they embraced each other.

Mr. Legge. Had my Lord *Levat* any of his own Clan there?

J. *Farquhar*. Yes: He had some of them to wait upon him.

Mr. Legge. Were they armed?

J. *Farquhar*. Yes, with Swords, Dirks, and Pistols.

Mr. Legge. Did they wear any Mark of Distinction in their Hats?

J. *Farquhar*. Some of them had Sprigs of Yew, and such-like Things, in their Hats; by which they were known to be of that Party.

Mr. Legge. Did you hear my Lord *Levat* express any Wishes that he had joined their Army?

J. *Farquhar*. He said, He wished to God he had joined the Prince, as he called him, at first when he came over.

Mr. Legge. While you was there, did you hear the Pretender's Health drank?—J. *Farquhar*. Yes.

Mr. Legge. By what Stile or Title?

J. *Farquhar*. By the Title of Prince *Charles*, to the Young One.

Mr. Legge. And what Title did they give to the Old One?

J. *Farquhar*. The Title of *James* the Eighth.

Mr. Legge. Who were the Persons that drank it? Did you hear my Lord *Levat* drink it?—J. *Farquhar*. Yes.

Mr. Legge. Pray how long did this Council last?

J. *Farquhar*. From Night till next Morning: I was there from Two o'Clock till Ten in the Morning.

Mr. Legge. You mention the French Money's being landed on the 4th of *May*; do you know any thing of the Disposition of any Part of that Money?—J. *Farquhar*. Yes.

Mr. Legge. To whom was it given?

J. *Farquhar*. To the Officers of the Rebel Army.

Mr. Legge. For what Purpose was it given them?

J. *Farquhar*. For a Second Gathering of the Men.

Mr. Legge. Do you know what was the general Resolution that That Council came to? or what was their Determination?

J. *Farquhar*. That they would assemble a Body of the several Clans to march South, so far as I could conjecture.

Mr. Legge. Why do you conjecture that?

J. *Farquhar*. I heard it.

Mr. Legge. Did you hear of any Expectation of further Assistance from France?—J. *Farquhar*. Yes.

Mr. Legge. What Number of Men did you expect?

J. *Farquhar*. I did not hear any particular Number mentioned; but we expected a Reinforcement every Day.

Mr. Legge. Where was the Rendezvous to have been?

J. *Farquhar*. At *Glenmany*.

Mr. Legge. Did they meet there?—J. *Farquhar*. Yes; several of them.

Mr. Legge. What do you think prevented the rest of them from meeting there?—J. *Farquhar*. The King's Troops.

Mr. Legge. My Lords, We have done with this Witness.

L. H. S. My Lord *Levat*, Will you ask this Witness any Questions?

Lord *Levat*. Was you taken Prisoner by the King's Forces?

J. *Farquhar*. No.

Lord Lovat. Do you know whether the Money that came over from France in the Ship, was given to Mr. Murray?

J. Farquhar. I cannot tell. Mr. Murray was there when the Money came.

A Lord. Do you know of any more Meetings than one between Lochiel and Lord Lovat?—J. Farquhar. No.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

Mr. Grenville. My Lords, The next Witness we beg Leave to call, is Charles Stuart.

Charles Stuart called into Court.

Lord High Steward. My Lord Lovat, Have you any Objection to this Witness?—Lord Lovat. No.

Charles Stuart sworn.

Mr. Grenville. My Lords, We beg this Witness may inform your Lordships, whether he remembers the Battle of Culloden?

C. Stuart. Yes.

Mr. Gren. Did you go with Mr. Murray, the Pretender's Son's Secretary, after that Battle, to Mortlach?—C. Stuart. Yes.

Mr. Gren. Was there a Meeting there of any of the Rebel Officers?

C. Stuart. Yes.

Mr. Gren. Who were present?

C. Stuart. There were Lochiel, Clanronald, Barisdale, and several others.

Mr. Gren. Was my Lord Lovat there?

C. Stuart. Yes, he was there.

Mr. Gren. Where were they?—C. Stuart. In a little Hut.

Mr. Gren. Was you in the Room with them?

C. Stuart. Yes, I was.

Mr. Gren. Did you hear what passed in the Room? If you did, please to give my Lords an Account of what passed there.

C. Stuart. Lochiel and Mr. Murray of Broughton came there, where they met with my Lord Lovat, and several other of the Highland Chieftains. They wanted to create an Association for re-assembling the Men together, in order to procure a Peace, or Terms of Surrender with the Duke of Cumberland; or to stand it out to the last. Mr. Murray ordered me to draw up the Articles; which I wrote: And it was signed by every Chief that was there.

Mr. Gren. Did my Lord Lovat sign it?

C. Stuart. No; all but he.

Mr. Gren. Was it proposed to him to sign it?

C. Stuart. Yes, it was; and he would not.

Mr. Gren. What was the Purport of it?

C. Stuart. That they were to assemble again in ten Days, in order to procure Terms of Peace from the Duke, or stand it out to the last.

Mr. Gren. What Number of Frasers were proposed to be raised?

C. Stuart. I think Three or Four Hundred.

Mr. Gren. Did any body undertake for the Frasers?

C. Stuart. I think Lochiel did.

Mr. Gren. At whose Request did he undertake for the Frasers?

C. Stuart. When it was proposed to my Lord Lovat to sign the Paper, he said, He would not; and desired Lochiel to answer for his Son.

Mr. Gren. What did he say about Lochiel?

C. Stuart. He desired Lochiel to answer for his Son.

Mr. Gren. Did he, or did he not, answer for him?

C. Stuart. I can't tell.

Mr. Gren. What Reason did my Lord Lovat give why he would not sign the Paper himself?

C. Stuart. I don't remember he gave any Reason.

Mr. Gren. Do you remember any Expressions made use of by my Lord Lovat then?—C. Stuart. No.

Mr. Gren. Was there any Money given then to any of the Chiefs of the Clan?—C. Stuart. Yes, to all of them.

Mr. Gren. Who delivered it to them?—C. Stuart. I did.

Mr. Gren. Was there any delivered to my Lord Lovat?

C. Stuart. No, not to him; but it was given to some of the Persons about him: I don't know whether it was his Servant, or no.

Mr. Gren. Was he my Lord Lovat's Servant?

C. Stuart. I don't know: He was a Person about him.

Mr. Gren. For what was it delivered? For what Purpose?

C. Stuart. For the Master to raise the Men against the Time.

Mr. Gren. You saw the Money given, and was the Person that delivered it?—C. Stuart. I did.

Mr. Gren. How much was there of it?

C. Stuart. Seventy or Eighty Pounds.

Mr. Gren. How came you by the Money?

C. Stuart. I got it from Mr. Murray.

Mr. Gren. What Money was it?

C. Stuart. Part of 35,000 l. that was landed some Days before from France.

Mr. Gren. Was my Lord Lovat present when the Money was delivered?

C. Stuart. Yes, he was.

Mr. Gren. Did he object to any Thing that was done, but to the Signing of the Paper?—C. Stuart. I don't remember he did.

Mr. Gren. Was the Money that was given in Guineas, or in Livers?

C. Stuart. It was all in Livers.

Mr. Gren. Was there any Thing said about a Neutrality then?

C. Stuart. I think my Lord Lovat said, That he was a neutral Person; so would have no Concern in it.

Mr. Gren. Do you remember Mr. Murray's being at Arisaig?

C. Stuart. Yes.

Mr. Gren. Did he receive any Letter there from a Captain of any Guard that my Lord Lovat had?

C. Stuart. I saw a Man come from the House where my Lord was, and said, He came from the Captain of my Lord's Guards, with a Letter for Mr. Murray; and asked some Money of him.

Mr. Gren. Did you send any Money to my Lord?

C. Stuart. Yes.

Mr. Gren. How much did you send?

C. Stuart. I believe it was about Fifteen Guineas.

Mr. Gren. By whose Order did you send it?

C. Stuart. It was by Mr. Murray's Orders I delivered the Money.

Sir J. Strange. My Lords, I will beg Leave to ask this Witness, Whether he was ever abroad on any Occasion?

C. Stuart. I was; but 'tis long ago.

Sir J. Strange. How long is it ago?

C. Stuart. It was in the Year 1736.

Sir J. Strange. Do you remember to have met with a Person called Roy Stuart whilst you was abroad?—C. Stuart. Yes.

Sir J. Strange. Where did you meet with him?

C. Stuart. At Boulogne in France.

Sir J. Strange. Where was he going when you saw him there?

C. Stuart. He said he was going to Rome.

Sir J. Strange. Please to recollect, as near as you can, the Time when it was you saw Roy Stuart at Boulogne, and give my Lords an Account thereof.

C. Stuart. I think it was in 1736, as near as I can remember.

Sir J. Strange. When Roy Stuart told you he was going to Rome, did he say upon what Errand he was going?

C. Stuart. He said he was going with Letters of Recommendation from my Lord Lovat.

Sir J. Strange. My Lords, I should not trouble your Lordships with asking the Witness any Questions of this Kind, if we had not laid a Foundation for it already, by having proved, that a Message was sent by this Roy Stuart from my Lord Lovat to the Pretender at Rome; and therefore what I now enquire of him is not Matter of Hearsay; but it is in Corroboration of the Circumstance which has been proved to your Lordships, That my Lord Lovat did give such a Message to this Roy Stuart: And therefore I will beg Leave to ask this Witness, What Message did Roy Stuart say he was going upon?

C. Stuart. Nothing else.

Lord Lovat. My Lords, I submit it to your Lordships, if this, or any other Witness, shall be examined upon Hearsay Evidence.

Lord High Steward. My Lord Lovat, You hear in what manner the Managers offer this Evidence: They say, That they have proved by one Witness, that you sent a Message by Roy Stuart to the Pretender at Rome. Now, to corroborate that Evidence, they offer to prove, that Roy Stuart, about the same time, declared to this Witness, That he had such a Message to carry.

Lord Lovat. What the other Witness said was Hearsay.

Sir J. Strange. My Lords, I will set the Noble Lord at the Bar right. It was such Hearsay as he had from my Lord Lovat's own Mouth; for Chevis the Witness said, on his Examination, That, after Roy Stuart had made his Escape out of Inverness Gaol, when he was going away to Rome, he heard my Lord Lovat charge him with a Message to the Pretender at Rome, to assure him of his Fidelity, and to prosecute the Affair of his Patent for a Duke: So that was not Hearsay, but positive Evidence.

Lord Lovat. That positive Evidence would say, That I was a natural Idiot.

L. H. S. Chevis did swear, either that he heard my Lord Lovat charge Roy Stuart with a Message to the Pretender, to assure him of his Fidelity, and to expedite his Commission of Lieutenant-General of the Highlands, and his Patent of a Duke; or else, that Lord Lovat told him, That he had charged Roy Stuart with such a Message: But I am not certain which it was.

Sir J. Strange. My Lords, I beg Leave to ask the Witness, when he met with Roy Stuart, and he said he was going to Rome, What he said he was going upon?

C. Stuart. All that Roy Stuart said was, That he depended on Letters of Recommendation he had from my Lord Lovat; and was in Expectation of getting the Post that Colonel Allan Cameron had.

Sir J. Strange. What Letters were those he mentioned?

C. Stuart. Letters, he said, he had from my Lord Lovat.

Mr. Sol. Gen. My Lords, In order to explain a little more particularly the Affair of the Meeting: As this Witness says, That my Lord Lovat refused to sign the Paper, I desire to ask him, What Part my Lord Lovat took in the Deliberations about raising the Men, before he had an Opportunity of making that Refusal?

C. Stuart. I was busy at that Time in distributing the Money, and do not remember.

Mr. Sol. Gen. My Lords, We have done with our Examination of this Witness.

L. H. S. My Lord Lovat, Would you ask this Witness any Questions?

Lord Lovat. No.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Lord Coke. My Lords, The next Witness we beg Leave to produce, is Lieutenant John Dalrymple.

Lieutenant Dalrymple called into Court.

L. H. S. My Lord Lovat, Have you any Objections to Lieutenant Dalrymple?

Lord Lovat. My Lords, I do not know him; but have no Objections to any Dalrymple.

Lieutenant Dalrymple sworn.

Lord Coke. My Lords, I beg Leave to ask this Witness, Where he was when my Lord Lovat was taken?

Dalrymple. I was on board the Furnace Sloop.

Lord Coke. Where was she?

Dal. At Loch Morar.

Lord Coke. Had you any Conversation with my Lord Lovat after he was taken Prisoner?

Dal. I had frequent Opportunities of discoursing with him, as I dined and supped with his Lordship on board the Sloop.

Lord Coke. What did he say upon those Discourses? What was the Purport of them?

Dal. On the 8th of June, I heard him say, That, if his Advice had been

been taken, the Rebel Army might have laughed at the King's Troops, and tired them out all Summer. He said, It was not their Business to fight the King's Troops; but that, as Summer was coming on, they might have taken themselves to the Mountains, and could have lived on Butter, Cheese, and Milk; for that the Duke of Cumberland's Horse could be of no Service to him in that Country. At another Time, I was asking his Lordship, How he came to be engaged in this Affair, after having received so many Favours from the Government? He said, He did it more in Revenge to the Ministry, for having taken away his Independent Company, than any Thing else. And, in talking of the Pretender's Son, he called him Prince: And, when he came on board, there was one *Frazer* taken, from whom we took about Twenty-two Guineas; and my Lord *Levat* complained, that the Money had been taken from his Servant, which he had given him to pay his Men with.

Lord Calk. Had my Lord *Levat* any Men in Arms with him when he was taken?

Dalrymple. That I am no Judge of, because I was on board.

Lord Calk. My Lords, We have done with this Witness.

L. H. S. My Lord *Levat*, Would you ask this Witness any Questions? *Lord Levat.* Was you in Captain *Fergusson's* Ship?

Dal. Yes; your Lordship may remember me very well.

Lord Levat. Then I hope you parted my Money amongst you: Did you see him take my Strong Box, in which were 700 Guineas?

Dal. I did not see him take the Box.

Lord Levat. Did you see it in his Cabin?

Dal. I saw the Outside of it; I never saw the Inside.

Sir J. Strange. My Lords, He says he saw the Outside, but did not see the Inside of the Strong Box: he will inform your Lordships whether he was present when the Papers were taken out of that Box afterwards?

Dal. No; I was not present at the Opening of it.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Mr. Noel. My Lords, The next Witness we beg Leave to produce, is *David Campbell*.

He was called into Court.

L. H. S. My Lord *Levat*, Have you any Objection to *David Campbell*?

Lord Levat. No; I have no Objection to any of the Campbells.

David Campbell sworn.

Mr. Noel. Please to tell my Lords, Whether you were with Captain *Fergusson* upon any Occasion, and in what Capacity?

D. Campbell. I was a Volunteer with General *Campbell* when we went to search the Islands; our Officers and Forces that served with General *Campbell* in the *Western Highlands* were divided; a good many went by Land, and a good many by Sea; and it fell to my Share to go with Captain *Fergusson*; I was on board, and on Shore with Captain *Fergusson* for about six Weeks.

Mr. Noel. What Islands did you go to search? and for what Purpose?

D. Campbell. We went into several Islands to search.

Mr. Noel. Do you remember your going into the Island of *Morar*?

D. Campbell. The Coast of *Morar* is on the Continent.

Mr. Noel. Where did you search?

D. Campbell. All along the Continent, and in all the Islands that lie there.

Mr. Noel. Who did you find there?

D. Campbell. We found a good many Rebel Gentlemen in the Islands, and upon the Continent.

Mr. Noel. Did you find any of the *MacDonalds* there?

D. Campbell. We apprehended several of that Name.

Mr. Noel. Do you remember one called the Bishop, or Vicar-General?

D. Campbell. We had Intelligence of his being in *Morar*; but the Day we expected to have taken him, he escaped with some others.

Mr. Noel. Was you present when my Lord *Levat* was taken?

D. Campbell. I was not present when he was taken, because it was ashore.

Mr. Noel. Did you see him after he was taken? and where?

D. Campbell. I saw him that Morning when he was taken, and brought on board the *Furnace Sloop*: I was then on board that Ship.

Mr. Noel. Did you search for any Letters belonging to my Lord *Levat*, on his being brought on board? and where did you search?

D. Campbell. Captain *Duff*, who was the Captain of the *Terror* Man of War, was the oldest Officer, and, as such, was the Commanding Officer of all those Vessels; and when my Lord *Levat* was brought on board, Captain *Duff* and Captain *Fergusson* determined to open his Box, and search it.

Mr. Noel. Did they find any Letters there?

D. Campbell. My Lord *Levat*, and the Two Captains, desired me to be present at the Opening and Examining the Box; and accordingly I came off the Deck, and was present, and was desired to take down a Particular of every Thing in the Box; which I did write down accordingly: And there was a Bundle of Papers, which seemed to be Letters, and was the last Thing we came to in the Box; and when we came to examine those Letters, I undertook to examine and read them, which I was desired to do; and I read them all.

Mr. Noel. Do you remember any particular Letter that you took notice of to my Lord *Levat*? If you do, pray tell my Lords what Lord *Levat* said upon it.

D. Campbell. I remember that the Purport of all the Letters, except the last, or the last but one, was about my Lord *Levat's* domestic Affairs; I cannot be positive whether it was the last, or the last but one; but that was a Letter directed to my Lord from his Son.

Mr. Noel. Did you say any Thing, and what, to my Lord upon that Letter?

D. Campbell. I read over that Letter; my Lord *Levat* at first had said to us, that we should not find, among those Papers that we were examining, any Matters of Disloyalty or Correspondence with the Rebels: And I expected it was so; but this Letter seeming to be a Correspondence with the Rebels, I said to my Lord *Levat*, after I had read the Letter, I think your Lordship had better not have had this Letter here: My Lord said, I was right, and he thought so too; or to that Purpose.

Mr. Noel. Did you say any Thing to my Lord *Levat* concerning his engaging, or not engaging, in the Rebellion?—*D. Campbell.* Yes.

Mr. Noel. What did you say to him?

D. Campbell. I cannot be positive whether I said it in the Manner of a Question, or in the Way of Conversation; but I took notice to him the one Way or the other, that I wondered his Lordship should be along with the Rebels, and be concerned in bringing his Country into Confusion. I remember I either asked him, or had Conversation with him, to this Effect.

Mr. Noel. What Answers did you receive from my Lord?

D. Campbell. What I remember of the Purport and Effect of it was, that he had been disobliged by the Government, and angry ever since he had his Independent Company taken from him.

Mr. Noel. Did he give that as an Answer to the Question that you asked him?

D. Campbell. He answered that immediately upon that Question, or this Part of the Conversation, as far as I can recollect.

Mr. Noel. Did you hear my Lord *Levat* say any Thing about his Opinion of fighting the Battle of *Gulloden*?

D. Campbell. Yes; I heard my Lord *Levat* say, That the Rebels and the Pretender's Son did not behave Soldier-like in fighting the Duke of *Cumberland* at that Time.

Mr. Noel. Did he say that as the Opinion of others, or as his own Opinion?

D. Campbell. To the best of my Remembrance, the Purport of the Conversation seemed to be, that he thought it was an unfoldier-like and a bad Manner of carrying on their Affairs.

Mr. Noel. Did he say any Thing about any Opinion of his having been, or not been, taken?

D. Campbell. I don't remember I heard any Thing of that.

Mr. Noel. Recollect yourself whether he did or no?

D. Campbell. It is so long since that happened, and I never expected to be questioned about that Conversation, that I do not recollect any particular Circumstances about my Lord *Levat's* giving any particular Reasons.

Mr. Noel. Did he speak any Thing of his own Advice or Opinion not being followed? and what was it? or to what Purport or Effect?

D. Campbell. I cannot recollect whether he did or not.

Mr. Noel. Did he say any Thing about continuing in the *Highlands*? or for what Purpose?

D. Campbell. I cannot charge my Memory with that Circumstance.

Mr. Noel. Did you hear my Lord *Levat* say any Thing about his coming to *London*, after he was taken?—*D. Campbell.* Yes.

Mr. Noel. What did he say upon that Occasion?

D. Campbell. In the Course of Conversation, sometimes my Lord said, He was in Hopes that he might get Friends that would befriend him; and he observed, that his being dealt mildly with, might be of more Service to the Government than rigorous Methods; and that it would be of more Service if they would spare him, than treating him with Rigour could possibly be.

Mr. Noel. Did he say in what respect it might be of more Service?

D. Campbell. I do not remember that.

Mr. Noel. Did he mention particularly in what he could be of Service, or no?

D. Campbell. I do not remember any Particulars farther, than that the general Tenor of his Conversation seemed to imply, that he could be of Service to the Government, by letting them into the Politicks of the Rebels, or some of their Counsels, or to that Purpose; I cannot be positive to any particular Thing.

Mr. Noel. My Lords, The Witness says, that he was sent for down from the Deck on board the *Furnace*, as he understood, at the Request of my Lord *Levat*, to be present when the Box was opened; and that accordingly he went down for that Purpose: Now I desire he may inform your Lordships, whether there were, or were not, many Papers in that Strong Box?

D. Campbell. It seemed to be a Bundle containing from about 25 to 30 Letters.

Mr. Noel. After you had read a Number of them, before you came to the Letter from his Son that you have mentioned, did my Lord *Levat* say any thing about the Contents of the Papers?

D. Campbell. He said, either before or after I had the Letters, directing his Discourse to the Company, that we should find nothing in those Letters that would shew any Correspondence of his with the Rebels.

Mr. Noel. Did he drop any thing to that Purpose during your reading the Papers?

D. Campbell. I cannot say whether he did, or not.

Mr. Noel. Was the Paper you have spoken of at the Bottom?

D. Campbell. I took them all up in Course as they lay; and that was the last, or last but one.

Mr. Noel. What did you say upon having read that Paper?

D. Campbell. I said, that he had better not have had that Paper there; and he said, I was right.

Mr. Noel. What did my Lord *Levat* say, or do, upon that Occasion?

D. Campbell. I remember nothing farther than what I have expressed.

Lord Halifax. My Lords, This Witness has told your Lordships, that, among the Letters which were in this Box, there was a Letter found from my Lord *Levat's* Son to him; which makes me imagine there was some treasonable Correspondence in that Letter: I therefore pray, he may acquaint your Lordships what the Purport and Tenor of that Letter was.

Sir J. Strange. My Lords, We shall produce the Letter in the Course of our written Evidence; and therefore we do not ask him any Questions about it now.

Sir J. Strange. When you said, that you believed the Letter had better not have been there, did my Lord *Levat* say any thing to his Servant how such a Mistake happened?

D. Campbell. I do not recollect any such Circumstance; it might have been, but I do not remember any such thing.

Sir J. Strange. Do you recollect, that he said any thing to his Secretary, or any of his People, about him?

D. Campbell. No.

Sir J. Strange. My Lords, We have done with this Witness.

Lord

Lord High Steward. My Lord Lovat, Would you ask this Witness any Questions?

Lord Lovat. Was you present when I surrendered my Sword in the Defect of Morar?

D. Campbell. I was not present; I was not ashore all Day, came on board the Night before, and therefore could not see my Lord Lovat surrender his Sword.

Lord Lovat. Do you know whether it was to Captain Dugal Campbell, of the Argyllshire Militia, that I surrendered my Sword?

D. Campbell. Captain Campbell was upon the Command; he is a Relation of mine; when he came on board, he said he had taken my Lord Lovat Prisoner. I heard Captain Fergusson's Boatswain mention how they came up with my Lord.

Lord Lovat. Did Captain Fergusson threaten Captain Campbell for not delivering up my Strong Box; and did they not fall to Loggerheads about it?

D. Campbell. Captain Fergusson never said any thing about it; Captain Campbell did; but I do not apprehend they were at Loggerheads. Captain Campbell told me, that when he had got Lord Lovat, and the Box, he did not know where Captain Fergusson was; he went a different Route; and afterwards Captain Campbell's Servant gave Captain Fergusson the Box, and desired him not to part with it.

Lord Lovat. Did you see my Brother-in-Law, Major General Campbell, in Captain Fergusson's Ship, when it lay there?

D. Campbell. I did not see him, because I went just before to another Ship.

Lord Lovat. Do you know that I delivered up my Strong Box to General Campbell, and said it would be as safe as in my own Hands?

D. Campbell. No; I was not there.

Lord Lovat. Do you know whether General Campbell and Captain Fergusson went themselves into the Cabin, to examine my Strong Box, and staid there two Hours?

D. Campbell. I don't know it; but I had an Inventory of the Things in the Box; and whoever had the Box, the Things contained in it were in the Inventory.

Mr. Attorney General. I desire to know, if the Strong Box was not opened by a Key delivered by my Lord Lovat, just at the Time it was opened?

D. Campbell. Yes, it was; and the Things put in the same Order they were before, and the Key delivered back to my Lord Lovat.

Mr. Att. Gen. Had it ever been opened before that Time?

D. Campbell. This was the first Opening of it.

Mr. Att. Gen. At the time you took the Inventory, was not that the first Opening of the Box? And was not the Key delivered by my Lord Lovat?—D. Campbell. Yes.

[Then the Witness, by Direction of the Lord High Steward, withdrew.]

Mr. Attorney General. My Lords, We will now call Sir Everard Fawkenner.

Lord High Steward. My Lord Lovat, Have you any Objection to Sir Everard Fawkenner?—Lord Lovat. Not any.

Sir Everard Fawkenner sworn.

Mr. Attorney General. I desire, Sir Everard Fawkenner, that you will please to give an Account to my Lords of the Conversation you had with Lord Lovat, after he was taken Prisoner.

Sir Everard Fawkenner. After Lord Lovat was taken and brought Prisoner to Fort Augustus, and lodged in an Apartment of the Fort there, his Royal Highness the Duke ordered me to go and visit him; not with any Design to examine him particularly; for his Highness said, he intended to send him to London, there to receive what the Laws of his Country should order; but that as, in all Appearance, he had been a great Cause of the Mischiefs brought upon his Country, this Visit was designed to see whether he would discover any thing that might tend to bring those Mischiefs to a more speedy End. When I went to him, I thought it would be the most candid Way of Proceeding to inform him who I was; and accordingly I told him, that I had the Honour to be Secretary to his Royal Highness the Duke: My Lord Lovat said, that, notwithstanding the Circumstances he then appeared in, he had formerly rendered great Services to the Government, and the present Royal Family; and that he had received several Marks of the late King's Favour: And my Lord imputed to Marshal Wade the Cause of his present Misfortunes; which was, the taking away his Company; which he expressed his Repentment at, by saying, that if Kouli Kan had landed in Britain, he should have thought that would have justified his Lordship to have joined him with his Clan; and he would have done it. He said further, that he had been in a Condition to render Service to the Government, and that he might be of future Service to the Government; and that Mercy, as well as Justice, belonged to Sovereigns; and that, if his Majesty would extend Mercy towards him, he would shew his Loyalty, and deserve more than Twenty such Heads as his were worth. I would have entered more particularly into the Services that he would render the Government, but that I found, by his own Discourse, that the Service he meant was no more, than to bring his Clan for the future into the Service of the Government, instead of employing them against it. He said, the World allowed him some Abilities, and he would apply them to that Service; and concluded with this, saying, He was

— in utrumque paratus
Seu versare dolos, seu certa occumbere morti.

Mr. Attorney General. Can you charge your Memory with any particular Expressions he made use of?

Sir Everard Fawkenner. I cannot say whether what I have said was the Subject of one or two Conversations; but he used to send for me frequently, and I remember there was one thing he would seem to make reconcileable, which was, his Principle of Loyalty to the Family of the Stuarts, and the Services done for the late King and the Royal Family.

Mr. Attorney General. What were the Services he said he could render the Government?

Sir Everard Fawkenner. Only that he would employ the Frasers in the Service of the Government, instead of employing them against it, and employ his Talents in the Support of it.

Mr. Att. Gen. Did my Lord Lovat confess or deny that he had been concerned in the Rebellion?

Sir Everard Fawkenner. He did not seem to me to take the Trouble to deny it, but rather acquiesced in it that he had.

Mr. Att. Gen. Did he ever say he was not concerned in it?

Sir Everard Fawkenner. I cannot say he ever did.

Mr. Att. Gen. My Lords, We have done with this Witness.

Lord High Steward. My Lord Lovat, Would you ask Sir Everard Fawkenner any Questions?

Lord Lovat. No; only that I am Sir Everard's humble Servant, and wish him Joy of his young Lady.

Mr. Att. Gen. My Lords, We have now done with calling our First Voice Evidence, any further than what will be necessary to prove the written Evidence which we shall produce; and therefore what we propose now, is, to call a Witness, to prove some Letters, some of them of the Signature and Hand-writing, and all of the Dictating, of the noble Lord at the Bar.

Sir W. Yonge. My Lords, I submit to your Lordships, if it would not be better to have the Whole of the written Evidence together, rather than to go on To-night with Part of it only: We submit it intirely to your Lordships, whether we shall now go on or not.

Lord Lovat. And I hope your Lordships will remember poor Lovat, who cannot stand; and that you will give a little Respite till Monday, or order his Funeral.

L. H. S. Gentlemen of the House of Commons, Is your written Evidence likely to be long?

Mr. Att. Gen. My Lords, It will be very long.

L. H. S. Will it take up more than one Day?

Mr. Att. Gen. My Lords, It is difficult to say, with Certainty, how long it will take up: There is a great deal of written Evidence to lay before your Lordships; and there must be the Summing up of the whole Evidence by one of the Managers.

Lords. Go on; go on.

Sir W. Yonge. My Lords, Then we will beg Leave to call Robert Frazer.

He was sworn and examined on this Trial before, and was my Lord Lovat's Secretary.

Robert Frazer called into Court.

Sir W. Yonge. Look upon that Letter (showing the Witness a Letter), and tell my Lords of whose Hand-writing it is.

R. Frazer. 'Tis my own.

Sir W. Yonge. By whose Order did you write that Letter?

R. Frazer. By Order of my Lord Lovat.

Sir W. Yonge. Did my Lord Lovat dictate it to you, or not?

R. Frazer. My Lord Lovat dictated every Word of it.

Sir W. Yonge. Look upon the Signature of the Letter, and tell my Lords of whose Hand-writing it is?

R. Frazer. 'Tis my Lord Lovat's.

Sir W. Yonge. Did you, or did you not, see him sign it?

R. Frazer. I saw him sign it.

Sir W. Yonge. As the Letter is not addressed to any body, please to inform their Lordships to whom it was intended to be sent?

R. Frazer. It was intended to be sent to John Murray of Broughton, the Pretender's Secretary.

Sir W. Yonge. Was it sent from Castle-Downey?

R. Frazer. No; not from Castle-Downey.

L. H. S. How do you know this Letter was intended to be sent to Mr. Murray?

R. Frazer. My Lord Lovat told me so.

Sir W. Yonge. Was the Letter sent at any time?

R. Frazer. Yes; it was sent from Gortuleg.

Sir W. Yonge. When was it sent?

R. Frazer. After my Lord Lovat had made his Escape from Lord London.

Sir W. Yonge. How long was that after the Letter was writ?

R. Frazer. It was writ in December, and sent in January.

Then the Letter (marked No. III.) signed Lovat, was delivered in, and read by the Clerk at the Table, as follows:

No. III.

Honorable and Dear Sir,

I Received, with vast Pleasure, the Honour of your Letter of the 31st October, by the Bearer, who has the Honour to be known to you, He is my Relation, and was my Secretary for several Years; and he is now Captain-Lieutenant in the First Battalion of my Son's Regiment. He gave me great Joy in letting me know at this Time, as well as when he came from Edinburgh some Weeks ago, that you was in perfect Health, notwithstanding of the extreme Fatigue, and constant Hurry, that the essential Affairs of the Royal Prince keeps you in Day and Night.

I do assure you, dear Sir, that no Man in Scotland is better pleased to hear of the Continuation of your Health, and the Prosperity of your Person in every Shape, than I am, as I always found you a worthy Gentleman, full of good Sense and Politeness, full of true Loyalty and Valour, and faithfully zealous for the Interest of the Royal Family, and, in the mean Time, mighty civil and obliging to me, when I had the Honour to see on the Subject of the King's Affairs, which never was so well taken care of, as since they were in your Hands: I would be therefore a most stupid, worthless Animall, if I had not a most grateful Sense of your Goodness and Freindship towards me: So, dear Sir, you my beleive me, when I assure you, that my Heart and Soul is full of Thanks and Gratitude for the great Marks of Freindship, that I had the Honour to receive from you; and I have laid my positive Commands upon my Son to love, honour, and respect you as my best Freind, and to make you his Patron at the Prince's Court, and to do nothing that is essential without your Advice.

Mr. Murray do not call is a Letter itself, gree, m Letter, my Lord Sir W. R. Fr Sir W. R. Fr Sir W. R. Fr

Vo

Advice; and he will find it his own Interest to observe exactly my Instructions on that Head.

I solemnly protest, dear Sir, That it was the greatest Greif of my Life, that my Indisposition and severe Sickness kept me from going South to my dear brave Prince, and never parting with him while I was able to stand, but venture my old Bones, with Pleasure, in his Service, and before his Eyes, while I had the least Breath within me: But, when I found, that by Pains and Weakness in my Knees, I lost the Use of my Limbs, I resolved to give a Proof of my singular Zeal for my dear Master the King, and for my brave glorious Prince, that, I truly believe, few or none in Scotland would do, but myself. I send my eldest Son, the Hopes of my Family, and the Darling of my Life, a Youth about Nineteen Year old, who was just going abroad to finish his Studys and Education, after having learned, with Applause, what is taught in our Scots Universitys, and was graduate Master of Arts. But, instead of sending him abroad to compleat his Education, I have sent him to venture the last Drop of his Blood in the glorious Prince's Service; and, as he is extremely beloved, and the Darling of the Clan, all the Gentlemen of my Name and Clan (which, I thank God! are numerous, and look well, and always believed to be as stout as their Neighbours) are gone with him.

There is not the Head of an old Family or Trybe of my Name and Clan in this Country, that have staid at home; only a few old Gentlemen, infirm like myself, that were not able to travell: And, as my Son is adored by the common People of my Clan, he has brought along with him a considerable Number of the best of them, in two handsome Battalions; and, if they were as well armed and equipped as I could wish, they would look as well as any Clan that went South this Year; for, as I possess the largest and best Estate in the Shire, I have a great Number of Commons on my Property, about 1500 good and bad; and that which is very singular, is, that, in that 1500, there is not 30 but what are *Frasers*; which no Chief in the *Highlands* can say of his Clan, but myself; for most of them are mixed with Men of all the other Clans.

I flatter myself, that my Son will behave well at the Head of my People; and I am sure every one of them will be ready to live and dye with him; and, if he lives, I hope he will be an useful Servant to the King and Prince, and an Honour to his Family; for he has very good Parts and Learning for his Age: And since I am like to make my Exit very soon out of this troublesome World, and that, I thank God! I have served my King faithfully from my Infancy till now; and that it is well known by all the Gentlemen in the King's Interest in the North, that, for many Years past, I was the Life and Spirit of the King's Affairs in these Countries; and as I made it my only Business to encourage and keep up the Hearts of the King's Friends, it was very fatiguing and troublesome to me, and vastly expensive, by my extravagant Housekeeping, and giving away often a little Money to the King's Friends that wanted it much, and from whom I never expect any Payment; and now I give the last Proof of my uncommon and unalterable Zeal for my dear Master the King, in sending what is dearest to me in the World, my eldest Son, and my Clan, to venture their Lives with the glorious Prince Royal, and under his Eyes.

As it would be ill Manners to trouble you in a Letter with some essentiall Things that concerns my own Person and Family, I have entrusted my Cousin, the Bearer, to give you a true Account of what I have to say; which, I hope, you will receive with your ordinary Goodness, and Freindship for me. And I earnestly entreat, after you consider what I have to say, that you represent it to the Prince in the kindly and freindly Manner you always behaved to me: And, as I ask nothing of his Royal Highness, that is either expensive, dishonourable, or disadvantageous, to his Royal Highness, and to his Interest, I am convinced, that his Royal Highness will give me a just and gracious Answer; which will for ever fix me, my Posterity, and all concerned in me, to his Royal Highness's Person and Family: And I can say without Vanity, that there is not one Family in the North of Scotland more capable to serve him, and his Royal Family, than mine, nor non that has deserved it more of the Royal Family of *Stuarts*, since their Accession to the Throne, than the *Frasers*, and the Lords of *Loval*. They likewise signalized themselves with Honour and Valour for King *Robert Bruce*, and his Offspring: And it is likewise singular, that no Lord *Loval* of Twenty-four that have been of my Family, ever fought or voted against their King.

I beg you Ten thousand Pardons for this Digression; but, as I look upon you as my best Freind, I thought proper to let you know this under my own Hand; which, I hope, you will forgive, and the Tediousness of this Letter, and believe that I am, as much as any Man alive, with the utmost Esteem and Respect, and with a most sincere and constant Gratitude, while there is Life in me,

Honorable and Dear Sir,

Your most obedient, most obliged, and most affectionate,

faithful, humble Servant,

LOVALT.

Mr. Att. Gen. This Letter will be proved to have been received by *John Murray of Broughton*. My Lords, he is not now here; and therefore we do not call him to that Particular: But the next Letter we shall produce, is a Letter written by my Lord *Loval* to the Pretender's Son. The Letter itself will appear to be torn in some Parts, which will, in a small Degree, mangle the Sense; but that will be supplied by a Copy of the same Letter, written at the same Time, by the same Hand, and by the Order of my Lord *Loval*, which we shall produce to your Lordships.

Sir William Yonge, producing the Letter to the Witnesses, asked,

Sir Wm. Yonge. Of whose Hand-writing is that?

R. Fraser. It is mine.

Sir Wm. Yonge. By whose Order did you write it?

R. Fraser. By my Lord *Loval*'s Order.

Sir Wm. Yonge. Was it dictated to you by him?

R. Fraser. Every Word of it.

(a) N. B. The Chasms in this Letter, which were occasioned by tearing off the Signature, are supplied from No. II. the Copy of it.

VOL. IX.

Sir Wm. Yonge. Was the Letter signed by my Lord?

R. Fraser. It was.

Sir Wm. Yonge. Is the Signature there? Or, is it torn off?

R. Fraser. It is torn off.

Sir Wm. Yonge. Look upon that Copy of a Letter, and tell my Lords whom that was written by?—*R. Fraser*. By me.

Sir Wm. Yonge. By whose Order?

R. Fraser. By my Lord *Loval*'s Order.

Sir Wm. Yonge. For what End or Purpose was it made?

R. Fraser. It was made for a Copy to keep.

Sir Wm. Yonge. Is that a Copy of the other Letter which you were just now shewn?

R. Fraser. That is a Copy that was drawn from the Principal.

Sir Wm. Yonge. Was the Original sent at any Time?

R. Fraser. Yes; it was.

Sir Wm. Yonge. When was it sent?

R. Fraser. It was sent from *Gortuleg* at the same Time the Letter to *Mr. Murray* was sent.

Sir Wm. Yonge. Can you give an Account how the Signature of the original Letter came to be torn off?

R. Fraser. I cannot.

Mr. Att. Gen. My Lords, There is some Part of the Signature remaining: The Top of the *L*, and the Top of the *t*, remain.

My Lords, We desire the Letter may be read.

Sir Wm. Yonge. Deliver both the Letter, and the Copy, to explain it.

L. H. S. Was the Signature originally there?—*R. Fraser*. Yes.

L. H. S. You say my Lord *Loval* dictated it?—*R. Fraser*. Yes.

L. H. S. Did he sign it?—*R. Fraser*. Yes.

L. H. S. Was the Name intire upon it, when it was sent away from *Gortuleg*?—*R. Fraser*. Yes; it was.

L. H. S. When was it sent away from *Gortuleg*?

R. Fraser. At the same Time with the former Letter, that has been read.

L. H. S. When was that sent?—*R. Fraser*. In January.

L. H. S. By whom was it sent?

R. Fraser. By a Tenant of my Lord *Loval*'s; one of his *Stratharrick* Men.

L. H. S. My Lords, As both the Letter and the Copy have been proved, it will be proper for your Lordships first to hear the Original read, imperfect as it is, and then the Copy.

Clerk read the Letter No. I. dated Beaufort, November, 1745, and then read the Copy of the same Letter, No. II.

No. I.

Most Royal Prince,

(a) I Reckon it the greatest Misfortune of my Life, and which has occasioned me more Greif and Sorrow, than any cross Accident that ever happened to me, that my long Indisposition, and severe Pains and

Tortures, suffered for a long Time, deprived me of the vast Joy and

. . . . Honour I would have had in kissing your nefs Person

Hands, and in venturing my old before your Eyes. And, as my dear

Masters and ereigns, your Royal Father and Grandfather never ha

. . . . d a more faithful and zealous Subject than een to

their Royal Persons and Interests, since I . . d the Use of my Reason; so nothing in this World could give me so much Pleasure as to signalize myself, and end my Days, in the Service of your Royal Highness, where I would not be useless, having been bred to the War by the best Masters in Europe these Fifty Years past: But now, finding myself a perfect Invalid, not able to mount a Horseback, nor to walk Half a Mile, and consequently not able to exert myself either as a Soldier, or as a General Officer, which my dear Master, your Royal Father, was pleased to make me above Forty Years ago.

Finding myself in this unhappy, cruell Situation, of not being able to pay my Duty to your Royal Highness in every respect, I did resolve to give your Royal Highness the next Mark of my greatest Zeal that I am capable of, if it was to gain your Royal Highness Ten Kingdoms; and that is, to send my eldest Son, the Bearer of this Letter, and the great Hopes of my Family, and the Darling of my Soul, to venture his Life, and

. . . his young Person, in your Royal High : And I hope,

that his great Zeal and For your Royal Highness, in

every Shape y him, will be a Proof, that he is my

true Son.

. the principal

I have sent along with him all Gentlemen, and Heads

of Families, of my Eight hundred of my common People of

s own Choice: Thirteen

hi : And it is singular in my Clan, that, of or

Fourteen hundred Men that are on my Proper they are all

Frasers; and there is not Twenty of them of any other Clan. Both

History and Traditions tell us, that the Clan of the *Frasers* always be-

haved well; and now, when they have a most glorious and brave Prince

at their Head, I truly rather hear of my Son's Death, and of all my

Clan that went along with him, than to hear of their Misbehaviour,

which would soon put my gray Head with Sorrow to the Grave;

but I do not in the least fear it. I therefore deliver my Son, and my

Clan, most heartily and frankly to your Royal Highness, to do with them what in your Royal Highness Goodness and Pleasure you think fit.

I hope there is none of your Royal Highness Friends, or Servants, that has come to this Country, but will do me the Justice to declare, that I am, and always have been, the most zealous and most active Partizan your Royal Highness has in the North of Scotland; and wn I did but my Duty.

Manners,

This Letter is already longer; than, in good, I ought to have troubled your Royal Highness as I have a great many essential Things to lay your Royal Highness, I will make a Memorial and give them in to my good Friend Mr., your Royal Highness Secretary of State, that he . . . y represent to your Royal Highness what is in . . ., when you are at Leisure.

I pray God preserve your Royal Highness Person, and give you Success and Glory in all your Enterprizes, as you have had hitherto; and I am, while I live, ready to lose the last Drop of my Blood, and with as great Zeal as any Man on Earth,

Most Glorious and most Royal Prince,

Your Royal Highness most constant and faithful Slave,
Beaufort, Nov.

1745.

Then the Copy of the above Letter was read.

Lord High Steward. By whom was this Letter intended to have been sent to the Young Pretender?

R. Fraser. It was intended to have been sent by the Master of Lovat.

L. H. S. How long had you this Copy in your Hands?

R. Fraser. I had it in my Hands for some time after it was written: It lay in my Desk.

L. H. S. How long had you it in your Hands?

R. Fraser. I cannot be positive.

L. H. S. To whom did you deliver the Copy?

R. Fraser. I do not know to whom I delivered the Copy.

Mr. Att. Gen. My Lords, Though it is impossible for your Lordships to doubt who is meant by the Words *Most glorious Prince*, and *Your Royal Highness*, in the Letter, yet, if your Lordships please, this Witness may be asked, as he wrote the Letter by my Lord's dictating, Who was meant by these Words?

R. Fraser. I took it to mean the Pretender's Son.

Sir W. Yonge. My Lords, The next Letter we beg leave to produce, is another Letter that was intended to be sent to the Master of Lovat.

Look upon that Letter [*showing the Letter to the Witness*], and tell my Lords of whose Hand-writing it is.

R. Fraser. It is mine.

Sir W. Yonge. By whose Order did you write it?

R. Fraser. By my Lord Lovat's.

Sir W. Yonge. Was it dictated by Lord Lovat to you?

R. Fraser. Every Word of it.

Sir W. Yonge. Was it signed by my Lord Lovat, when it was written?

R. Fraser. I cannot be positive whether it was signed, or not.

Sir W. Yonge. Recollect, if you can, whether it was signed, or not.

R. Fraser. To the best of my Remembrance, it was signed. It was intended to be sent, with the other Letters, to the Laird of Lochiel, who was then at Perth. It was written by me, and dictated by my Lord Lovat every Word.

Sir W. Yonge. Can you take upon you to say, that it was signed, or not?

R. Fraser. To the best of my Knowledge, it was.

Sir W. Yonge. Was that Letter sent at the same time with the others?

R. Fraser. Yes; it was.

Sir W. Yonge. At the same time, and by the same Person?—R. Fraser. Yes.

Sir W. Yonge. By whose Orders were they sent?

R. Fraser. By my Lord Lovat's.

Sir W. Yonge. What was you ordered to do with these Four Letters?

R. Fraser. To put them up in a Packet; which I did, and directed them to the Master of Lovat.

Sir W. Yonge. By whom was you ordered to do it?

R. Fraser. By my Lord Lovat.

Sir W. Yonge. Were there Three or four Letters in all?

R. Fraser. There were Four Letters.

L. H. S. Was this Letter sent in the same Packet with the others?

R. Fraser. Yes; it was.

Then the Letter N^o IV. was delivered in at the Table, and read by the Clerk, as follows:

No. IV.

My Dear Laird of Lochiel,

I Could hardly believe an Angel from Heaven, if he had told me, that Donald Laird of Lochiel would forget Simon Lord Lovat, as you have done: And this is the more surprizing, that you cannot say, nor justly think, that, in one Article of my Life, I fail'd to shew my singular Affection and Respect for my dear Cousin Lochiel; but, on the contrary, gave you all the Marks of Freindship in my Power, or that I was capable off; and yet, my dear Cousin, since ever you join'd the Prince, you never did me the Honour to write me one Scrape of a Pen, notwithstanding of the strict Union and Freindship that we always lived in, and our constant Correspondence. I solemnly protest, that I know not what to attribute this Silence to; since I cannot accuse myself of any thing that deserves it at your Hands: For you never saw me fail in my Loyalty to the King, or in my Affection and Freindship towards you; nor never will, tho' you should continue as unkind as you are. I therefore beg of you, my dear Cousin, to let me hear from you; and be so good as to comfort my languishing Soul, and drooping Spirits, by assuring me

that you are the same affectionate Laird of Lochiel to me that ever you was: I truly never had so much Need of your Comfort and Assistance as at this time; for I am in vast Distress of Body and Mind.

The base and treacherous Behaviour of our wretched Cousin the Laird of Mac Leod has almost cost me my Life already: The Night before he took his Journey to the Isle of Skye from this House, sitting by me, he looked up seriously, and swore to me, that as he should answer to God, and wished that God might never have Mercy on him, and that he might never enter into the Kingdom of Heaven, but that his Bones might rott on Earth, be burnt, and his Ashes blown up in the Air, if he did not come with all Speed imaginable, and with all his Men that was already prepared, and come and join my Son, and the Clan Fraser, and march South with them to the Prince's Service, wherever he was. He swore the same terrible Oaths and Imprecations next Day to my Son, and to your faithful Servant Gortuleg: And if he had kept his Oaths and Word, I had so managed this Part of the North, that about 6000 Men had marched South to the Prince's Assistance; which I thought would much encourage his own Loyal Party, and frighten the English to his Obedience. But when I got Mac Leod's Letter about Twelve Days after, in which he told me, that, after deliberating fully with his Neighbour, Sir Alexander, and weighing the Arguments on both Sides, he, and his Neighbour, had resolved to stay at home, and not to trouble the Government.

In reading this Line, I had almost fainted, and my Body swell'd with Anger and Vexation; so that I could not sleep nor eat for several Days; and I am yet far from being recovered, for I have a severe Stich and Pain in my Left-side, which keeps me from my Night's Rest, and has intirely taken away my Appetite; so that I beleive the Treachery of that unnatural, ungrateful, and wicked Man, will be the Occasion of my Death very soon: But before I die, I resolved, if possible, to give such a Mark of my Zeal for my good Master the King, and for the glorious brave Royal Prince his Son, that I beleive few in Scotland would do but myself.

I send my eldest Son, who is the great Hopes of my Family, and the Darling of my Life and Soul, to venture his Life and Blood in the brave Royal Prince's Service; and he has all the Gentlemen of my Clan with him, except a few old Gentlemen that are not able to travell. He has Stray, Killbokie, and Religg, the principal Heads of Familys of the Frasers this Side of Lochness; and he has Foyers, Ferraline, and Leale-Garth, as the principal Heads of the Familys in Stratherrick and Aber-torff; and he has certainly taken with him the Flour of my Clan. I pray God preserve him and them, and influence them to fight gallantly before the brave Prince's Eyes; for I had much rather hear of my Son's Death, and of my Clans, than that they should misbehave; since History cannot shew an Occasion in which the Frasers misbehaved; for, I thank God, they were always known to be brave.

Now, my dear Cousin Lochiel, you cannot but think it just and reasonable, that I deliver my Son to your Care, in every respect; and that your Clan, Cluny's, and mine, should be most unite, and live together like Brethren; and that the Quarrell of the one should be the Quarrell of the other, according to our mutual Engagements by Word and Write; in which, I hope, we will never fail. The treacherous Behaviour of the monstrous Laird of Mac Leod should put all Relations and intimate Friends on their Guard not to fail to one another; for he has, by his Treachery and unnatural Behaviour, fixed upon himself the most infamous Character of any Man on Earth: That Traitor, instead of coming to this House, where he was always Mr. to join my Son, according to his Promise, has marched the other Side of Kessock this Day with 400 of his chosen Men and Gentlemen: I beleive that, hearing that my Son's Regiment was in Arms in this Country, he was afraid to pass through it, though it's the best Way to Inverness. His Fears was groundless; for I would not hurt my Mother's Kin, though it was in my Power: But if my Son saw the Laird, I beleive he would shoot him, or bring him Prisoner to the Prince, because of his abominable Breach of Oath and Promises to him.

When he sent a little sneaking Gentleman here with his treacherous Letters, my Son and Gortuleg made two bitter Answers to them. When the little Gentleman sought my Answer, I told him to tell his Chief, that he was a Traitor to the King, and a Murderer of my Son and me, which he might be sure I would resent, if I was able; but that I would never black Paper to a Man that had so basely betray'd me; that since he went to the Devill, I would leave him there, and have no more to do with him.

Honest Gortuleg, who made up a Company to go with my Son, and who would be most usefull to him, fell very ill, Eight Days ago, of his old Distemper, an Inflammation in the Kidneys, of which he had almost dyd some years ago in Lochaber, and many times since. He lies in the next Room to me; we are both much indisposed, and Invalids. He joins me in assuring you, and my dear Cousin the Lady Lochiel, and all your lovely Family, of our most affectionate humble Duty and best Respects.

Since you are justly the Royal Prince's great Favourite, I hope you'll be so kind, dear Cousin, as make my Court to his Royal Highness; for tho' it is my Misfortune not to be able to follow him wherever he goes (which would be the Delight and Honor of my Life), yet you can freely assure his Royal Highness, that he has not a more faithfull and zealous Partizan in Scotland: And tho' I am now able to mount a Horseback, or travell a Foot, yet I have done his Royal Highness more Service than any one of my own Rank in Brittain; for I keep Life and Spirits in his Affairs more than any Man in the North: And tho' the President tells me plainly, that I have forfeit Life and Fortune, and that my Person is not safe in this House; yet I am resolved to live and die with Courage and Resolution in my King and Royal Prince's Service; but no Death that they can invent can lessen my Zeal, or fright me from my Duty.

I beg, my dear Cousin, you may acquaint me what you know of our dear Cousin Mr. William Drummond of Bechaldy; for I can get no certain Accounts of him, which vexes my Soul and Heart; for he was one of the Men in the World that I loved most, and that loved me most.

I beg you ten thousand Pardons for this very long Letter; but it is to punish you for your Silence, and to convince that I am always the same Man towards you and yours.

I intreat

I intreat you make my most affectionate Compliments to my dear Son-in-law *Cluny*.—I am persuaded he will do Honor to all concerned in him.—I am convinced that you will easily believe, that I am, as much as any Man alive, with unalterable Esteem, Attachment, and Respect,

My dear Laird of *Locheil*,

Beaufort, Novr

The Signature of this Letter was torn.

Mr. Attorney General. My Lords, There was another Letter, which we take to be One of the Four which was sent in that Packet; it is not a very material one; and we shall produce it to your Lordships, rather to connect the Evidence of this Witness, than for any thing contained in it. It is a Letter to the late Marquis of *Tullibardine*, by the Name of Duke of *Athol*.

Sir William Yonge producing the Letter, the Signature to which, and Part of the Date, is torn off.

Sir W. Yonge. Of whose Hand-writing is that Letter?

R. Fraser. My own.

Sir W. Yonge. By whose Directions did you write it?

R. Fras. By my Lord *Levat*'s.

Sir W. Yonge. Did he dictate it to you?

R. Fras. Every Word of it.

Sir W. Yonge. Was the Letter signed by Lord *Levat*?

R. Fras. Yes, it was.

Sir W. Yonge. Did you see my Lord *Levat* sign it?

R. Fras. Yes, I did.

Sir W. Yonge. Is the Signature torn off?

R. Fras. Yes.

Sir W. Yonge. Was that Letter sent with the others?

R. Fras. It was sent with the former that have been read.

Sir W. Yonge. In the same Packet?

R. Fras. Yes.

Sir W. Yonge. Which was directed to the Master of *Levat*?

R. Fras. Yes.

Sir W. Yonge. For whom did my Lord *Levat* say that Letter was designed?

R. Fras. For the Duke of *Athol*.

Sir W. Yonge. Who did he mean by that?

R. Fras. The Marquis of *Tullibardine*, the Duke of *Athol* that was abroad.

Sir W. Yonge. By whose Order did you send that Letter?

R. Fras. By my Lord *Levat*'s Orders.

Then the Letter, N^o V. dated 5th December, 1745, was delivered at the Table, and read by the Clerk, as follows:

No. V.

My good Lord Duke

I HAD the Honour to receive two very ob * from your Grace; for which I give you * . . . nks; and I can freely assure your Grace * . . . nefs and Civilitys towards me, have had * . . . pression upon me, that I will remember * . . . ays of my Life with Gratitude and Thank . . . And your Grace shall always find me most ready to serve your Person and Family.

I had the Honour to return Answers to both your Grace's Letters; one by Mr. *Mac Donell*, and the other by Mr. *Mac Pherjon*, both of the Army; but as the Bearer has the Honour to be your Grace and is my Relation, and one whom I trust as much as any of my Family, I have put it upon him to acquaint your Grace of every thing that happens in this Country worth your while to hear, since I had the Honour to receive your Grace's Letters; which I am sure he will do very exactly and very faithfully; for he knows every thing that is done in this Country, and does not want Understanding.

I humbly beg the Continuance of your Grace's Goodness and Civilitys towards me; and be so just as to believe that I will remain, while I live, with the utmost Esteem, Attachment, and Respect,

My good Lord Duke,

Your Grace's most obedient, most obliged, and most affectionate faithful humble Servant,

Beaufort, Dec. 5.
1745.

The Signature of this Letter was torn.

Mr. Attorney General. My Lords, The next Letter we beg Leave to produce, is a Letter from my Lord *Levat* to his Son. My Lords, your Lordships have heard already of a Letter which was found in the Box, from the Son to the Father; to which this will appear to be an Answer. The Father's Letter we shall prove in the same Manner as we have done the others; and the Son's will be proved to be of his Hand-writing, and to have been in the Box, at the time it was examined and opened, in the Manner your Lordships have heard.

Mr. Att. Gen. Of whose Hand-writing is that Letter? [*Shewing the Letter to the Witnesses.*]

R. Fras. It is of my own Hand-writing.

Mr. Att. Gen. By whose Orders did you write it?

R. Fras. By my Lord *Levat*'s.

Mr. Att. Gen. Was it signed by my Lord *Levat*?

R. Fras. It was not signed.

Mr. Att. Gen. Was it ever sent by my Lord *Levat*'s Order?

R. Fras. Yes.

Mr. Att. Gen. To whom?

R. Fras. To the Master of *Levat*.

Mr. Att. Gen. Did my Lord *Levat* dictate it to you?

R. Fras. Yes, every Word of it.

Mr. Att. Gen. Did he order you to send it to the Master of *Levat*?

R. Fras. Yes, he did.

Mr. Att. Gen. Did Lord *Levat* frequently order Letters to be wrote, and order his Secretary to send them, without signing them?

R. Fras. Yes, my Lords, he did.

Mr. Att. Gen. Was not that generally to People the most intimate with him?

R. Fras. Yes, only to his Intimates.

Lord High Steward. Do you know any thing of the sending of this Letter?

R. Fras. Yes.

Lord High Steward. By whom was it sent?

R. Fras. By one of my Lord *Levat*'s Tenants.

L. H. S. Was it sent at the same time with the Packet?

R. Fras. Yes, I believe it was; but I am not positive as to the precise Time it was sent; it was either then, or a little after: If I was to read the Letter, I could tell. [*The Witnesses having looked upon the Letter.*]

L. H. S. Does that enable you to recollect when the Letter was sent?

R. Fras. Yes, my Lords, it does; it was sent at the same time with the other Letters that I spoke of.

L. H. S. With that Packet which has been mentioned?

R. Fras. Yes.

Mr. Att. Gen. My Lords, This Letter consists of two Pieces; one is a Postscript: Therefore we beg Leave to ask this Witness, Whether the Postscript was wrote by him, and dictated by my Lord, and sent at the same time with the other?

R. Fras. Yes, it was.

Then the Clerk read the Letter, No. X. at the Table: Which is as follows:

No. X.

My Dearest Child,

I Received the Pleasure of your Letter by the two Expresses that I sent to you the first of this Month, which you forgot to mark the Date of. It gave me great Joy, my dear *Simon*, to know, that you are in perfect Health, and to see such a handsome Letter of your own Write and Diction. But I must tell you, my dear Child, that you advance severall Things in it that are not just, and that you cannot support in Reason. In the first Place, your Reason for your not writing to me before, since I made my Escape (though I accept of your Excuse) was neither just nor relevant; for it was not to be supposed, that either *Loudoun* or the President would be in Terms with me so soon, after having so signally affronted them: But, in the second Place, it is impossible there could be any Terms 'twixt Lord *Loudoun*, the President, and me, that should keep you from writing to me; no, if I should be attainted: So your Reason for not writing to me was ill-founded. As to your Advice, that comes immediately after it, in representing to me, That if I could make my Peace with *Loudoun* and the President, and save my Person and Estate, that you would content yourself with a thin Regiment: This Thought, my dear Child, was not at all digested, and entirely ignorant to my Circumstances: For, in the first Place, *Loudoun* can no more save my Person and Estate, than any of your subaltern Officers can; nay, they cannot as much engage to make me free from Prison for any Time: So that it would be Madness for me to make any Terms with them, but to speak civilly, and to keep myself out of their Way. But the Fact is, my dear Child, which you forgot, or perhaps that I did not take Pains to inform you of it, That, above seven Years ago, I was one of those that entered into a formal Association to venture our Lives and Fortunes to restore the King, and his Offspring; and we signed our mutual Engagements for this Purpose with our Hands and Seals, and sent it to *France* to the Cardinal *de Fleury*, then First Minister of *France*, by the Hands of Mr. *William Drummond* of *Bochaldy*. The Cardinal was so pleased with it, that he shewed our Engagements and Subscriptions to the King his Master, and begged of his Majesty to support us: And the King desired the Cardinal to assure us of his Protection, and that he would give us his Assistance and Succours to restore our King. When Mr. *Drummond* acquainted my own King of this Proof of my Loyalty, and of my constant Zeal for his Person and Interest, from my younger Years till now, gave me evident Proofs of his Goodness and Favours towards me since, as much as to any Subject. He gave Mr. *Drummond* a Commission to carry to me of General of the *Highlanders*, which I have; and severall Letters writ with the King's own Hand, that his Majesty would pay all the Money I paid *Frazerdale*, and his Creditors, for the Estate of *Levat*; and, last of all, the King was so good as to give such a singular Mark of his Favour to me, and to my Family, that he created me Duke of *Frazer*, &c. and sent me that Patent by *William Drummond*; of which I have an authentick Copy, signed and counter-signed by the King. I would be a Monster of Ingratitude, if this did not attach me to his Majesty more than ever. *Bochaldy*, not thinking it safe to bring the Patent to *Britain*, left it with his Uncle, old *Locheil*, at *Bullen* in *France*, who is now come over with Lord *John Drummond* his Collonell; and I hope he has taken my Patent along with him. I beg you may assure him of my most affectionate Respects. He and I always lived like two Brothers, and loved one another most dearly. I am sure he still retains affectionate Sentiments for me, as I do for him. I hope he will deliver you my Patent, or a good Account of it. So, my dear Child, since that Association, I made it my Business, where-ever I was, to promote the King's Interest, and to gain and engage faithful Subjects to serve him; so that I have done more against this Government than would hang fifty Lords, and forfeit fifty Estates. I have therefore nothing for it now, but to promote every Thing that is for my dear Prince's Honour and Interest: And nothing made me ever speak as much as a fair Word to Lord *Loudoun*, or the President, but to endeavour to save my Person from Prison, since I was not able to go to the Field, and fight for my King; but, since that is over, and that I have no Safety from Prison, but by being in Hills and Woods, and inaccessible Places, my greatest Desire under the Sun is, that you should make a good and handsome Figure in the Prince's Army; which I wish, and am as anxious to see done as yourself, and would do as much for it as I would do to save my Life, or keep myself from Prison, which would be soon Death for me: And, as *Loudoun* told me the Day before I made my Escape, That he had as much to say against me as would hang all the *Frasers* of my Clan, I have no Reason to hedge or dissemble with any Man of the Government: So you may assure yourself, that I will put all Irons in the Fire to send you South, all the Men thats engaged with you, and as many more as I can get.

You

You are quite mistaken, my dear Child, when you think, that your coming North would not engage them to go South. I am sure it would do much more than my Orders; for the Tenth Man would not go this Day at my Desire, that would go first when you began this Work: However, I will be working at them all I can.

I am making up, with all the Haste possible, a Habitation for myself in the House of *Maily*; for that Country is the strongest Hold in Scotland; for I will make too good Men defend it against all Forces that King *George* can have in Scotland. Besides, I ordered a Boat to be made, to carry me out and in to the Isle of *Maily*, when I please; so that it is morally impracticable to attack me in that Country, where I am resolved to go, if possible, next Week, if my Accommodation be finished. I keep *Ferris* till I go out of the Country; for if he went away just now, when the People of the *Aird*, are going South, and *Simon*, with some Men, out of this Country, I would be hunted like a Fox by *Loudoun* up and down the Country, which perhaps would cost me my Life by Cold and Fatigue; so that I am resolved to stay at my dear *Gortuleg's* House, which I reckon my Home as much as if I was at *Castle-Dunry*, till my Accommodation is made up at *Glinfraser*.

I shall send you my fine Pistols and Furniture, after I cause put them up in a new Portmantua; for it would be a Pity to spoil them; for they will be few so good in the Army. I wonder that you are so long without writing to me; for you may be sure that it's a Comfort for me to hear often from you; and when I am a Week without hearing, in the Situation that you are in now, you may believe that I must be very uneasy. Therefore, my dear *Simon*, for Christ's Sake, don't be a Week without writing to me; and let me know how all Matters goes with you, and what Situation the Prince's Army is in, and write encouraging News, that may be shewn to your People.

I shall long much for the Return of this Express; and I ever am, with great Affection,

My dearest *Simon*,

January 14th, 1746.

Your dutyfull Father.

P. S. I send you enclosed the Four Letters that you should have carry'd with you from *Castle-Dunry*, which, I hope, you will have Occasion to deliver out of your own Hand. You may tell the P. when you deliver the Letter to him out of your own Hand, That your Father thought it the greatest Misfortune of his Life, that his Sickness and Infirmitys deprived him of the Honour of attending his Royal Highness where-ever he went; and that his only Comfort now is, that he is capable to give his R. H. such a Mark of his Zeal as to send you, and his Kindred, to venture your Lives for him; and that he himself is every Day exposed to be made a Prisoner, and be sent to *London*, to have his Head struck off; since it can be easily proven against him, that he has done more against the Government than any one of his Rank in *Brittain*; and hopes, that since, by God's Help, he has made what may be called a miraculous Escape out of the Hands of his cruel Enemy, he will yet expose his Person, with his Sword in his Hand, to serve his R. H. and to do his Duty before his Eyes. You will make your Court and mine to Mr. *Murray*, as much as you can; he is a very pretty honest Fellow; and, I am very sure, would be ready to serve us. And tell young *Locheil*, and *John Roy*, That I expect that they will make my Court, and yours, to his R. H. in every Shape; and that they both know the entire Trust and Confidence I put in them.

I hope your Captain-Leivt. is come home by this Time; and it was very right to send him; for he is certainly one of the prettiest Fellows of your Clan: Give my Service to him, and tell him, That I beg of him to remember all that I spoke to him about my Patent; and when you talk seriously with him about it, I entreat that you both put all the Irons in Fire you can, to make the Thing succeed. I ask nothing of his Royal Highness, but to give his Countenance, and own publicly what his Father has done for me; which if he refuse, I must keep to the Oath that I gave before the Duke of *Perth*, the Earl of *Traquair*, *Locheil*, and other Gentlemen, that first engaged in the present Project with me, that I would never draw my Sword till that was done. And I cannot suppose or imagin, that his R. H. will make the least Scruple about it, since it is for his own Honour and Interest, as well as for that of my Family. I beg over and over again, my dear Child, to let me hear more often from you: I give you my affectionate Blessing; I pray God, and his Angels, that you may be preserved in Life and Health till you come to my Age. Adieu, my dearest *Simon*!

I need not tell you who the Bearer is; he is a very honest pretty Fellow; the natural Head of the *MacTavish's*. One of the Deserters goes in Company with the Bearer, and the rest of them will be up with you in a Day or two, in Company with *John Dunche's* Son, and *John Thomas Gortmore's* Son: They came all to me here, and were insinuating Complaints against their Officers; but I would not hear them, as the settling the Matters of your Regiment is your Province, not mine: But I promised them, that you would use them well; and that they would meet not only with all Manner of Justice, but with Clemency, as this was the first Fault: So I hope they won't fare the worse that I recommend them to you. I beg you may dispatch the Bearer, and send a Man with him here.

To the Honble the Master of Lovat, commanding a Regiment of Frasers, at Perth, or Stirling.

Mr. Attorney General. My Lords, It will now be necessary, that we should give your Lordships an Account of the Son's Letter, and likewise of his Hand-writing; and therefore beg Leave to ask the Witnests, Whether he was acquainted with the Hand-writing of the Master of *Lovat*?

R. Fraser. Yes, I have seen him write frequently.

Mr. At. Gen. Is that his Hand-writing, as you believe, or recollect?

R. Fras. Yes.

Mr. At. Gen. Have you seen him write?—R. Fras. Yes.

Lord High Steward. Have you often seen him write?—R. Fras. Yes.

Sir William Yonge. My Lords, We shall now beg Leave to call a Witnests to prove where this Letter was found.

Captain Robert Duff called into Court.

L. H. S. My Lord Lovat, Has your Lordship any Objection to Captain Duff being sworn as a Witnests?

Lord Lovat. No, none at all.

Captain Duff sworn.

Sir W. Yonge. My Lords, We beg Leave to ask this Witnests, Whether he was present on board the *Furnace*, when my Lord Lovat's Strong Box was opened?

Captain Duff. Yes, I was present.

The Letter was produced to the Witnests.

Sir W. Yonge. Look upon that Paper, and acquaint my Lords, if that Paper was taken out of my Lord Lovat's Strong Box at that Time, Look it all over, and be positive, if you can.

Captain Duff looks over the Letter.

Captain Duff. I saw this Letter taken out of Lord Lovat's Strong Box.

Sir W. Yonge. Was that Letter taken out in the Presence of the Lord Lovat?—Captain Duff. Yes, it was.

Sir W. Yonge. Did my Lord Lovat say any thing about that Letter at that Time? Or did any body else say any thing about it?

Captain Duff. I spoke to my Lord Lovat then, and told him, That I believed that Letter was not designed to fall into my Hands.

Sir W. Yonge. Did Lord Lovat make any Answer to you?

Captain Duff. My Lord Lovat made no Answer that I can remember.

Sir John Strange. My Lords, One Witnests is enough to prove this Fact; but Campbell has also told your Lordships, That he took this Letter out of the Box.

Then the Letter, No. IX. was delivered in at the Table, and read by the Clerk, as follows:

No. IX.

This Letter is directed, To the Right Honble Simon Lord Fraser of Lovat.

My Dr. Papa,

Strathbuck.

I received this Day the Pleasure of your Lop's Letter of the 1st. I'm very glad you have no Complaints of your Health, notwithstanding the Fatigue you have of late undergone in your Escape from *Inverness*, which gave every body here great Joy. The Reason of my not writing your Lop by the Express I sent last was, that I did not know but you might be on Terms with Lord *Loudoun* and the President, after making your Escape.

I'm as sorry at my bad Success with the Commanders here, as your Lop can be; but there is no Help for it; Nor were they altogether to blame, as the Prince's sudden Return to Scotland made it dangerous for them to take any Step of Consequence, without his particular Orders; and these they had in a very few Days after I came to *Perth*; and the Orders were, That they should all march directly to *Sterling*. This, your Lop sees, put it out of their Power to march Northward: But as I saw your Lop's Safety, and the King's Interest, required an Expedition to the North, I left no Stone unturned to bring it about: I therefore immediately upon hearing of the Prince's being at *Glasgow*, dispatched my Captain-Lieutenant (who was of great Use in arguing this Matter to the People at *Perth*) to *Glasgow*, to negotiate the Affair there. He is not as yet returned; but I make no doubt, how soon the Affair at *Sterling* is ended, but a proper Body of Troops . . . ordered to clear the North, and sooner the Art . . . cannot bring it about.

As to your Lop's Conduct in the mean time, if I might give an Advice, it would be, not to lose on both Sides: I am far from meaning by this, that you should come to *Perth*; so far from it, that provided your Lop could make Conditions for your own Person and Estate, with Lord *Loudoun*, and the President, I should be content with a thin Regiment; but, in case they have neither Authority or Inclination to give this, I humbly think you should immediately come to a Resolution, and put it in Execution: For, if your Lop's Clan do not all immediately join the Prince, the Cause will soon be found out. I would not much care if your Lop's Person and Estate were preserv'd by their Stay; but it will be hard, if it does not better your Condition with the Government, when it must evidently make it worse with the Prince.—I'm sorry for the Opinion your Lop has of the *Two Charles's*: I really think you wrong them; but, tho' they had all the Inclination in the World, your Lop knows, you always accus'd me of not being very subject to Advice. As to what Dr. *Archib. Grant* writes of *Inverlachie*, I have all the Reason in the World to believe it is a very great Falshood, and I'm surpriz'd your Lop should give any notice to it. As to my going to *Sterling*, if it was the People at *Perth* that were to command in that Expedition, your Lop . . . right, and I would be quite a Conver . . . your Argument; but the Prince's positive Orders to us all, his coming there himself to command us, and venture his Person with us, in my Opinion, quite alters the Case.—As to my going North, I know your Lop's Influence over your Clan too well, to think, that, where your Orders fail, my Presence will have any Weight. I'm certain your Commands, tho' only intimate by your Officers, will do in a Day more than my Presence would in a Week; and, I'm persuad'd that your People will come up to a Man, if you order them; and, if you do not, that they will stay at home; so that their coming, or not, entirely depends on your Lop. Besides, my going North at this time . . . u'd look a little odd, when the Prince is so Scotland, has sent us his positive Orders, let us know, that he himself is to come and command us in Person, that I should, at such a critical Time, run home, would look ill; and the Pretext (as it would be called) of r . . . ing Men, wou'd not screen me from an Imputation your Lop, I'm sure, would alwise wish me to shun. These Reasons, I dare say, convince your Lop, that my going North is not only unnecessary, but very improper, at this time.

All your Lops Fr . . . ds here join me in wishing, that your Lop may

live for many Years to serve your King and Country. (a) . . . great Affection,

Your Lo^ds

Dutifull . . .

FRASER.

Then the Lord Sandys moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the House was adjourned accordingly: And then the Lords and others returned in the same Order as before.

The House being resumed in the Chamber of Parliament,

Ordered, That this House will proceed further in the Trial of Simon Lord Lovat on Monday next, in Westminster-Hall, at Eleven of the Clock in the Forenoon: And

A Message was sent to the House of Commons, by Mr. Spicer and Mr. Edwards, to acquaint them therewith.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do take back the said Lord Lovat, and bring him again to the Bar of this House in Westminster-Hall, on Monday next, at Eleven of the Clock in the Forenoon.

Monday the 16th of March, 1746:

The FIFTH DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on Monday last, into Westminster-Hall; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence; and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, bring forth your Prisoner Simon Lord Lovat to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the Tower brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

Lord High Steward. Your Lordship may rise.

The Lord High Steward asked Leave to go down to the Table: And went accordingly.

Lord High Steward. Gentlemen of the House of Commons, You may proceed in your Evidence.

Sir W. Yonge. My Lords, We beg Leave to call Robert Frazer again.

Robert Frazer called into Court.

Sir W. Yonge. My Lords, He has been already sworn; and [Shewing the Witness a Letter] look upon that Letter; and acquaint their Lordships of whose Hand-writing it is.

R. Fras. It is mine; it was wrote by me.

Sir W. Yonge. By whose Order did you write it?

R. Fras. By my Lord Lovat's Order.

Sir W. Yonge. Was it dictated by my Lord Lovat?

R. Fras. Every Word of it.

Sir W. Yonge. Is it signed?

R. Fras. It is not signed.

Sir W. Yonge. Did you send that Letter to any body?

R. Fras. Yes; it was sent from Gortuleg to the Master of Lovat, at Inverness.

Sir W. Yonge. By whose Order did you send that Letter?

R. Fras. By my Lord Lovat's Order.

Then the Letter, No. XI. was delivered in; and read by the Clerk at the Table, as follows.

No. XI.

My dearest Child,

Gortuleg came home last night, with Inveraloch's Brother, and the Two Sandys, Fairfild's Son, and mine: And I am glad to know, that you are in perfect Health; which, you may be sure, I wish the Continuance of. I am sure, for all Sandy's Reluctancy to come to this Country, he will be better pleased with it than any where else; for he has his Comrade, Gortuleg's Son, to travell up and down with him; and I shall not desire him stay an Hour in the House but when he pleases.

My Cousin Mr. William Frazer tells me, That the Prince sent Notice to Sir Alexander Benneman, by Sir John M'Donnell, that he would go some of these Days, and view my Country of the Aird, and fish Salmon upon my River of Beaully: I do not much covet that great Honour at this time, as my House is quite out of Order, and that I am not at home myself, nor you: However, if the Prince takes the Fancy to go, you must offer to go along with him, and offer him a Glass of Wine, and any cold Meat you can get there. I shall send Sandy Dean over immediately, if you think that the Prince is to go: So I have ordered the glyd Post to be here precisely this night.

Mr. William Frazer says, That Sir Alexander Benneman will not give his Answer to Sir John M'Donnell, till he return, about the Prince's going to Beaufort; and that cannot be before Saturday Morning. So I beg, my dearest Child, you may consider seriously of this, not to let us be affronted; for, after Sir Alexander, and other Gentlemen, were entertain'd at your House, if the Prince should go, and meet with no Reception, it will be an Affront, and a Stain upon you and me while we breath: So, my dearest Child, don't neglect this; for it is truly of greater Consequence to our Honour than you can imagine, tho' in itself it's but a Maggot: But, I fancy, since Cumberland is coming so near, that those Fancys will be out of his Head. However, I beg you may not neglect to acquaint me (if it was by an Express) when you are rightly informed,

that the Prince is going there. I have been extremely bad these Four Days past with a Fever and a Cough; but, I thank God, I am better since Yesterday Afternoon. I shall be glad to see you here, if you think it proper, for as short or as long a Time as you please. All in this Family offer you their Compliments: And I ever am, more than I can express,

March 20th.

My dearest Child,

1746.

Your most affected and dutifull Father.

P. S. The Prince's Reason for going to my House is, to see a Salmon kill'd with the Rod, which he never saw before; and if proposes that Fancy, he must not be disappointed. I long to hear from you, by the glyd Post, some time this Night. I beg, my dear Child, you may send me any News you have from the East, and from the North, and from the South.

Lord Halifax. My Lords, I should be sorry to ask any Questions that might interrupt the Managers of the House of Commons in their Proceedings. I should likewise be sorry, that any Questions should be asked by me that should, in any degree, preclude the noble Lord at the Bar from any Defence he should think proper to make: But, my Lords, as the Answer, in Consequence of my Question, will thoroughly establish, or else greatly diminish the Credit which your Lordships may give to this Evidence; therefore I think it my Duty to ask, Whether, after the Writing of this Letter, my Lord Lovat did himself read the Letter, and approve of it? And I look upon it, this would be a necessary Question to ask, in regard to all the other Letters which have been, or shall be, produced.

R. Fras. I never did write a Letter from my Lord Lovat, but I first made a Scrawl, or a Draught of it; and whenever it was transcribed upon clean Paper, it was always read to my Lord Lovat.

Lord High Steward. Repeat what you said just now aloud.

R. Fras. I first made a Scrawl or Draught of all the Letters that I wrote for his Lordship, and afterwards transcribed them upon gilt Paper, and then read them every Word to his Lordship: Sometimes my Lord read them himself, and sometimes I read them to him.

L. H. S. Upon your Oath, when you read any Letter to my Lord Lovat, after it had been written over fair, did you read it truly as it was written, Word for Word?

R. Fras. Yes, Word for Word.

Sir William Yonge produced another Letter to the Witness, and asked,

Sir W. Yonge. Look upon that Letter, and tell my Lords of whose Hand-writing it is.

R. Fras. It was written by my own Hand.

Sir W. Yonge. My Lords, We have done with this Witness for the present.

Lord High Steward. My Lord Lovat, would you now ask this Witness any farther Questions?

Lord Lovat. No; I hope to convince these Gentlemen, that no Footman should give Credit to his Evidence.

[Then the Witness withdrew.

Mr. Attorney General. My Lords, We beg that Mr. John Murray of Broughton, may be called in again.

Mr. Murray called into Court.

Mr. Att. Gen. My Lords, he has been already sworn: We pray, my Lords, that this Witness may be shewn the Letter, No. III. that was read to your Lordships before, and that was proved to have been written by my Lord Lovat to Mr. Murray.

The Letter, No. III. was shewn to the Witness.

Mr. Attorney General. Do you remember ever to have seen that Letter before?

J. Murray. I am sorry to say, that I received this Letter at Inverness, in the End of February, or Beginning of March, by the Hands of Mr. Frazer of Gortuleg.

Mr. Att. Gen. Mr. Murray says, He is sorry to have received it; but I desire to ask him, if he did in Fact receive it?

J. Mur. I did receive it, at Inverness.

Mr. Att. Gen. My Lords, We pray, that the Letter written by the Pretender's Son to my Lord Lovat, may be shewn to Mr. Murray. The Use which we shall make of it; we shall explain to your Lordships by-and-bye.

The Letter, No. VI. was accordingly shewn to Mr. Murray.

Mr. Attorney Gen. Of whose Hand-writing is the Name at the Bottom of that Letter?

J. Murray. The whole Letter is written by the Pretender's Son himself.

Mr. Att. Gen. The whole Letter?

J. Mur. Yes.

Mr. Att. Gen. Both the Body and the Subscription?

J. Mur. Yes.

Mr. Att. Gen. Is it directed to any body?

J. Mur. For the Lord Lovat.

Mr. Att. Gen. Is that Direction also of the same Hand-writing?

J. Mur. The same Hand.

Mr. Att. Gen. Do you know if that Letter was ever sent?

J. Mur. This Letter was delivered, together with the other Letters, to Hugh Frazer, at Glasgow.

Mr. Att. Gen. By whom was it delivered to him?

J. Mur. By me, to the best of my Remembrance.

Mr. Att. Gen. Was it, or was it not, sent and delivered by the Direction of the Young Pretender?

J. Mur. It was by his Direction.

Mr. Att. Gen. What was it delivered to Hugh Frazer for?

J. Mur. It was delivered to him, to forward to my Lord Lovat.

Lord High Steward. Have you ever seen the Pretender's eldest Son write?

J. Mur. Very often.

L. H. S. Upon that Knowledge you have of his Hand-writing, do you, upon your Oath, believe that Letter to be of his Hand-writing?

J. Murray. Yes; I was present in the Room when he wrote it.

Then the Witness was shewn another Letter by Sir William Yonge, No. VII.

Sir William Yonge. Who was that Letter wrote by?

J. Murray. This Letter was wrote by Cameron of Lochiel.

Sir W. Yonge. By whose Order was it wrote?

J. Murray. It was wrote by the Direction of the Young Pretender himself.

Sir W. Yonge. Was that Letter signed? and by whom?

J. Murray. The Letter was signed by Cameron of Lochiel, Mac Pherson of Clunie, and by myself.

Sir W. Yonge. To whom was that Letter directed? Or, is there any Direction or Address to it?

J. Murray. No; there is none.

Sir W. Yonge. To whom was it intended to be sent?

J. Murray. To my Lord Lovat.

Sir W. Yonge. Was it, or was it not, delivered to any body to be sent to my Lord?

J. Murray. Yes; it was delivered to Hugh Fraser.

Sir W. Yonge. At the same Time with the Letter from the Pretender's Son?

J. Murray. Yes; at the same Time, and in the same Packet.

Sir J. Strange. What is the Reason why it was not addressed?

J. Murray. The Reason why it was not addressed was, that Hugh Fraser asked, If there was a Patent granted by the Pretender to create my Lord Lovat a Duke. To which Lochiel answered, That, if there was any such Patent, it was in the Hands of his Father John Cameron, who was then at Dunblain; and therefore that Packet was not addressed, because it was not then known, whether there was such a Patent, or no: And it was left without any Direction, till Hugh Fraser should inquire, whether there was any Patent of Duke, or not.

Sir J. Strange. Are you acquainted with Cameron of Lochiel's Hand-writing, or not?

J. Murray. Perfectly well.

Sir J. Strange. Was you present when that Letter was written, or no?

J. Murray. There was none present but Cameron of Lochiel, Mac Pherson of Clunie, and I.

Sir J. Strange. Did you see them sign that Letter?

J. Murray. Yes; I did.

Mr. At. Gen. My Lords, I mentioned to your Lordships, That I would explain the Use intended to be made of these Two Letters. Your Lordships have observed, That, among the several Species of Treason charged by the Articles upon the Prisoner at the Bar, one of them is, His corresponding with the Pretender's Son, and likewise with Persons employed by him. My Lords, in order to shew a Correspondence between the Prisoner and the Pretender's Son, and the Persons named in that Letter, we have shewn in Evidence, That the Prisoner at the Bar had an Interview with Cameron of Lochiel, Mac Pherson of Clunie, and Mr. Murray; which is one Kind of Correspondence: And, my Lords, it is material to shew, that those Persons, with whom the noble Lord at the Bar thus corresponded, were Persons employed by the Pretender's Son, it being, by an Act of the 17th of his present Majesty, made expressly High-Treason to correspond with any Persons employed by the Pretender's Son. My Lords, the First Letter now mentioned is a Letter wrote by the Pretender's Son to my Lord Lovat; in which, your Lordships will find, he refers to another Letter, which is the Second Letter produced to your Lordships, as a Letter written by his Order, and containing his Sense. Your Lordships have heard from Mr. Murray, that the First Letter was written by the Pretender's Son, and that the Second was written by his Order; and that proves expressly, that the Persons by whom they were written, were Persons employed by the Pretender; and consequently, any Persons corresponding with them were guilty of High-Treason within the Meaning of the Act: We therefore pray, That the Letters may be read. We do not offer them as Letters received by my Lord Lovat, but as Letters written by Persons employed by the Pretender's Son. The First is proved to be written by the Pretender's Son himself, and the Second by his Direction.

Then the Letter, dated the Second of January 1746, signed Charles P. R. was delivered in, and read by the Clerk at the Table; as was also the other Letter of the same Date, from Cameron of Lochiel, Mac Pherson of Clunie, and Mr. Murray: Which said Letters are as follow:

No. VI.

Glasgow, Jan. y^e 2d, 1746.

I Have just now read a Letter written to you by Lochiel, Clunie, and Murray; and you may depend on its containing my true Sentiments, as much as if it was all writ with my own Hand. I shall only add to it, that you cannot do me either more Pleasure, or more Service, than by coming to join me out of hand; and then you need doubt as little as I do of our being perfectly satisfied with one another

For the Lord Lovat.

Charles, P. R.

No. VII.

My dear Lord,

YOU need not be surpris'd, from the Situation we have been in for some time past, that we have faln out of the Way of writing; notwithstanding of which, our particular Love and Affection for your Lordship, and Family, as well as our sincere Attachment to our King and Countrey, seems to render it absolutely necessary to give your Lordship the Trouble of this Letter.

We are no Strangers to the great Pain and Trouble your Lordship had taken to persuade MacLeod and Sir Alexander to act that Part, which was so consistent with their Honour and Interest, and, if we may venture to say so, the very Being of their Familys; for your Lordship well knows, that, upon the falling or standing of the severall Highland Familys now

engaged in this Affair, theirs equally depends: For, did we fail in our Attempt, and the Conqueror prove either so weak or wicked, as to endeavour the Extirpation of our Familys (which perhaps wou'd not prove so easy as they imagine), these Two Gentlemen wou'd probably be taken (upon some false Pretext) into the general Corps of Disaffected, with a View to make a clean Stage of the Whole: Or allowing, that, from the scandalous Activity of one, and shamefull Indolence of the other, they were spared; yet their distant and small Influence, in proportion to the Body of the Clans, wou'd necessarily render them insignificant to any Party, that might, from unforeseen Causes, afterwards appear.

Your Lordship's firm and steady Behaviour, in spite of all the under-hand Dealings, as well as open Threats, of the Lord Loudon, and your Neighbour the President (who has rendered himself a Scandall to all Scotsmen, and a Nauseance to all Society), together with the early, noble and generous Appearance of the Master of Lovat in the Cause of his King and Countrey, has not only gain'd your Lordship the Admiration of this Island, but has settled the Affection and Friendship of the Prince for your Family upon a more firm and solide Foundation, than we dare venture to say, it was ever on with any of the Royall Family of Stewart, notwithstanding your Lordship's many heavy Sufferings in that Cause: And this my Lord we don't assure you from ourselves alone, but by his Royall Highness speciall and repeated Orders.

Now, my Lord, allow us to congratulate you upon your happy Escape from Inverness. Had it been any other, we could not possibly have given Credite to it, from the Circumstances of the Story; but knowing with what Address Lord Lovat has so often extricate himself from Difficulties, unfurmoutable by the rest of Mankind, we cou'd not allow ourselves to form the leaste Doubt of the Truth of it, and are now only in Pain to think of the Fatigue you must have undergone, and the Danger your Health must have run, in so sudden a Change of your usuall Way of Liveing.

The glorious Retreat his Royall Highness made from within Four-score Miles of London, upon Intelligence of the French being landed in Scotland, having an Enemy within 20 Miles in Front, and Mr. Wade within 3 Days March of Lancaster in his Rear, plainly shews what a great and enterprising Mind is able to perform. The Unactivity of the Enemy in not harrassing the Royall Army, when so much in their Power, with the feeble and weak Attack they made upon our Rear near to Perth, where they were most severely handled, makes it evident how easy a Game we wou'd have, did Scotsmen act with that Unanimity and Vigour, that made their Ancestors so famous over all Europe. From the present Situation of the Prince's Army on this Syde of Forth, who are all in the highest Spirits, the Numbers in the North already in Arms, the Victory Lord Louis Gordon has obtain'd over MacLeod and his Adherents, the landing of a Body of French Troops, with a fine Train of Artillery, the Kings of France and Spain declaring the Prince their Ally, and taking him under their speciall Protection, the French Ambassador having taken on his publick Character; and, in fine, an absolute Promise from the Court of France of a Descent of 15,000 Men in England, as by Letters received Eight-and-Forty Hours agoe from his Royall Highness the Duke of Albany and York, and from Cardinal Tencin, makes itt plain, that it now depends on us alone to restore the Royall Family to the Throne of their Ancestors, the Rights and Liberties of the Subject, and Scotland to that Honour and Independency your Lordship has so long and ardently wish'd for; which last Article we are absolutely sure of, as Scotland, in the worst of Events, must be ours.

And now, my Lord, the only proper Means that appears to us, in common with all the Prince's Wellwishers, to bring this to the wished-for Issue, is your Lordship's openly appearing in Arms, and joining the Royall Standard; in which Case, we are certain, that there is not a Man beyond the Forth, however timorous or cautious (except some few who have already destined themselves to Perdition), but will appear with the greatest Alacrity and Cheerfullness. But, not to take up too much of your Lordship's Time, what his Royall Highness above all Things wishes and desires is, to have your Lordship with him to take upon you the Command of the Army; for tho' the Prince knows, that your Lordship's Age makes it impossible for you to undergo the Drudgery Part of a General, yett he is sensible, that your Advice and Council will be of greater Value, than the Addition of several Thousand Men. Tho' your Lordship has your own Equpage, yett we are apt to believe, the Prince's Coach and Six (of which he himself makes no Use) will be as convenient a Voyture for your Lordship; and the French Ambassador, with Lord Pitt-Rivers, who has been in itt all along, won't prove disagreeable Company.

In short, it is impossible for us to give the hundred Part of the Reasons, that makes us so sensible of the absolute Necessity of having your Lordship about the Prince's Person, which you will be fully satisfy'd of at Meeting.

This Moment Hugh Fraser is come here, and has given the Prince a Detail of your Lordship's Situation, and that of the Country, with the Proposall your Lordship sent to the Army at Perth; of which he approves exceedingly, and will To-morrow send Orders, by Express, to Lord John Drummond to meett him att Bannockburn, Saturday first, there to concert in what Shape it shall be putt in Execution, and to move 4 or 6 Piece of Cannon towards Blair-Castle without Delay: But of this your Lordship is most earnestly entreated not to mention one Word to any body, leaste the making it publick should procure the Escape of some Folks, who may otherwise be catch'd napping; and your Lordship is begg'd to cutt off all Intelligence from that Quarter.

We shall now only beg, that your Lordship give no Ear to any of the Storys spread in the North, as the Gazettes have not contained one Word of Truth in relation to us since we left Edinr; and do us the Justice to believe, that we are, with most sincere Regard, Attachment, and Esteem, wishing you many happy and prosperous new Years,

My dear Lord,

Glasgow, Janr. 2d, 1746. Your Lordship's most obedient, most faithfull, and most sincerely affectionate humble Servant...

The Signature of this Letter was torn off.

Mr. Attorney General.

Mr. Attorney General. My Lords, We have done with Mr. Murray.
 Lord High Steward. My Lord Lovat, Would you ask any Questions of Mr. Murray?

Lord Lovat. My Lords, I did ask your Lordships before, if I might have Liberty to cross-examine the Witnesses brought against me; and your Lordship told me, I might have an Opportunity of doing it, when I came to make my Defence.

L. H. S. Your Lordship misunderstood me: I did not say, that you would have an Opportunity of cross-examining any of the Witnesses produced against you, when you came to make your Defence; but that you was at Liberty, when the Witnesses were produced, to ask them such Questions as you should think proper; and that, when you came to your Defence, you might make such Observations upon their Evidence as you should think fit: But if your Lordship has a Mind to call any of those Witnesses in your Defence, which have been produced against you, I do not doubt but the Managers of the House of Commons will take care that they shall attend.

Sir John Strange. My Lords, if the Noble Lord at the Bar will give notice over Night of any of our Witnesses, that he thinks necessary to call in his Defence, we will take care that they shall be in the Way.

L. H. S. My Lord Lovat, Would you now ask any Question of Mr. Murray?

Lord Lovat. My Lords, I shall say nothing till I come to make my Defence, and then I shall hope to have an Opportunity to say what is just against these Witnesses.

Sir William Yonge. My Lords, We now beg Leave to call Robert Frazer again.

Robert Frazer called into Court again.

Sir W. Yonge [showing the Witness a Letter, No. XXI.] asked, Look upon that Letter, and tell my Lords of whose Hand-writing it is?

R. Frazer. It is mine.

Sir W. Yonge. By whose Order did you write it?

R. Frazer. By my Lord Lovat's.

Sir W. Yonge. Did he dictate it to you?

R. Frazer. Every Word.

Sir W. Yonge. Who is the Letter signed by?

R. Frazer. By my Lord Lovat.

Sir W. Yonge. Did you see him sign it?

R. Frazer. Yes.

Sir W. Yonge. To whom did he order it to be sent?

R. Frazer. To the Duke of Cumberland.

L. H. S. Was that Letter read over by my Lord Lovat, or was it read over by you to him, before it was sent?

R. Frazer. It was read over both by my Lord Lovat, and by me to him.

Then a Letter, signed Lovat, without any Date, was delivered in, and read by the Clerk at the Table, and is as follows:

No. XXI.

S I R,
 THIS Letter is most humbly address'd to your Royal Highness, by the very unfortunate Simon Lord Fraser of Lovat.

I durst not presume to solicit or petition your Royal Highness for any Favour, if it was not very well known to the best People in this Country, attached to the Government, such as Lord President, &c. and by those that frequented the Court at that Time, that I did more essential Service to your Royal Family, in suppressing the great Rebellion in the Year 1715, with the Hazard of my Life, and the Loss of my only Brother, than any of my own Rank in Scotland: For which I had three Letters of Thanks from my Royal Master, by the Hands of the Earl of Stanhope, then Secretary of State; in which his Majesty strongly promises to give me such Marks of his Favour, as would oblige all the Country to be faithful to him thereafter. Indeed the gracious King was as good as his Word to me; for as soon as I arrived at Court, and was introduced to the King by the late Duke of Argyll, I became, by Degrees, to be as great a Favourite as was about Court, of a Scotsman: And I often carried your Royal Highness in my Arms, in the Parks of Kensington and Hampton-Court, to hold you up to your Royal Grandfather, that he might embrace you; for he was then very fond of you, and of the young Princes.

Now, Sir, all I have to say in my present Circumstances is, That if your Royal Highness will be pleased to extend your Goodness towards me, in the generous and compassionate Manner, in my present deplorable Situation, if I have the Honour to kiss your Royal Highness Hands, I would easily demonstrate to you, that I can do more Service to the King and Government, than the Destroying a hundred such old and very infirm Men, like me, past Seventy (without the least Use of my Legs or Knees) can be of Advantage in any Shape to the Government.

Your Royal Father, our present Sovereign, was very kind to me. In the Year 1715, I presented on my Knee to his Majestie a Petⁿ, in favours of the Laird of M^r Intosh, to obtain a Noli Prosequi for him, which he most graciously granted, and he gave it to Charles Cathcart, then Groom of his Bed-Chamber, and ordered him to deliver it into my Hands, that I might give it to the Laird of M^r Intosh. This was but one Testimony of severall Marks of Goodness his Majesty was pleased to bestow on me while the King was at Hanover: So I hope I shall feel, that the same compassionate Blood runs in your Royal Highness Veins.

Major-General Campbell told me, That he had the Honour to acquaint your Royal Highness, that he was sending me to Fort William; and that he begg'd of your Royal Highness to order a Litter to be made for me, to carry me to Fort Augustus, as I am in such a Condition, that I am not able to stand, walk, or ride. I am, with the utmost Submission, and most profound Respect,

S I R,
 Your Royal Highness most obedient,
 And most faithfull humble Servant,
 LOVAT.

Sir William Yonge. My Lords, We have done with this Witness.
 Lord High Steward. My Lord Lovat, Would your Lordship ask him any Questions?

Lord Lovat. No.

[Then the Witness, by the Direction of the Lord High Steward, withdrew.]

L. H. S. Gentlemen of the House of Commons, have you any other Witnesses to produce?

Sir W. Yonge. No, my Lords, we have no more Witnesses to produce.

Sir JOHN STRANGE.

My Lords,
 THE Commons have now gone through all the Evidence they propose to lay before your Lordships, in Support of their Impeachment; and as that has unavoidably run this Cause into a great Length of Examination, they think it may not be improper to have the Whole that relates to the impeached Lord collected together, and presented to your Lordships View, in as concise a Manner as the great Variety of Circumstances that have attended this Case, will admit of.

This Province is assigned to me.

And we choose to enter upon it now, at the Close of our Evidence, as the most fair and candid Way of Proceeding, with regard to the impeached Lord; For—should the Commons reserve the summing up, and observing upon their Evidence, to make a Part of the Reply (as they might do), the Noble Lord at the Bar (his Defence being then closed) might perhaps be under some Disadvantage; whereas, in this Way of Proceeding, if any Mistake shall be committed in Stating of the Evidence, or any Observations made upon it that the Case will not bear, an Opportunity is hereby given to the Party accused, to set it right.

My Lords, The Articles that have been read to your Lordships, contain Four distinct Charges of High-Treason.

The First is, "The Compassing and Imagining the Death of the King."

The Second is, "The Levying War against the King in his Realm."

The Third is, "Corresponding with the Pretender to his Majesty's Crown."

And the Fourth is, "Corresponding with the Pretender's Son, and others employed by him, knowing them to be so employed."

The Two first of these are declared to be Treason, by the express Words of the Statute of 25th Edward III.

The Third is made Treason, by the 13th & 14th William III, cap. 3. the Words of which extend to the corresponding with the Pretender, by Letters, Messages, or otherwise.

The Fourth Species of Treason is against the Statute of 17th George II. cap. 39. which makes it Treason to correspond with the Pretender's Son, or others employed by him, knowing them to be so employed.

As I have no Imagination that any Doubt can arise, whether, when the Matters of Fact are proved to your Lordships Satisfaction, the Case will not come within the Provisions of these Laws, I shall forbear entering into any Argument upon them; and shall only say, That, although the Articles have charged the First Sort of Treason, in the precise Words of the Statute of 25 E. III. which are, "Compassing and Imagining the Death of the King," yet the Law does not require Evidence of actually accomplishing so horrid a Crime; for that sacred Life is so guarded, that the bare going about, or contriving so flagitious a Scheme, is sufficient to constitute this great Offence, provided those Purposes are manifested by Overt Acts.

And that, although Levying of War is a distinct Branch of High-Treason, yet it is also an Overt Act of the former Species, "That of Compassing and Imagining the Death of the King."

My Lords, in stating this Evidence to your Lordships, I can no way do it so intelligibly, as by following the Example of the learned Manager who opened the Nature of the Case, and divided it into Three distinct Periods of Time.

The First Period contains the Behaviour of the impeached Lord, before the Landing of the Pretender's Son in Scotland, in the Month of July 1745.

The Second Period includes the Facts proved to have been committed by the Noble Lord at the Bar, from the Time of the Pretender's Son's Landing, to the Battle of Culloden.

And the Third Period relates to what happened afterwards, to the Time of my Lord Lovat's being sent up, and committed to the Tower.

As to the First Period of Time, your Lordships are pleased to observe, that our Evidence goes so far back as the Year 1719.

And, my Lords, we chose to take it up there, because, in the Noble Lord's Answer, he values himself much upon "Having given, in the Year 1715, the strongest Proofs of his Zeal for, and Attachment to his late Majesty, and the Succession of the Crown in his illustrious Family, against such as had undertaken the Destruction of both: And now laments his Misfortune, to have his Fidelity questioned, at the End of his Days, when near worn out with Age and Infirmities; and to be charged with intending the Subversion of a Government he had, in the Strength and Vigour of his Age, exerted his utmost Power and Address to support."

My Lords, I have faithfully rehearsed the Words of this Answer, which I think made it necessary for the Commons to shew, That the Noble Lord's engaging in the late Rebellion, was not the Effect of Dotage, or through the Constraint, or by the Imposition of others; but proceeded from a long and deep-rooted Principle of Disaffection to the Protestant Succession, and of Attachment to the Cause of the Pretender.

To begin then, at the Year 1719:

Mr. Chevis, a near Neighbour of the impeached Lord, has sworn, That the Noble Lord told him, that, in the Year 1719, when an Invasion was attempted by Spain upon Scotland, and Lord Seaforth was raising his Men in favour of the Pretender, he (Lord Lovat) wrote a Letter to Lord Seaforth, to acquaint him, That Lord Lovat would join him with his Clan: That this Letter was delivered to Lord Seaforth, after it had been first shewn

shewn to one *Chisholm* of *Knockford*. This *Chisholm*, it appears, informed the late Duke of *Arbuthnot* of the Contents of the Letter; and his Grace sent up Notice of it to the Government. This came to my Lord *Lovat's* Ears, who was greatly alarmed at it; but your Lordships find he had soon the Dexterity to get up his Letter, upon Terms he had an Opportunity of making with *Lady Seaforth*: After which he shewed it in Confidence to a trusty Friend of his, who declared it to be a treasonable Letter; and as such, it was thrown into the Fire.

My Lords, I cannot help observing to your Lordships, that it appears from this Transaction, that the noble Lord was then contriving to commit Treason, and yet screen himself from Punishment; for he declared, he had not signed the Letter; and therefore, if it had been forthcoming, it could not be fixed upon him.

In the Year 1737, your Lordships find him sending a Message, by *Roy Stuart*, to the Pretender at *Rome*, to assure him of his Fidelity, and to hasten his Patent that had been promised him for a Dukedom.

It has likewise appeared in Evidence, That he afterwards sent another Message of the same Nature by *Drummond*.

In the Year 1739, he appears to have proposed an Invasion to *Drummond* of *Bothalie*, in favour of the Pretender, his lawful Sovereign (as he called him); and in whose Cause he then declared he was determined to live and die.—An Expression your Lordships cannot but have observed occurs also in his Letters.

And the same Proposal Mr. *Chevis* has proved was afterwards made by my Lord *Lovat* to *Lochiel* and *Cluny M'Pherson*.

My Lords, I pass over the poetical Performance between *Roy Stuart* and the Noble Lord, and go on to the Year 1746. About this time it was he declared to Mr. *Chevis*, that he had signed and sealed an Association of the *Highland* Chiefs, in favour of the Pretender; and which Lord *Lovat* declared was sent over to Cardinal *Fleury*.

My Lords, This material Part of our Evidence is so far confirmed, that Mr. *Murray* (the Pretender's Son's Secretary) has proved his hearing of it at *Paris*; and that it was also mentioned to him, at a private Audience he had of the Pretender's eldest Son, in *France*.

He has likewise proved what passed between M. *Amelet* and him, upon the Foot of such an Association; and the Assurances given by that Court, of Encouragement and Support.

But, above all, your Lordships have heard it confirmed by a Passage, in a Letter of the noble Lord's to his Son, that was read at the Table; wherein he tells him, "That, above Seven years ago, he was one of those that entered into a formal Association, to venture their Lives and Fortunes to restore the Pretender (by him called King) and his Offspring; which Engagement (he says) was signed with their Hands and Seals, and sent to *France* to Cardinal *de Fleury*, then First Minister at that Court; and was by him shewn to the King his Master, who promised them his Assistance, and Succours, to restore their King."

"Since which (says he) I have made it my Business to promote the King's Interest, and to gain and engage faithful Subjects to serve him."

And, in his Letter to the Pretender's Son, he appeals to all who have come into that Country, who (he says) will do him the Justice to declare, "That he has always been the most zealous and most active Partizan they had in the North of *Scotland*; and in that, he owns, he did but his Duty." This he repeats, in his Letter to *Lochiel*; and boasts himself to be "the Person who kept Life and Spirits in the Pretender's Affairs, more than any Man in the North."

In the Year 1742, your Lordships find him declaring he had got a Commission to be Lieutenant-General of the *Highlands*, and a Patent of Duke from the Pretender; and which he said he had merited by his Services to that Family.

This Declaration is proved by Mr. *Chevis*. The Talk of it, and seeing a Copy in a Desk, supposed to be signed by the Pretender, is proved by *Robert Frazer*. And *Hugh Frazer* says, my Lord *Lovat* shewed it him.

Mr. *Murray* told your Lordships, he found my Lord *Lovat* expected the original Patent had been brought over; but Mr. *Murray* not being certain, that such a Patent had ever passed, he sent his Letters to Lord *Lovat*, without an Address, but inclosed in a Packet, with other Papers: And this, he has told your Lordships To-day, was done for fear of committing a Mistake, either by directing them to his Grace, or only to Lord *Lovat*.

This Affair of the Commission and Patent is also confirmed by a Passage in the Letter to his Son, that I appealed to before; wherein he tells him, "That, in Proof of the Sense his own King had of his Loyalty and Zeal, he had sent him such a Commission and Patent, besides a Number of Letters under his own Hand; the Original of which Patent, he tells his Son, was in *Drummond's* Hands; but he, Lord *Lovat*, had an authentic Copy of it, signed and countersigned by his King."

"These Favours (he adds) had more than ever attached him to that Interest; and he should be a Monster of Ingratitude if they had not." And, in the Postscript, he charges his Son to inquire for the Patent; adding, That "he asked nothing of his Royal Highness (as he calls the Pretender's Son) but to give his Countenance, and own publicly what his Father had done for him."

Your Lordships have likewise heard it proved, that, during all this time, the whole Turn of his Conversation was in favour of the Pretender.

He declared he had made an Alliance, by the Marriage of his Daughter, which added to his Strength, and would enable him to humble his Neighbours.

The Healths drank at his Table have been mentioned by the Witnesses, particularly that execrable one proposed by himself, of Confusion to the White Horse, and all their Generation.

The next Thing your Lordships heard of, were his Encomiums on the Pretender, whose Countenance he said proclaimed him, to all Beholders, the rightful King.

There are likewise in Proof, his Exultations on the Taking of *Ostend*, as laying open all the Coast of *Flanders*, and exposing us to an Invasion

in the Compass of one Night, from the *French*, who, he declared, would carry all before them. And this we rely upon as a Circumstance of great Malignity, when it is considered what Numbers of our Troops were then abroad, in the Cause of Liberty and *Europe*, and what a Situation our Power at home was in at that time.

Your Lordships have likewise heard his Declarations about the Reformation and the Revolution, and of the noble Lord's Scheme to get rid of both; which was to bring in the Pretender.

And as to Religion, his Declaration to Mr. *Chrois* was, That he believed there was no true Religion in the World but one; and that was the Church of *Rome*.

A very extraordinary Declaration this, to be made by one, who, by having had an Independent Company in the King's Service, and upon other Accounts, must have seemed (at least) to have been of a different Opinion.

Thus circumstanced, my Lords, and this Temper of Mind, was Lord *Lovat* in, at the Breaking out of the Rebellion, in the Summer of 1745: Which is the Second Period of our Evidence.

And this Part of our Evidence, your Lordships will be pleased to remember, began with the early Notice it appeared my Lord *Lovat* had of the Pretender's Son's being landed in *Scotland*.

Upon the News of this, my Lords, he prepares immediately to support him.

His Son, a Youth of about Nineteen Years old, either newly come home, or sent for from the University on purpose, is appointed to head the Clan.

The Design of sending him to travel is laid aside.

A Proposal made by those who were willing to have kept the Son out of Rebellion, is (upon Consideration) rejected by Lord *Lovat*, who, at the same time, declared, that his first Intention was to have headed the Clan himself; but that now his Son should go, since others had disappointed him, who he expected would have joined Forces with him.

And, in Consequence of this, Orders are proved to have been given by my Lord *Lovat* for all Military Preparations.

My Lords, this Proposal for the Son's travelling is proved by *Hugh Frazer*, to have been made to, and rejected by the noble Lord; who also, in his Letter to *Murray*, makes use of these Words: "I have sent (says he) my eldest Son, the Hopes of my Family, and the Darling of my Life, a Youth about Nineteen Years old, who was just going abroad for his Studies and Education; I have sent him (says he), instead of this, to venture the last Drop of his Blood in the glorious Prince's Service."

Hugh Frazer has also proved his being charged with a verbal Message to the Pretender's Son to the same Effect; and his being sent back by *Murray*, with a Letter to Lord *Lovat*.

He has also proved, That, when he delivered the Letter, and told my Lord *Lovat* the true State of the Pretender's Affairs, which, he said, were not very inviting, after so many regular Forces were come from *Flanders*, which the Rebels would not be able to encounter, my Lord's Declaration upon that Occasion was, that "he had gone too far to go back;" and, for fear this News should dishearten his Son, he ordered *Frazer* not to say a Word of it to him.

Before or about this time likewise, it was, that he received the Pretender's Manifesto.

He orders his Son to read it aloud to the Company.

And when Mr. *Chevis* (who never went near him afterwards) was offering some Objection to it, my Lord *Lovat* told him, That he talked Treason; or it was Treason in him to object to the reading the Manifesto.

Soon after this, your Lordships may recollect, it has appeared, that great Preparations were made for supporting the Cause of the Pretender. Arms,—Colours,—Tents,—Powder, and Ball, are prepared, and laid in by Lord *Lovat's* Order.

His Arms and Crest are painted, supervised, and approved by himself. So eager is he, that his Son is upbraided for his Backwardness, and the Retainers of the Family are spoke to, to hasten him.

He thunders out his Anathemas against a Gentleman, who, he thinks, had disappointed him, which if he had not done, he says, in his Letter to *Lochiel*, "he had so managed that Part of the North, that above 6000 Men had marched South to the Prince's Assistance; which he (Lord *Lovat*) thought would much encourage his (the Pretender's) Son's own loyal Party, and fright the *English* to his Obedience."

At this time likewise it was, that he wrote those Letters to the Pretender's Son, and his Secretary, which were so audibly and distinctly read to your Lordships; that they stand in no need of a Repetition to make their Impression.

In the next place, your Lordships find him magnifying the Skirmish at *Presston-Pans* into a Victory not to be paralleled in History; which, I may venture to say, was certainly calculated by my Lord for the Encouragement of his People.

When the late Earl of *Cromartie's* Men marched South, and passed by *Castle-Downey*, your Lordships observe him repining that they should be first ready, and what a Shame it was they should pass by his Nose.

He entertains the late Earl of *Cromartie*, and his Officers, then in Arms for the Pretender, and declaring, in my Lord's Hearing, they were going to assist the Pretender's Son.

And this (as it came out upon a noble Duke's Question) was in a friendly, hospitable Manner, and not as a Person quartered on by Compulsion.

All this while his Men are gathering together.

There are Two Rendezvous of the Clan, and 700 *Frasers* drawn up within half a Mile of his House.

He offers (as it has been proved) Commissions to several Persons; Declares his Son was to be their Colonel:

Threats and Promises are made use of by him; and the Firy Cross is carried about:

The distinguishing Mark of the Rebels, the White Cockade, is worn by the Officers in his Presence;

He drinks to their Success; and, in his Letter to the Pretender's Son, begs of GOD to preserve him, and give him Success and Glory in all his Enterprizes."

He advises those he is sending forth not to let the Pretender's Son hazard his Person, by going into Engagements: He prophesies Victory and Success to him.

Let us all be thankful, that his Prophecies were not fulfilled! All this while your Lordships find him balancing between Hopes and Fears:

He gives Orders, and contradicts them, either as our own Forces arrive, or there comes Assistance to the Rebels from France;

Insomuch that his Son is at last forced, with Tears in his Eyes, to beg, "He may no longer be made a Fool or a Tool of;" but may then have such Orders as the Father will stand by.

And then it was he directed the Clan to march; and said, "Those were the Orders he would stand to."

And, to prove they marched by his Direction, I appeal to his Letter to the Pretender's Son; wherein he says, "I have sent with my Son all the principal Gentlemen, and Heads of Families of my Clan, with 800 of my common People." And the Words of his Letter to Mr. Murray are, "I have sent my Son." He also tells his Son, in the Letter that has been read, that "he will put all Irons in the Fire to send him Men: I will be working at them (says he) all I can."

His Friends and Dependents, however, were in doubt what to make of him, and whether it would be safe for them to exert themselves, or not, suspecting (and not without Cause), that he was keeping open a Back-door for himself; and therefore it was they also thought it necessary to call upon him to dissemble no longer, but to take off the Mask; which he performed before them, by pulling off his Hat, and laying it at his Feet, telling them "There it is then."

And, in the Letter addressed to him from the Pretender's Son, your Lordships must have observed a Jealousy he had of him; for he is there pressed to come and join him in Person; "and then (says the Letter-Writer) you need doubt as little as I do of our being perfectly satisfied with one another."

In the Course of our Evidence, my Lords, it has appeared, That he was taken Prisoner by Lord Loudon, as fomenting the Rebellion; and his escaping afterwards has been proved.

He corresponds with his Son and Lochiel, when in Arms for, and employed by, the Pretender, knowing they were so employed; which is one of the Overt Acts of Treason laid in the Impeachment.

And what is the Game he is all the while playing against his Son? From first to last it is an Endeavour to avoid being fixed himself, and to throw it all upon his Son; that Son, whom he had, in a manner, forced into the Rebellion.

This appears by Robert Fraser's Evidence relating to a Draught of a Letter to the Lord President, charging the young Man with Obstinacy, and forcing out the Clan against the Father's Inclination, or Power to controul him: Which when the Master had discovered, by accidentally going into the Secretary's Room, and insinuating to see the Draught, which the Father had ordered he should not, he declares (in great Repentment of such Usage from his Father,) "That he would go himself to the Pretendent, and put the Saddle upon the right Horse. Good God! (says the Master) how can he use me so!"

And the Disposition of the Son is further proved by the Circumstance of pulling the white Cockade out of his Hat, in the Father's Presence, and throwing it into the Fire.

And this likewise was confirmed by the Evidence of Hugh Fraser, who has told your Lordships, That, both from the publick and private Discourse and Behaviour of the Master, he is satisfied he was better disposed, than to have gone, of his own Accord, into the Rebellion.

To this I may add what fell from Chevis on his Cross-Examination; who, when he was asked by the noble Lord about a Plot to hang the Old One, and save the Son, declared to your Lordships, he never heard of any other than directly the Reverse.

A Behaviour this from a Father to a Son, which I the less wonder at in the noble Lord, when I consider he was at the same time forgetting that natural Allegiance, which he owed to the FATHER OF HIS PEOPLE.

There is one Circumstance more upon this Head, which is, that, when he began to find his Majesty's Forces were likely to be an Overmatch for the Rebels, he privately sent out Hugh Fraser to find what Terms he could get from Lord Loudon and the President; and what might probably be the Consequence to himself, if his Clan continued in Arms.

And this, my Lords, brings me to the glorious Action at Culloden;

A Battle which, the noble Lord declared, was rashly entered upon;

Contrary to his Opinion; which was, That the Rebels should have retired to the Mountains, where, he thought, the Duke's Horse could not follow them, and where they might easily have subsisted themselves till they had received a Reinforcement of Troops and Money.

Upon this Occasion, he pointed out the Distress such a Conduct must have brought upon the King's Troops, and upon that great Commander, who, under the wise Precautions of his Majesty, and by the good Providence of Almighty GOD, has proved to be the Deliverer of his Country.

Surely, my Lords, there is no Need for me to dwell any longer on that Period of Time, which includes the Rebellion.

The Third and last Period is what happened afterwards:

And this, my Lords, consists of a great Number of Particulars, which have been proved at your Lordships Bar.

The First thing your Lordships have heard of is, his personal Conference with the Pretender's Son on the Night of the Battle of Culloden.

The Excuses made by the noble Lord to that Person, for not coming himself to join him, on account of his Age and Infirmities, have appeared in Evidence, and are to the same Effect with those which have been read out of his Letters.

They are proved to have been, to outward Appearance, satisfactory to the Person, to whom these Excuses were made; and your Lordships find the Parting between them was with mutual Embraces.

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The next thing your Lordships have heard of, in the Course of our Evidence, is the Flight of the noble Lord, in order to avoid being taken by the King's Troops.

To this End, he retires into a Part of the Country, where, he imagined, it would be impossible for them to find him out, or harraß him.

In such a Place it is he had that Meeting with the Rebel Chiefs; on which Occasion his Behaviour is very remarkable.

For it has appeared, that, at that Consultation, he continued to be what, at other Times, he boasted to have been, the Life and Spirit of the Party.

Who so forward to reassemble their scattered Forces as he?

It was he that declared they had no need to be afraid; for he did not doubt but Eight or Ten thousand Highlanders might yet be raised to defend themselves, either to get Terms from the Duke, or fight the Elector of Hanover's Troops; which was the Expression he made use of.

In consequence of this, it was then agreed to raise Men; and a Paper is drawn up for that Purpose. The noble Lord indeed avoided signing it himself, by desiring Lochiel to vouch for his Son the Master's Proportion: But it is very observable, that when his Cunning suggested to him the Declaration, That he was a neutral Person, it presently forsook him, or else he had not accompanied it with another Declaration, that denoted his repining at his not having joined the Pretender's Son on his first Landing.

This Agreement to raise Men is immediately followed by a Distribution of French Money for that Purpose; which Money, to the Amount of 35,000 *Livres*, had been just received to support the Rebels.

The Money indeed, that was intended to raise the Frasers with, was not paid into the noble Lord's own Hands; but (the Master being absent) it was delivered to a Servant that attended upon the noble Lord, and Part of it was by himself, soon after, sent to his Son; which brings it home to my Lord Lovat as his own Act: It shews him privy to the Design for which it was advanced (which was treasonable); and his own Hand is in the Transaction.

As this Money has appeared to have been sent over to support the Rebellion, and those who joined in it, the noble Lord thought he had a Right to a Share of it; and therefore sends to Murray for some of it, which he demanded, and received, for Twenty Days Pay of a Guard to attend his own Person, and defend him against the King's Troops, who were in Search of Rebels at that Time.

And when, soon after, his Son came to desire he might be permitted to surrender himself to the Duke, he calls him a Person of a mean Spirit, and advises him against it; that Son who would have been contented with a thin Regiment, so the Father had been safe.

When taken, his Guilt immediately suggested to him, and he declares openly, That he expected to lose his Head: He comforted himself, however, that his Estate was so settled, that it would be preserved to his Family.

Your Lordships have likewise heard the Circumstances that attended the Search of his Strong Box: When Papers were found in it, he declares in a jocular Way, that they would find no Treason in them: He continues in this Strain whilst many private and immaterial Papers were reading; but, when the Letter from his Son (which has been read in Evidence) appeared, and he is asked, Whether that came within his Description, or was designed to be found there, he changes his Note, is surprised at its being found there, and agrees it was not in a proper Place.

After all this, I need only barely mention the Offers he made to merit his Life by Discoveries, and appeal to the Letter written by him to the Duke of Cumberland, just now read at the Table.—Those must have proceeded from a Consciousness, that he had forfeited his Life before.

How the noble Lord will be able to reconcile all his softening Insinuations in his Letter to the Duke with what he before said to Lochiel, wherein he declares, "He is resolved to live and die in his King and Royal Prince's Service; and that no Death the Government can invent can lessen his Zeal, or fright him from his Duty"—This I must leave to his Lordship; for, I own, it is past my Skill.

My Lords, I am very ready to acknowledge, that, in the Course of our Evidence, one of the Witnesses has said, That, by what he could observe, the noble Lord did not seem to be averse to his present Majesty; but his Repentment, he said, was against the Ministry, that had taken away his Company.

But how far that is agreeable to his Actions, Healths, and Declarations, that he was ready to join Kouli Kan, if he had come over, your Lordships will consider.

And, as to his Objection to Mr. Murray's Evidence, as remaining an attainted Person, I will only say (that it may appear in this Tryal when it comes abroad into the World), That although Sir Thomas Armstrong suffered upon the Notion, that a compulsory taking within the Year was not strictly a Surrender; yet, in the Second Year of his present Majesty's Reign, in the Case of one Roger Johnson, who had been outlawed for Treason, and was taken within the Year allowed by the Statute, the then Attorney General, like a true Friend to the Liberty of the Subject, disdained to insist upon Armstrong's Case; and the Court of King's Bench held it was immaterial, whether he came before them on a voluntary Surrender, or a Compulsory Caption, so long as it appeared the Man was there, and amenable to Justice within the Time: And, in Consequence of this, the Man had his Trial, and was acquitted.

To apply this to our Witness, I need only observe, That it has appeared in Evidence, that his Time was not out till 12th July 1746, and he was committed Prisoner by the Lord Justice Clerk Fourteen Days before, and has ever since remained in Custody, amenable to the Law. The Precedent, therefore, I have cited, is directly in the Point, and founded in the Justice and Equity of the Case; for a Man, who has a fixed Time given him to come in, ought not to be prejudiced by being taken up before.

Some Questions, my Lords, have been asked our Witnesses upon their Cross-Examinations, and some Objections thrown out about Expectations of Mercy, which I do not see it is necessary to take Notice of at this Time: If they are relied upon by the noble Lord, in his Defence, the Reply will be the most proper Time to answer them; and to that I shall leave it.

All that now remains for me to do, in Discharge of the Commands I have been honoured with by the Commons, would be to take particular Notice of the Letters that have been read, and the Strength they communicate to the Evidence of the Witnesses.

But, as I have attempted something of this Nature as I went along, and they are also fresh in your Lordships Memory, it does not seem necessary to be making a separate Head of them.

In Gratitude therefore to your Lordships, who have thus honoured me with your Attention, I forbear to descant any farther upon these Letters; and if, in this, I shall be thought by those who sent me hither, to have been remiss in my Duty to them (to whom I own myself accountable), I shall humbly implore their Forgiveness for any Omissions I may have been guilty of in this Service.

This only I will say, upon the Letters, that whatever bodily Infirmities the noble Lord may labour under, yet whoever reads or hears those Letters, and considers the Strength and Energy of the Expressions, dictated by himself, must agree with him in what he intimated to Sir Everard Fawkener, That the Faculties of his Mind were yet intire.

I have now done, my Lords, with stating the Evidence that has been given in Proof of the High-Treason charged in the Impeachment; and I should abuse your Lordships Patience, if (after this) I should attempt to apply it particularly to the several Statutes I took Notice of in the Outset.

Surely, my Lords, I may venture to say, that these Facts (if not answered by the noble Lord) must, in your Lordships Judgment, amount to a full Proof of all the High-Treason with which he is charged; and will abundantly justify me in alluding to that Expression contained in the noble Lord's own Letter to his Son, wherein he boasts "to have done more against this Government than would hang Fifty Lords, and forfeit Fifty Estates."

Thus, my Lords, have the Commons maintained their Impeachment, and supported it (as they think) with a Weight of Evidence suitable to the Dignity of their Interposition.

They think they have sufficiently shewn your Lordships, that this unfortunate Lord was not fit to be trusted to bring his Clan about again, *Et versare dolos*, as he offered to do. On the contrary, they think it appears, that they have properly singled him out, and brought him to this Bar, on their own Prosecution, here to receive your Lordships Judgment for the other Part of the Alternative pointed out by himself.

L. H. S. Gentlemen of the House of Commons, have you any thing farther to offer in Support of your Impeachment?

Sir William Yonge. No, my Lords.

L. H. S. My Lord Lovat, the Gentlemen of the House of Commons have closed what they have to offer by way of Evidence, and in Support of the Charge against you; and now is the Time for you to make your Defence, by making such Observations as you shall think fit, upon the Evidence which has been given against you, and upon what they have offered, by way of Argument, to enforce it. Your Lordship may likewise open your own Evidence, which you have to offer, and call your Witnesses, and pursue your own Method, as you shall think fit; provided it be agreeable to Law, and the Course of Proceeding in such Cases.

Lord Lovat. My Lords, I have already told your Lordships several Times since I came here, that I was very weak and feeble, and really afflicted with a Distemper that made me almost incapable to appear here, if it had not been to shew my Obedience and Respect to your Lordships: And I now humbly beg, that since you are so good as to indulge me to say something for myself, that you will give me Four or Five Days, at least, to recover my Health a little, and to prepare my Evidence. And, my Lords, I have another Thing humbly to propose to your Lordships: There is an Evidence, a very material Evidence for me who is a Member of the House of Commons: I would humbly beg that your Lordships would be pleased to take such Methods as you shall think proper, to make him appear at the Bar, and give his Evidence, which is but Two or Three Words, whatever Day your Lordships please.

L. H. S. My Lord Lovat, as to what you have mentioned, First, in asking for Four or Five Days, to make your Defence, and prepare your Evidence, that is an Interruption of a Trial I have not known; but it is in the Judgment of the Lords what Time they will be pleased to give you. As to what your Lordship hath said, in regard to a Member of the House of Commons being a material Evidence for you, you must be advised by your Counsel (who are to advise you as to Matters of Law, and the proper Methods of Application) in what Manner you are to make Application for that Purpose.

Lord Lovat. My Lord, I will take your Lordship's Advice, and will do so; but it will be impossible for me to appear before you, except I am better in Health.

L. H. S. Gentlemen of the House of Commons, have you any thing to offer, in relation to what my Lord Lovat has now said?

Sir William Yonge. My Lords, Nothing, but to submit it to your Lordships, when you will be pleased to proceed. My Lords, the Time that the Prisoner at the Bar has desired is very extraordinary, and will be very inconvenient: But, my Lords, a reasonable Time the Commons will have no Objection to.

Lord Lovat. My Lords, I am at your Lordships Disposal; I am a Prisoner here, and submit entirely to your Lordships Determination, be it what it will.

The Lord President moved to adjourn to the Chamber of Parliament; and the Lord High Steward going back to his Chair, the House was adjourned accordingly. And then the Lords, and others, returned in the same Order as before.

And the House being resumed in the Chamber of Parliament, Ordered, That a Message be sent to the House of Commons, by Mr. Sawyer and Mr. Mountague, to acquaint them, That the Lord Lovat having requested, that *Normand M^r Leod*, Esquire, a Member of their House, might be examined as a Witness at his Trial, the Lords do desire, that they will give Leave to the said *Normand M^r Leod* to be so examined at the

said Trial: And that their Lordships will proceed further thereupon, in *Westminster-Hall*, on *Wednesday* next, at Eleven of the Clock in the Forenoon.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do take back the said Lord Lovat, and bring him again to the Bar of this House in *Westminster-Hall*, on *Wednesday* next, at Eleven of the Clock in the Forenoon.

Wednesday, the 18th Day of March, 1746.

The SIXTH DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on the First Day, into *Westminster-Hall*, where the Commons and their Managers were in the Seats prepared for them respectively, as before. And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

L. H. S. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes I Lieutenant of the Tower of London, bring forth your Prisoner *Simon Lord Lovat*, to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the Tower brought the Prisoner to the Bar, in the like Form as before; and then he kneeled down.

L. H. S. Your Lordship may rise.

The Lord High Steward asked Leave to go down to the Table: And went accordingly.

L. H. S. My Lord Lovat, your Lordship may now proceed to make your Defence.

The Prisoner then acquainted their Lordships with his great Age and Infirmities, which rendered him, as he alledged, incapable of speaking what he had to offer; and that therefore he had put into Writing what he had conceived, and was advised to say on this Occasion; and which he desired their Lordships would be pleased to permit their Clerk to read at the Bar: And their Lordships permitting it, the same was read by the Clerk, as follows; viz.

My Lords,

IN my unhappy Situation, it is with the highest Pleasure and Gratitude, that I return my Acknowledgements to your Lordships, for the Indulgence you have shewn me, during the Course of my long Tryal: And had I, my Lords, met with any Degree of Justice from those who have appeared as Witnesses against me, it would have been unnecessary for me to have troubled your Lordships with any thing in my own Defence; but as there can be no Security against the Oaths of Persons who are swayed by Malice, or interested by the Hopes of Life, and Fears of Punishment, it becomes necessary for me to trouble your Lordships with a few Observations: First, As arising from the particular Circumstances of my Case; and, Secondly, Upon the Nature of the Evidence that has been produced against me, and the Degree of Credibility which such Sort of Evidence deserves. With respect to the First, my Lords, upon being served with a Copy of the Articles of Impeachment, I immediately applied to your Lordships for an Order to bring up those Witnesses, whom I thought necessary for my Defence: And, considering the complicated Nature of the Treasons charged upon me, and the great Period of Time they were intended to comprehend, it cannot surprise your Lordships, that my List contained Sixty, or thereabouts. But, to my very great Misfortune, uncommon Methods have been used against me, to prevent their Attendance: The ordinary Judges have been divested of their Offices, and obliged to appoint others, who were recommended by the King's Officers to officiate for them: Nay, the ordinary Seats of Justice have been, in my particular Case, forsaken, and new Courts erected, to which Numbers have been forced under the severest Menaces, to attend as Witnesses against me; whilst all whom those new Judges and Rulers, upon their Inquisition, found might be serviceable to me in my Defence, have been overawed and intimidated; so that they durst not attend my Tryal. These, my Lords, are Facts as notorious in themselves, as unprecedented in these Kingdoms; and Facts which I can instantly prove, to your Lordships Satisfaction, partly by Affidavits now in my Hands, and partly by Witnesses of undoubted Credit, who have been brought Five hundred Miles from the Highlands of Scotland, with a View to be examined against me; and who, it is probable, have been laid aside, lest what I now take the Liberty to affirm to your Lordships, should, upon their Examinations, have been made to appear.

My Lords, By these and such-like Methods, have my Witnesses been terrified from appearing; at least, so very few have had the Resolution to venture, that they scarcely deserve to be named, and cannot be material for my Defence, without the Assistance of the others. I am therefore under the hard Necessity to forget yet a little longer the Inconveniencies of a close and tedious Imprisonment, and to stifle that Desire of Liberty which is so natural to me, for some longer time, till, by your Lordships effectual Interposition, I can command the Attendance of my Witnesses; and, of Consequence, justify my Innocence: For, if your Lordships consider, that my very Words and Actions have been made the Subject of a critical Examination, from the Year 1719, my Case must appear extremely hard, and necessarily require a very circumstantial Proof, by Examination of those Persons with whom I have had any Intercourse, from that Period till now: But, if your Lordships should instantly oblige me to proceed upon my Defence, unprepared as I am, I must submit. Locked up a Prisoner in the Tower, I cannot make your Lordships Order effectual against the several Persons in the List I gave in to this Honourable House; and to proceed to Tryal, whilst I am under these Circumstances, has the Appearance of so much Hardship, that I flatter myself it will move your Lordships effectually to interpose, and order some proper Method, by which my Witnesses can be forced to attend; and not suffer a Peer of the Realm to be destroyed, because he can-

not work impossibilities, or oblige me, like the *Israelites* of old, to make Brick without Straw. I must therefore humbly move, and insist with your Lordships, not to introduce a Precedent in my Case, which may be attended with the worst of Consequences to any Lord who shall hereafter be brought to your Lordships Bar. And, indeed, my Lords, I say this not altogether out of a Regard to myself: I am now Four-score Years of Age, have suffered many Changes, and, thank my God, have no unbecoming Fear for any Thing I can yet suffer: I know, by the quick Advances and Frailties of old Age, that, in the Course of Nature, I am hastening to my End; and, by the Favour of the Almighty, I have been long preparing for that great and solemn Change: But this, my Lords, may produce a Precedent that shall prove fatal to many of younger Years. And, surely, your Lordships must be convinced I have the greater Reason to insist on this Demand, upon considering what I propose to lay before your Lordships, in the Second Place, namely, a few Observations upon the Nature of the Evidence, and the Credit that those Witnesses deserve who have sworn against me.

In general, your Lordships have undoubtedly perceived the high Improbability that runs through the whole of *Chevis's* Oath: He, my Lords, takes upon him to swear to Conversations as far back as the Year 1719; and mentions as if I was then engaged in Plots against his late Majesty, at the very Time many of your Lordships know, and that it is notorious, I was highly in his Favour. It might, my Lords, carry the Air of Vanity for me to mention to your Lordships the many particular Services I was thought to have done his Majesty in the Year 1715: But allow me, my Lords, to say, they were Services of such a Nature, as made his Majesty think me entitled to very distinguishing Marks of his Favour, as will appear by several Letters, which, by his Majesty's Orders, I had the Honour to receive from the late Lord *Stanhope*, my great and very worthy Friend: So that, my Lords, *Chevis's* Accounts are even more than improbable; besides, that the minute and particular Manner in which he swears to Circumstances that have happened so long ago, must render his Testimony too suspicious to be believed. And allow me to observe a very remarkable Circumstance, That he has carefully avoided to name any one Man who was present at any one of those Conversations, and could possibly have been brought to confront him, lest the same Providence which detected the Elder, in the Case of *Sufanna*, might have detected *Chevis*. A farther Circumstance your Lordships will also allow me to observe, That it is not to be supposed, that I, or any Man of Common Sense, should have talked so often, and so freely, upon a Subject of that delicate Nature, to a Person, who, if your Lordships can possibly believe himself, was always so openly and zealously affected to the present Establishment. But can your Lordships yet conceive any good Opinion of a Person who voluntarily offers himself as an Evidence to little trifling Conversations, which the only Opportunity he had of hearing was his eating at my Table, when he must have starved at his own, and perished for Cold, unless my Money had furnished him with Cloaths? In Evidence of this, I was, till very lately, possessed of many of his accepted Notes, for greater Sums than I am afraid he is yet able to pay, I having prevailed with a Friend to let me have Money upon them, to supply my present Wants; and I should be sorry if he shall suffer by his Friendship to me.

The next Three Evidences, who have appeared at your Lordships Bar against me, are these infamous Fellows, who call themselves Secretaries; the one, and on this Occasion I name *Murray*, the most abandoned of Mankind, who, forgetting his Allegiance to his King and Country, has, according to his own Confession, endeavoured to destroy both, like another *Catiline*, to patch up a broken Fortune upon the Ruin and Distress of his native Country; To-day stealing into *France* to enter into Engagements upon, your Lordships may believe, the most sacred Oaths of Fidelity; soon after, like a sanguinary Monster, putting his Hand and Seal to a bloody Proclamation, full of Rewards for the apprehending the sacred Person of his Majesty; and, lest the Cup of his Iniquity had not been filled, to turn up all in one, impudently appears at your Lordships Bar, to betray those very Secrets, which he confessed he had drawn from the Person he called his Lord, his Prince, and Master, under the strongest Confidence. Your Lordships will perceive, I have yet forbore to mention the other Circumstances of his having received, since the Battle of *Culloden*, 35,000 *Livres*, which he yet expects to live and riot on; but, my Lords, who can consider the Price of Blood and Treachery, and not bestow that Sort of Pity, which *Murray*, the greatest Criminal, the true Disciple of his Master *Isariot*, calls for? One Thing more, my Lords, I cannot omit; and that is, to take some Notice of the indecent and scandalous Liberty the Wretch has attempted to take, by aspersing a Number of very noble, worthy, and honourable Persons, of whose Innocence your Lordships were so fully persuaded, as to stop him in his Career, lest, like one of *Samson's* Foxes, he should destroy some of the worthiest Members of the Commonwealth. But if, after all that I have said, your Lordships can pay the most distant Regard to this Secretary's Evidence, it is hard to determine how many of his Majesty's other faithful Subjects may escape the licentious Liberty of his Impeachment; for let him once think, that, upon the Multiplicity of his Accusations, his worthless Life depends, and there is no Reason to apprehend any of the most faithful Subjects can boast of a long Security. I will not, my Lords, trouble your Lordships much upon the Objections, to which my Counsel have spoke against the Competence of this Witness; but, if a Desire of Life to so wicked a Person, who must be afraid to die, can be any Inducement to swear falsely, it is apprehended impossible any of your Lordships can give the least Degree of Credit to the Oath of the Villain Secretary *Murray*.

My Lords, the next Secretary I choose to trouble your Lordships with, is *Robert Frazer*, a Person who never had the good Fortune to be worth a Shilling, and whose Veracity and Truth never exceeded his Riches. He, my Lords, has taken upon him to swear to Letters wrote by himself, and many of them not pretended to have been signed by me: Others, my Lords, have neither Date or Direction; and no Sort of Proof has been attempted to be brought by the Managers, where, or in whose Custody, they were said to have been found. How weak an Evidence, therefore, this is to fix so heavy a Charge as High-Treason upon a Peer of this Realm, is humbly submitted. But, my Lords, this Witness has also, to

go through the whole Drudgery of Swearing, framed a very improbable and awkward Tale to your Lordships, of his having found, in a Writing-desk in my House, a Copy of a pretended Patent, creating me Duke of *Frazer*, which, by-the-bye, the Managers have not offered to produce; and I must leave it with your Lordships, whether it is at all likely, that, if I had been possessed of such a Patent, I should have left it so carelessly loose; or that, if I had, this Witness should have been the only Person in my numerous Family to have seen it; for I am not now speaking of the Testimony of the other Witness *Hugh Frazer*. My Lords, is it, or can your Lordships think it possible I could have had the Copy, and not have had the Original? The one was quite as easily sent as the other; and your Lordships all know, that it is a mighty unusual Thing to send Copies of Patents, where Dignities are intended to be conferred. As to the other Part of *Robert Frazer's* Testimony, that relates to his writing for Arms, Powder, and Ball, I am persuaded it cannot make the least Impression upon your Lordships: First, Because he has not deposed to express Quantities; and, secondly, That it might have been so easy for the Managers to have brought a positive Proof, had the Fact been true, by the Persons from whom these Things were said to have been bought; or, at least, by those who carried them to my House, though indeed I can make no manner of Doubt, that had this Gentleman, *Robert Frazer*, thought it material, he would have gone a little farther, and sworn to that, as he is one of those honest Gentlemen, whose Mouth seldom opens, but for their Tongues to lye.

My Lords, I must next trouble your Lordships with *Hugh Frazer*, and again repeat a general Observation, That a Person, himself in the Rebellion, and who did, upon his Oath, declare at your Lordships Bar, That he would give no Evidence, except in Expectation of Life, cannot be reckoned an unsuspected Witness; for, according to the Value which he shall set upon his own Life, must his Evidence be less or more hurtful to me; since, my Lords, Life is the Purchase, and his giving Evidence the only Price. He says, That I shewed him a Copy of the Patent; and yet, long after this pretended Time of shewing, he, my Lords, was the very Person to whom *Murray* declared, he knew nothing of such a Patent. He was also the Person who received those treasonable Letters that have been read against me; and it is not pretended, that after this Interview with *Murray* at *Glasgow*, I ever saw him, or had any Intercourse with him, till I was brought to your Lordships Bar; nor is it laid to my Charge, that I ever received any of those Letters or Commissions, which *Frazer* is said to have brought from *Glasgow*. And here, my Lords, I must repeat the same Observation against *Frazer* of *Dunballech*, who was himself in the Rebellion; and therefore in like manner swearing away my Life to preserve his own.

Many other Particulars, my Lords, I purposely omit, reserving my Observations, till I shall have your Lordships Order to bring up my Witnesses; and then, my Lords, I shall be able to falsify those Particulars, and, indeed, the whole Substance of this heavy Charge against me.

I must, my Lords, beg your Lordships Pardon for taking up so much of your Time. I labour under so many Disadvantages from old Age, and the Decay of the Faculties of the Mind, that it is no Wonder I should make a bad Defence for myself, unassisted either by Counsel or Solicitor; and that so many great and eminent Persons, skilled in the Laws, and Masters of *Ciceronian* Eloquence, have appeared to manage the Prosecution against me. But I hope, in your Lordships Hands my old Life is safe; and that your Lordships, whose noble Blood is like so many Fountains, from whence issue Streams of Humanity, Justice, and Honour, will not, nay, cannot, find me guilty upon the Evidence of such Witnesses as have defiled your Bar, and have no other Method left to expiate their own Crimes, but by laying them upon me: For your Lordships must allow me to observe, that all the Witnesses, except Sir *Everard Fawkenner*, have both their Lives and Estates depending upon their giving such Evidence as may convict me: And even as to Sir *Everard*, he has Judgment enough to know, that, should I be acquitted, he would find it difficult to defend an Action at my Instance, for Reparation of uncommon Wrongs, and Acts of Violence, done by his Order upon my Estate, in cutting very valuable Woods, and appointing Receivers of my Rents; and consequently he has too great an Interest in my Conviction, to be considered or received by your Lordships as an unexceptionable Witness.

My Lords, to me, who am no Lawyer, it appears extremely strange and unreasonable, that *Socii Criminis* should be admitted Witnesses before they are pardoned; but if it is true, that the Law of *England* differs in this respect from the Law and Usage of all other Nations, I should be glad to know, how that Difference has been introduced.—I take it, my Lords, for granted, that it is not by the Force of any Statute; for, I am sure, the great Learning and Ingenuity of the Managers have omitted to mention none that concerns the Case of *Treason*; and, if it is by the Common Law, my Objection is entire, and can only be determined by your Lordships, as in this Case my Jury.

In some Sort of Felonies, my Lords, I remember to have often heard of Statutes which authorise a Proof of that Nature; but, in *Treason*, I never heard of one: And, indeed, the Necessity does by no means appear to me to be the same; for, Because the one is not so common as the other; and 2dly, Because there can be no Room to plead a Penury of Witnesses in *Treason*, which is laid to my Charge: whereas there may in Felonies. Another strong Consideration will naturally occur to your Lordships, that the Revenge or Malice of Power cannot operate in Felonies; but may in *Treason*.

If, my Lords, I should be told, It has been established by Custom, I must beg Leave to say, That, as it seems contrary to Justice and Reason to trust to the Evidence, which an Accomplice unpardoned is to give, it is incapable of being hallowed by Custom; since I am assured, that it is an established Rule, That, unless a Custom is reasonable, and according to Justice, it is void.

But allow me, my Lords, to ask, What Reason can be given, why these confessed Rebels have not been honoured with a Pardon previous to my Trial? If it is that the Government believe, in that Case, they would not swear the Truth, can the Wit of Man invent a stronger Argument why your Lordships, in equal Diffidence, should not believe them when they

they have no Pardon; for, if they are such abandoned Villains (and, in Truth, my Lords, I believe them such) as to perjure themselves after a Pardon, when they can neither gain nor lose by the Evidence they are to give, surely your Lordships ought not to trust them, when their Lives depend upon giving such Evidence as may convict me, who have yet the Honour to be a Brother Peer.

One thing more, my Lords, and I have done; and that is, Should this Sort of Proof be once established, I may venture to say, that *Dalton's* would become greater Nuisances here than ever they were at *Rome*; and that all our noble and ancient Families will be, by degrees, cut off, upon Pretence of *Jacobite* or Republican Plots; since the History, my Lords, of all Ages shews, that Power can make Plots; and fatal Experience proves, that in every Age are Villains ready, like my Three Secretaries, to prove what Power shall hereafter dictate or expect.

Thus far I thought it my Duty, in Vindication of myself, to trouble your Lordships, and, without further trespassing upon your Patience, freely submit my Life, my Fortune, my Honours, and, what is dearest of all, my Posterity, to your Lordships.

Lord High Steward. My Lord Lovat, Do you think fit to call any Witnesses?

Lord Lovat. No, my Lords.

MR. SOLICITOR GENERAL.

My Lords,

THOUGH the noble Lord perseveres in denying the Charge, yet, as he has called no Witnesses, but rests his Defence altogether upon Complaints, Observations, and Objections to the Force and Credibility of the Evidence against him, if I was to follow my own Inclination and Judgment, I should think it unnecessary to say any thing upon a Matter already sufficiently understood.

But I am told by the Opinion of those, whose Opinion is to me a Law, That I shall not do my Duty, nor perform the Part assigned me, unless I close this solemn Trial, by calling back your Lordships Memory and Attention to the principal Grounds upon which we have proceeded; especially as they have now been objected to as insufficient, and complained of as setting an Example, which may be dangerous to Innocence hereafter.

The Gentlemen who manage this Prosecution have, in the Course of it, meant to do Justice to their Trust in such a manner, that the noble Lord at the Bar should feel the Weight of Truth, but not of his Accusers: And it is not to aggravate Guilt, or to press down the Load heavier upon him, that I am at this time commanded to speak; but to satisfy your Lordships now, and the World hereafter, from the Nature of the Evidence by which this Accusation has been supported, why no Part is attempted to be answered.

He has put your Lordships in mind, that the Law requires you, as his Judges, to be his Counsel; which is certainly true: And I am persuaded, Compassion, inseparable from noble Minds, has been ingenious to suggest to your Thoughts, Doubts and Objections, in favour of one standing in that Place, who certainly labours under some Infirmities, and is allowed to defend himself by no other Tongue than his own.

If Scruples have arisen in the Minds of any of your Lordships, they will gain Strength from that Consideration; and the honest Prejudice you must feel from his Want of Assistance, may be of more Advantage to him, than the ablest Assistance he could have had.

It is proper, therefore, it may even be necessary, to endeavour to set the Whole in such a View, as may tend to obviate every Possibility of Doubt.

There are but Two Things for your Lordships Consideration upon this Occasion:

First, Whether the Evidence given is a convincing and legal Proof of the Charge, if it be believed? And next, Whether there be any Reason to induce your Lordships not to believe it?

The only thing, in the Course of this Proceeding, which has not yet been done to satisfy your Lordships with regard to both these Points, is, to apply the particular Evidence that has been given to the principal Overt Acts laid in the Articles of Impeachment.

As this is the only thing which has not yet been done, it is the only thing which I shall attempt to do.

There are Three Kinds or Species of Treason, of which the noble Lord at the Bar stands accused by the Articles:

Compassing and Imagining the Death of the King:

Levying War against his Majesty within the Realm;

And Corresponding, contrary to a late Act of Parliament.

The Two first are Treasons, declared to be so by the Statute of the 25th of *Edward the Third*.

Compassing or Imagining the Death of the King is an inward Thought, or Operation of the Mind; and therefore, as God alone can judge of Thoughts, because He alone can know them, so, for this Kind of Treason, no Man can be convicted, unless he does some open Act, which proves the secret Intention of his Mind. It is not necessary, that the open Act should have an immediate Tendency to take away the natural Life of the King; but any Design to subvert his Government, or to raise War against him, which may, in consequence, draw on his Death, has been long settled to be an Overt Act of this Species of Treason.

In High Treason, for greater Security, the Law requires a formal, as well as convincing Proof; and therefore no Man can be found guilty of High Treason, which is not proved by the Testimony of Two Witnesses. One, let his Credit be never so good, let him be supported by never so many Circumstances, is not sufficient.

But it is not necessary, that Two Witnesses should give Proof of the same Overt Acts: If they give Evidence in Proof of distinct Overt Acts, it is enough, provided they are Overt Acts of the same Species of Treason.

Having mentioned what legal Proof is required (for this was the Law before the 7th of King *William*, and is therefore applicable to the present Occasion), I will state the Overt Acts of each Species of Treason, whereof the noble Lord stands impeached; and apply the Evidence to them.

Of Compassing and Imagining the Death of the King, the principal Overt Acts laid in the Articles are Three:

1st. That he conspired, with several of the King's Subjects, to induce a Foreign Power (the *French*) to invade this Kingdom.

2d. That he corresponded with the Pretender, in order to dethrone the King, and, with that View, solicited, and accepted, a Commission from him to be Lieutenant-General of the *Highlands*; and also solicited and obtained from him a Patent creating him Duke, as a Reward of his engaging in that Design.

3d. That he conspired to raise War and Rebellion against his Majesty within this Realm.

That Conspiring with a Foreign Power to invade the Kingdom is an Overt Act of Compassing the Death of the King, cannot now be doubted.

As to the Proof:

Robert Chevis proves, That, in June 1739, he heard Lord Lovat propose to *William Drummond* of *Bochaldie* the Project of an Invasion;

That, in 1740, he heard him say, There was an Association; and drank Success to it.

Robert Frazer proves a Letter of the 14th of January, 1746, from the noble Lord to his Son, to have been dictated by him, afterwards read over to him, approved of, and sent; in which are these Words:

"I was one of those that entered into a formal Association to venture our Lives and Fortunes to restore the King, and his Offspring; and we signed our mutual Engagements for this Purpose with our Hands, and Seals, and sent it to France to the Cardinal de Fleury, then First Minister of France, by the Hands of Mr. *William Drummond* of *Bochaldie*. The Cardinal was so pleased with it, that he shewed our Engagements and Subscriptions to the King his Master, and begged of his Majesty to support us; and the King desired the Cardinal to assure us of his Protection and Assistance, and Succours to restore our King."

Here are Two Witnesses who give Evidence of that; which is direct Proof against the noble Lord of this Overt Act: But this direct Proof is strengthened by general Evidence.

John Murray of *Broughton* proves, That such an Association and Memorial was sent to the Court of France; and that *William Drummond* of *Bochaldie* was the Person who carried it; he names all who signed it; he was himself carried by this *Drummond* of *Bochaldie* to Monsieur *Amelet*, and introduced as coming from those, who signed, and sent the Association and Memorial: He was received by Monsieur *Amelet* upon that Foot: He had an Answer from the French King to carry to those from whom he came.

This general Evidence is again corroborated by that, which is positive Proof against the noble Lord.

In his Postscript to the Letter I mentioned before, he says, If his Patent of Duke was refused, he would keep to the Oath that he gave to the Gentlemen who first engaged in the Project with him, that he would never draw his Sword till that was done. He mentions Three of the Persons by Name who first engaged with him; so that the general Evidence is supported by this Postscript, as to some of those who signed the Association, and particularly as to Lord Lovat himself.

The Authenticity of this Letter and Postscript don't rest upon the positive Testimony of *Robert Frazer* only; but is supported by the Letter from my Lord's Son, to which this is an Answer, proved to be the Hand-writing of the Son, and to have been found in my Lord's Custody.

There are other Circumstances which give Credit to the Proof of his having entered into the Association, which was sent to France by *William Drummond* of *Bochaldie*.

In his Letter to *Lochiel*, he inquires after Mr. *William Drummond*, as the Man whom he loved, and who loved him best.

Robert Frazer says, Lord Lovat told him, That his Patent was in the Hands of one *Drummond* in France.

And, in his Letter of the 14th of January to his Son, he says, The Patent was sent by *William Drummond*, as a Reward of his having joined in the Association.

The Second Overt Act of this Species of Treason, which I mentioned, was, That he corresponded with the Pretender, in order to dethrone the King, and, with that View, solicited and accepted a Commission from him to be Lieutenant-General of the *Highlands*; and also solicited and obtained from him a Patent creating him Duke, as a Reward of his engaging in that Design.

Tho' Corresponding with the Pretender be made Treason by Act of Parliament, yet Corresponding, in order to disturb the King's Government, is an Overt Act of Compassing the Death of the King; and so it is laid in the Articles.

As to the Proof of this Overt Act:

Robert Chevis heard him, in 1736, send a Message by *Roy Stewart* to the Pretender, with Assurances of his Fidelity, and that he would live and die in his Cause; and charged *Roy Stewart* to expedite the sending over his Commission of Lieutenant-General, and Patent of Duke.

This is corroborated by *Charles Stewart*, who met *Roy Stewart* in 1736 at *Boulogne*, and was told by him, That he was going to *Rouen*; and hoped for a Place under the Pretender, thro' Letters of Recommendation which he carried from Lord Lovat.

Robert Chevis was told by Lord Lovat in 1742, That he had got a Commission of Lieutenant-General, and obtained a Patent.

Robert Frazer saw at *Gortuleg*, among Lord Lovat's Papers, a Commission from the Pretender, appointing him Lieutenant-General. He saw the Copy of a Patent creating him Duke.

He was told by Lord Lovat, after his Escape from Lord *Louden*, That his Patent of Duke was in the Hands of one *Drummond* in France.

Hugh Frazer was told by Lord Lovat, That his Patent of Duke was in *Lochiel's* Hands; and, in November 1745, my Lord shewed him a Copy of the Patent.

In his Letter to *John Murray* of *Broughton*, he refers to his Cousin the Bearer (who was this *Hugh Frazer*) about a Suit he had to make.

John Murray of *Broughton* says, *Gortuleg* explained this to relate to the Patent.

In his Letter to his Son, speaking of the Pretender, he says,

"When he was acquainted with the Association, he gave Mr. *Drummond* a Commission to me of General of the *Highlanders*, which I have."

"Last of all, the King was so good as to give such a singular Mark of his Favour to me and my Family, that he created me Duke of Fraser, and sent me that Patent by William Drummond, of which I have a Copy."

The Original, he says, was left with old Lochiel.

In the Postscript to this Letter, he says,

"Tell your Captain-Lieutenant (Hugh Fraser) I beg of him to remember what I spoke to him about my Patent.—Put all Irons in the Fire.—I ask nothing of his Royal Highness, but to give his Countenance, and own publicly what his Father has done for me; which if he refuse, I must keep to the Oath, &c. never to draw my Sword till it was done."

This is corroborated by general Evidence given by Broughton, and Hugh Fraser: They talked at Glasgow about it: The Packet was not directed till Hugh Fraser should learn from old Lochiel, whether he had such a Patent.

Of this Overt Act there is direct positive Evidence, by the Testimony of Three Witnesses, Hugh Fraser, Robert Chevis, and Robert Fraser, supported by Two more, Charles Stewart, and John Murray of Broughton; and all the Circumstances, which confirm the Authenticity of the Letters.

The Third Overt Act, which I mentioned, of this Species of Treason, was,

That he conspired to raise War and Rebellion against his Majesty, within this Realm.

In his Letter to the Pretender's Son, he says,

"None of your Servants but will do me the Justice to declare, that I am, and always have been, the most zealous and active Partizan your Royal Highness has in the North of Scotland."

In his Letter to John Murray: "For many years past I was the Life and Spirit of the King's Affairs in these Countries," &c.

"I made it my only Business to encourage and keep up the Hearts of the King's Friends."

In his Letter to his Son, he says, "Since that Association, I made it my Business, wherever I was, to promote the King's Interest, and to gain and encourage faithful Subjects to serve him: So that I have done more against this Government than would hang Fifty Lords, and forfeit Fifty Estates."

In the Postscript, "It can be easily proved against him (your Father), that he has done more against the Government than any one of his Rank in Britain."

Hugh Fraser proves, That he said he thought of heading the Frasers himself, as he believed Four or Five thousand Men would have risen; but that was disappointed.

He sent a Message to the Young Pretender, by the Witnesses, That he had intended to have gone at the Head of Four or Five thousand Men, to support his Interest.

When the Witnesses gave him the true State on both Sides, he said he had gone too far to go back.

In his Letter to Lochiel, he says, He had so managed the North, that 6000 Men would have marched South to join the Pretender, had not the Design been frustrated.

Robert Fraser proves, That he made Excuses to Lochiel, Keppoch, and others, for not having joined them publicly: That he made Excuses, after the Battle, to the Young Pretender; and they both embraced.

This is strengthened by general Evidence given by John Murray of Broughton, that, when the Young Pretender landed, a Message was sent to Lord Lovat by Doctor Cameron, and Gortuleg came from him.

And also by general Evidence given by Robert Fraser, that, soon after the Pretender landed, one Cameron came to Lord Lovat, and Gortuleg went to the Young Pretender.

This is strengthened too by most of his Letters; which imply a previous Concert, and Assurances given: They are full of Apologies for his not acting up to that, which, he seems conscious, was expected from him.

His Wavering and Irresolution speak a Mind divided between former Engagements and present Fear.

At first, when he thought Four or Five thousand Men would be raised, he intended to have headed them himself: When that Scheme was disappointed, he neither would join the Rebels himself, nor send his Men. Upon the News of the Battle of Preston-Pans, he resolved his Son should go.

When an Account came of the Landing of the Dutch Forces in England, he resolves his Son should stay, so as to give Occasion to that Expression of his, That one Day undid what another did.

At last, when Lord John Drummond landed in Scotland, with a Body of French Forces, and Assurances of powerful Succours from France, he returns to the Design of sending his Son.

This Conduct, and Fluctuation of Counsels, shew he equally dreaded either breaking former Engagements, when the Attempt wore a Face of Success; or keeping them, when it looked desperate; and gives Credit and Strength to all the direct and positive Evidence, that the Case was so.

Thus this Overt Act is proved by the Testimony of Two Witnesses, Robert and Hugh Fraser, and supported by all the Circumstances which confirm the Authenticity of the Letters.

The Second Species of Treason, whereof the noble Lord stands accused by the Articles, is, Levying War against the King within the Realm.

My Lords, Levying War, properly speaking, and in the Nature of the thing, is itself an open Act, and may be laid as an open Act, of Compelling the Death of the King: It is impossible to consider a Man as levying War, without having done some Act. In Treason there are no Accessories; all who assist are Principals. Tho' a Man should not himself appear in Arms, nor commit any Hostilities with his own Hands, yet if he voluntarily aids, in any Manner, those who are in Arms, and commit Hostilities, he is guilty of levying War.

But tho' levying War be really an Act itself, to be proved by the Hostilities committed, or Assistance given; yet, as the Letter of the Statute of Edward III. requires the Four Kinds of Treason first men-

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tioned in that Act to be made out by open Deed, Overt Acts are always laid of this Species of Treason, tho' generally, they are only Descriptions of the Manner of levying War.

In the present Case, the Articles have pointed out particularly the Manner in which the noble Lord is charged with having levied War. And of this Species of Treason there are Three Overt Acts laid:

First, That he encouraged, by Messages and Letters, the Pretender's Son, and his Adherents, then in Arms, waging War against his Majesty, within this Realm.

Hugh Fraser proves, That he carried a Message from Lord Lovat to the Young Pretender; the Purport of which your Lordships have heard.

Robert Fraser proves his Letters to the Pretender, Lochiel, and John Murray of Broughton.

His Evidence, as to the Letter I last-mentioned, is supported by its appearing to be written in Answer to a Letter of the 31st of October, from Broughton; and Hugh Fraser swears, he brought such a Letter from John Murray of Broughton to Lord Lovat, was privy to the Contents, and gives an Account of them: And John Murray of Broughton proves, That he received this Letter from Gortuleg.

All these Letters are established by the Postscript to his Letter to his Son, of the 14th of January 1746; in which he says,

"I send you inclosed the Four Letters which you should have carried with you from Castle Downy: You may tell the Prince when you deliver the Letter to him."

The Authenticity of this is supported by his Son's Letter, to which this is an Answer.

So that, to this Overt Act, there are Two positive Witnesses, Hugh and Robert Fraser; besides all the Circumstances which give them Credit.

The Second Overt Act of this kind of Treason laid in the Articles, is,

That he sent his Son, at the Head of an armed Force, to join the Young Pretender, and his Adherents, and assist them in the War they were then carrying on against his Majesty, within the Realm.

Robert Fraser proves, That Lord Lovat sent Letters early to Two Heads of different Tribes of the Name, to prepare their Men, in order to join the Master of Lovat:

That he ordered Colours and Bell-Tents to be got ready:

That his Men were twice rendezvoused just by his House, with his Privy:

That he ordered the Witnesses to give them Gunpowder, and delivered him the Key of the Place where it was, for that Purpose:

That he furnished them with Bonnets, Shoes, and Shot.

His Letters to the Young Pretender, Lochiel, Broughton, and the Son himself, shew that he sent his Son, and the Men he led.

Hugh Fraser says, after his Return from the President, Lord Lovat gave his Opinion, that his Son should march with all Dispatch:

That this was his final Opinion, and should not be countermanded.

Robert Chevis proves, That my Lord offered him a Captain's Commission.

Hugh Fraser of Dumballoch says, Lord Lovat asked him what Number of Men he could raise; and said the Master was to head and raise them.—Declared he would send his Son and Clan—Wished himself younger, that he might go and command the Men himself—Blamed his Son's Slowness in raising the Men—Promised Gratuities to the Wives and Children of those who went South to the Pretender, and engaged to support their Families in their Absence.

W. Walker was present at Part of a Dispute between Lord Lovat and his Son, who threw his Cockade into the Fire.

He heard Lord Lovat say to Fraser of Byersfield, "What would you have me do? I am forcing my Son out, the Life of me."

Peter Fraser of Balladrum proves, That when the Men were rendezvoused, the Officers used to go to Lord Lovat, and he bid them go to his Son, their Colonel.

There are more; but I have already named Six Witnesses to this Overt Act, whose Evidence is confirmed by a Variety of Circumstances.

The Third and only other Overt Act of this kind of Treason, which I shall mention, is, That he conspired with many Persons in Arms, how to renew the Rebellion, when it was almost suppressed, and to raise Forces to keep it alive.

John Murray of Broughton proves, That Lord Lovat met at Mortligan, in the Island of Morar, Fifteen of the Chiefs of the Rebels:

That he said 3000 Men would be sufficient; and mentioned 400 Frasers, as the Quota of his Son; and desired Lochiel to answer for his Son.

John Farquhar proves, That he embraced Lochiel's Officers; and said, He did not doubt their getting 7 or 8000 real honest Men, to fight the Elector of Hanover's Troops.

Charles Stewart proves, That 3 or 400 Frasers were proposed as his Son's Quota; and that he desired Lochiel to answer for his Son.

All agree French Money was distributed for the Purpose of raising Men; and that 70 or 80 Louisers were given to a Man belonging to Lord Lovat, for the Frasers.

John Murray of Broughton says, That Four or Five Days after, my Lord talked of sending the Servant who had received the Money, to his Son with it.

So that, to this Overt Act, there are Three concurring Witnesses.

The Third Head of Treason laid in the Articles, which is, knowingly corresponding with the eldest Son of the Pretender, and Persons employed by him, contrary to the late Act of Parliament, I pass over, because the Evidence to support that Part of the Charge is also Evidence upon the Two other kinds of Treason; and, as such, it has already been taken notice of.

All this particular Proof is strongly corroborated, if it wanted any Support, by a general Evidence of Guilt.

Lieutenant Dolymple proves, That Lord Lovat, after he was taken, being asked, how he came to be engaged, said It was in Revenge for the Loss of his Company.

David Campbell asking how he came to be engaged in a thing of this Kind, at his Years, Lord Lovat said, He had been disoblged by taking away his Company.

Sir *Everard Fawkenor* has told your Lordships, that he did not take Pains to deny his Guilt: That he put the Part he had acted upon Representation to the Ministry, for having taken away his Company: That he said, for the Sake of Revenge, he would have joined *Kauli Kan*, had he come.

His escaping after he was first apprehended, the Condition and Place in which he was taken, shew, that he thought his only Safety lay in Flight.

After he was taken, his Declarations to those who took him; his Conversations with Sir *Everard Fawkenor*, well knowing who he was, shew an absolute Conviction, that the Part he had acted was too notorious to be dissembled.

My Lords, This being the Nature and Strength of the Evidence, upon which the Case now in Judgment depends: from the Precedent which may be made upon this Occasion, I little thought to have heard of Danger to Innocence hereafter.

If this were a doubtful Matter, if it were a measuring Cast, the Commons had rather the Guilty should escape, than run a risk of the Innocent being condemned. When they accuse, they desire the Person accused may be convicted upon clear, satisfactory, and unanswerable Proof, or not at all.

The noble Lord at the Bar has complained of many Hardships: Few are the Tryals in which such a Complaint would be so little founded.

He had full Time to prepare for his Defence: At his own Request he has been indulged with Adjournments during the Tryal: He has had all the Advantages of Assistance which could be given, or connived at.

I wish the inflexible Rule of Law, as it still stands in Prosecutions of this Kind, could have allowed him to make his full Defence by others.

The Appearance of a Hardship would have been removed; but, as this Case is circumstanced, the removing that Appearance would have helped the Prosecution much more than the Prisoner.

I speak it feelingly, I had rather reply to the ablest Advocate, than do what my Duty now requires of me. It is painful to the last Degree, to observe upon any thing which has dropped from himself; but some Notice must be taken.

He has laboured to prove, That no Credit ought to be given to the Witnesses against him, because many of them are Accomplices, and speak from the Danger of their Situation.

I will allow, that the Hopes of Life, or the Fear of Death, may have induced some of them to give Evidence upon this Occasion, but not a false Evidence.

The same Hope or Fear is a Security against that: When the Commons accuse, and your Lordships sit as Judges, what Expectation can they have but from their Ingenuity and Veracity? Should they be caught prevaricating, should they be detected in a false Accusation, desperate were their Condition indeed.

But the noble Lord is misinformed, when he says an Accomplice ought not to be believed at all, till he is pardoned: If so, he could not be examined. The utmost Force of the Objection is no more than a Circumstance, to weigh in the Scale against his Credit; but then it must be balanced with the Matter of the Evidence, the Manner in which it is given, the Proof by which it is supported, and that by which it is contradicted.

The Matter here is probable and consistent: Nothing of Consequence rests upon a single Testimony: They who support each other, first told their Stories separately; have never since had an Opportunity of conferring; and therefore could not agree in a Fiction. One perhaps first examined in London, another at *Inverness*, neither knowing what the other had, could, or would say, kept in separate Custodies ever since,-- it is impossible they should unite in the same Falshood.

The Manner too in which they gave their Evidence, carried with it a Degree of Conviction: To instance in one, the Behaviour of *Hugh Fraser* demonstrated what he told your Lordships: He said, if he had no Hopes of Mercy he would not have spoke at all; for if he submitted to be examined, he must speak religiously the Truth.

The visible Agonies, and Anguish of Mind, under which he laboured; the Ingenuity with which he answered the precise Question put to him, without ever going a Syllable beyond it; could not but force Belief to all he said; and shewed he gave the Answer because it was true, but wished not to have given it upon this Occasion.

When he first discovered what he knew, he has told your Lordships, that he thought himself in the Article of Death; and from what he then said he never has varied since.

The Proof by which their Testimony is supported, I have already laid together in one View: To contradict them nothing is offered.

The noble Lord says, the Witnesses who could clear him are not here: Though, in the Course of the Tryal, we heard of his having Witnesses, and what they would prove; he has not had Time enough to bring them;--he complains of their having been prevented: As he has not Witnesses enough, he won't call any.

These are Pretences; but he let fall the true Reason why he has no Witnesses,--There is no making Brick without Straw;--There is no calling Witnesses without Facts;--There is no making a Defence without Innocence;--There is no answering Evidence which is true.

He has not so much as suggested what these Witnesses could prove, if they were here.

I will do him the Justice to believe, that, if he could with Truth, he would not now throw the whole upon the stiff-necked, headstrong Disobedience of his Son--That unhappy Boy is already attainted, and now actually in Custody. Though he might have been made the Scape-goat, if he were out of Reach, yet, in his present Situation, I am sure the noble Lord would not defend his own Life by loading this unfortunate Youth: Much less would he attempt such a kind of Defence, contrary to Truth; for so it must be, if either the Prisoner himself, or our Evidence, is believed.

Would he call Witnesses to prove the Letters which have been read to be forged?--Consider how they are authenticated. To some his Signature still remains--He don't controvert its being like his Hand--

The Bodies are wrote by *Robert Fraser*.--A Letter, unquestionably signed and sent by the noble Lord to his Royal Highness the Duke, was produced. The Body is wrote by the same *Robert Fraser*. The Signature to this, and the Signature which remains to the others, appear manifestly of the same Hand.

One of the most material Letters is an Answer to a Letter wrote by his Son. That too must be a Forgery;--yet it was found in his own Custody. But the intrinsic Evidence of Authenticity is still stronger.

If the Letters are forged, how come they to give the same Account of the Association, and mention the same Persons concerned, as your Lordships have heard from the general Evidence?

If the general Evidence is a Fiction, how could the same Story get into these Letters?

If *Robert Fraser* invented the Letters, how came *Hugh Fraser*, and others, to give the same Account of the Patent and Commission which is to be found in them? If the Patent and Commission never were seen or heard of, how could they be put into forged Letters? But Remarks are unnecessary, where the Case is so plain. I have said thus much, to shew, that the noble Lord's alledging he wants Assistance, or has not his Witnesses, may be of more Service to him, than any Assistance, or Witnesses, he could have; and to shew, that the Commons have not taken upon themselves this Prosecution, to lay the noble Lord at the Bar under any Disadvantages, in his Defence.

From the Witnesses who have been examined, the Case must appear to your Lordships such as no Advantages could have enabled him to get the better of. There are many Circumstances which induced them to single out this Prosecution; many Circumstances of a publick, many of a peculiar Nature. I am almost tempted to mention some of them;--but, in Part, they have occurred to your Lordships in the Course of the Examination; and I refrain, lest I should drop any thing that might tend to inflame. Every thing of that sort has, by every body, been carefully avoided upon this Occasion. That *Ciceronian Eloquence*, as he calls it, from Principles of Justice and Humanity, has not been used against him. Every Gentleman, who has spoke in this Tryal, has made it a Rule to himself, to say nothing against the Prisoner but plain Facts, and positive Evidence, without Aggravation. They have addressed themselves to your Judgment, and not to your Passions. I dare say your Lordships have observed, that, though the Evidence given consists of a Variety of Facts, some more directly affecting the noble Lord, others less, and some, perhaps, not affecting him at all, neither in the Summing up the Evidence, nor in what I have now troubled your Lordships with, has any thing been mentioned as direct Evidence against him, which is not so. Circumstances which only tend to corroborate, have been mentioned in that Light; and Evidence which no way affects him, has not been repeated, or observed upon at all.

My Lords, The Whole is now before your Lordships: It is your Province to make the Conclusion which ought to be drawn from the Premises.

Lord Talbot. My Lords, The Abilities of the learned Manager who just now spoke, never appeared with greater Splendour than at this very Hour, when his Candour and Humanity has been joined to those great Abilities which have already made him so conspicuous, that I hope one Day to see him add Lustre to the Dignity of the first Civil Employment in this Nation. My Lords, I observe one thing in the Defence of the noble Lord at the Bar; which, for the Sake of the Managers for the Representatives of Great Britain, and out of the Regard that I have for their Constituents who deputed them, I think myself obliged to take Notice of.

My Lords, The noble Lord at the Bar, in his Defence, complains I believe, very unjustly, of the Hardships he has suffered, in being deprived of his Witnesses; and, at the same time, mentions, that there are Witnesses of indisputable Credit, who were brought up in order to be Witnesses against him, but who have not been examined by the Managers, for Fear they should, on their Cross-Examination, support those Facts.

My Lords, I therefore now desire, for the Honour of the Gentlemen who are Managers of this Prosecution, that the noble Lord at the Bar may be asked, Whether he is now willing to have those Witnesses produced, and to have them asked any Questions concerning that Matter?

Mr. Attorney General. My Lords, What has been taken Notice of by the noble Lord, and what is desired by him, is extremely irregular, after the Managers have closed and summed up their Evidence; and the noble Prisoner had Liberty and Time given him, in the most indulgent Manner, to make his Defence in such Way as he should be advised. He was pleased to make a Speech to your Lordships, containing a great Variety of Facts, but declined producing any Witnesses; and though called upon for that Purpose, thought proper to acquaint your Lordships, that he should offer none to support those Facts which he had alledged. Your Lordships have, upon that Declaration, been pleased to proceed to hear the Managers Reply.

My learned Friend on my left Hand hath executed that Part with great Justice to the Commands of the Commons, and all that Tender-ness to the noble Prisoner, which was consistent with his Duty. Your Lordships have heard and felt the Weight of it.

The Proceedings are closed, and wait only for your Lordships Opinion. The Managers therefore are surprised to find the noble Lord now calling upon the Prisoner, to examine Witnesses which he did not think proper himself to examine, after the fullest Opportunity of considering it. And it appears by his own Speech, he has had Correspondence with his Witnesses since they came up. The Managers therefore must insist, that your Lordships will proceed to give your Opinion upon the Whole of the Evidence, which is now fully before you.

My Lords, I cannot but take Notice of the Method which the Prisoner at the Bar has taken, of reflecting upon this Prosecution, in his Speech. He has complained in a heavy Manner, and endeavoured to induce your Lordships to believe, that those who have had the Conduct of this Prosecution, have been using undue Methods, either to get Witnesses to support

support the Charge, or to prevent him from having any Witnesses in his Defence. If the Prisoner at the Bar could have made out any thing of this kind, your Lordships would certainly have heard it here, in Evidence; for his not doing it could not be out of Deference to the Commons, or to your Lordships, or to his Majesty.

He has represented as if a new Method was taken, of erecting uncommon Courts of Justice, to compel some Witnesses to give Evidence on one Side, and deter others from doing it on the other. My Lords, it is indecent to lay Reflections of this Kind before your Lordships, in this Manner. Is the noble Lord at the Bar now to say, I could have Evidence, if I had an Opportunity of producing it; and if your Lordships will give me Time, I will prove all that I have said? My Lords, what has he been doing ever since the Articles were exhibited? Who are the Persons he could now examine? Many of his Witnesses, he has said himself, are come up; has he made any Use of them? Have they been examined at your Lordships Bar? On the contrary, did not the Prisoner say, he would produce no Witnesses? Yet, says he, I will reflect upon the Proceedings; and say, that I could have Witnesses, if I had Leave and Time to produce them.

My Lords, a Prisoner who is tried for his Life, may think he has a Right to say any thing; how false, how unjust soever: But it is incumbent on your Lordships to prevent the Effect of such Reflections, to do Justice to all Parties, to the Government, the Commons of Great Britain, and the Managers. The Prisoner seems to have Hopes, that your Lordships may be prevailed upon, by this Means, to believe, that there is some Truth in what he says. Your Lordships Indulgence now, of further Time, on this Pretence, would give some Colour to that Suggestion; and it will be imagined, that it was believed by your Lordships. I call upon the Prisoner himself, to declare, whether your Lordships did not indulge him with an Opportunity of calling any Witnesses, even those brought up on the Part of the Managers, on his giving them Notice for that Purpose? If your Lordships should now, upon what has been said by the noble Lord, which I do not doubt but he said from the great Regard he has to Justice, and from his Compassion for a Person appearing in the Circumstances of the Prisoner: I say, my Lords, if upon such a Suggestion your Lordships should now call again upon the Prisoner to produce his Witnesses, it will be giving Credit to that false and injurious Insinuation: And I hope your Lordships will not give Colour to imagine it was believed by You, by giving Leave to the Prisoner now to call Witnesses for that Purpose.

Lord High Steward. Have you done with your Evidence on both Sides?

Lord Lovat. My Lords, I am an unfit Person to say any thing after that great Man that has spoken last; but, since I am now upon my Tryal for my Life and Fortune, I must tell your Lordships what is really Fact, though, perhaps, it may not be pleasing to that great Man. That there is not one Syllable of what he has said true. My Lords, it is certain, that I got your Lordships Order for bringing up Sixty Witnesses to this Place; and it is certain that I sent a Gentleman, who was once allowed to be my Solicitor; and, though I was robbed of my whole Money, and did not get a Farthing out of my Estate since I was taken Prisoner, yet I had Interest enough to get 500 l. from Mr. Ross, which was given to this Man, to bring up my Witnesses. My Lords, he came there to Inverness, and found all the Witnesses that I had named to him were very ready to come up; but I was extremely surprised to find, that there was a new Court, besides the Court of the House of Peers, a little Depute of the Sheriffs, that took upon him to leave the common Place of Justice in the Tolbooth at Inverness, and to go to a private Place in the Suburbs, and there to erect such Courts as he thought fit; and there he examined what Witnesses he pleased; and those which he thought Friends to me were some of them put into Prison, others overawed and terrified, and others chased out of their Houses, their Houses burnt, and their Cattle taken away, and most of the rest obliged to go to the Highlands, and threatened to be undone, if they came to be Evidence for me. My Lords, after my Friend, that was sent to bring up my Witnesses, used all his Endeavours, and offered to bear their Expences, and to keep them, he could not get them to come up, because there was an Influence used by the General Officers in his Majesty's Service, and Persons sent up and down the whole Country, to threaten Part of the Witnesses, and to bribe others of them: So that, my Lords, though I am no Lawyer, nor Orator, as the learned Gentleman on my left Hand is, yet I heard from a very great Man, that this was a Precedent which never happened in Scotland, and, he believed, not in England; and he said to me, That it was most certain the Lords would take notice of it, because the Affront had been done to themselves. My Lords, after I was arraigned before your Lordships, and that the House of Commons had brought up Articles against me, that your Lordships would not allow any little Court of Inquisition to go afterwards, and to judge my Cause, as it were, before your Lordships. Therefore, my Lords, it is simply impossible for me to make my Defence, while I am not allowed the Witnesses that your Lordships ordered for me. That what I say myself is true, there are two Affidavits here of it, if your Lordships please to let them be read by the Clerk.

Lord High Steward. My Lord Lovat, By our Law, Affidavits cannot be read as Evidence upon a Tryal: You must call Witnesses to prove the Facts. But I would ask your Lordship the Name of that Agent, whom you sent down into Scotland to bring up the Witnesses, and who gave you this Information?

Lord Lovat. His Name is Hugh Fraser.

Lord High Steward. My Lord Lovat, I must put your Lordship in mind, that you made Three Applications to the House of Lords, by Petition, to put off your Tryal: The first was on the 19th of February, and the others on the 2d and 3d of March. One of those Petitions was supported by an Affidavit made by one Hugh Fraser: Was that the same Hugh Fraser, whom you sent, as your Agent, into Scotland?

Lord Lovat. Yes, my Lord, it was.

Lord High Steward. Then, my Lord, there is another Affidavit annexed to your Petition to put off the Tryal, on the 3d of March, which

is the Affidavit of George Ross. Now, in neither of these Petitions, though one of them is supported by the Affidavit of Hugh Fraser, whom you admit to be the Person you sent into Scotland to summon your Witnesses, is there any Allegation of any undue Practices, or any Restraint upon your Witnesses. How comes it to pass, when this Hugh Fraser came back from Scotland, and made an Affidavit to support the Petition to put off your Tryal, that this Complaint was not made then?

Lord Lovat. My Lords, In the first place, it could not be done before, because they went upon these Methods but just before Hugh Fraser came up. I have a Minister of the Gospel, a very honest and worthy Man, whom they designed to make an Evidence against me; and, I believe, he will tell the Truth upon the Subject of the Hardships done to my People, to keep them from coming up here to be Evidences; I mean my Tenants.

Mr. Noel.

My Lords,

I DID not intend to have troubled your Lordships at all, not finding the noble Lord at the Bar had, in his Defence, made it necessary for me to take any Part in the Reply; since what he has said (if it had been more material than the Nature of it appears to be), he hath said unsupported by any Evidence at all; and the noble Lord very well knows, that, in every Court of Justice, a Prisoner is not expected to make his Defence by what he thinks fit to say himself; but he must support it by Evidence, or it can have no Weight in Answer to the Evidence produced to support the Charge against him; and, my Lords, it was for that Reason that I did not trouble your Lordships in that Part of the Case, which hath been so amply, minutely, and accurately gone through by my learned Friend, who has spoken to it. But, since the noble Lord has irregularly mentioned several Matters since the Reply was closed, I shall take the Liberty to make some Observations upon what he has insinuated upon.

My Lords, the noble Lord at the Bar has made it Matter of Complaint to your Lordships, as if particular Methods of Practice had been used, to prevent his Witnesses coming up to appear in his Behalf. Your Lordships will give me Leave to say, that such Allegations ought to be considered as the highest Injustice, when his Lordship has not called one single Witness to the Truth of them, or to his own Defence. My Lords, this Affectation of saying Things, without supporting them by any Proof, after hearing the Reply of the Commons, and the summing up of the whole Proceeding, is a Method which was never known to be endured in any Proceeding by way of legal Tryal. My Lords, it is extremely easy for any noble Peer upon this Occasion, when he stands to be tried for his Life, and has no Defence to make, nor no Witnesses to produce; it is easy, I say, my Lords, to throw in Matters by way of Calumny; but your Lordships will not endure it, unless it is made at a proper Time, and supported by proper Evidence.

My Lords, I am the more surprised at this from the noble Lord at the Bar, because, whatever he may think of it, this I will say, that I know of no Instance in any Case where a Prisoner has been more fairly dealt with, or used with more Candour and Humanity on the Part of those, whose Business it is to make but the Charge against him, not on the Part of those, by whom he is to be tried: And it is the more extraordinary, because, if I am not mistaken, till this very Day, he has declared to your Lordships, that he had Numbers of Witnesses ready to produce, who would falsify every Fact which has been alledged against him.

My Lords, I will take notice, now I am up, of another Objection made by the noble Lord to some of the Witnesses that have been produced against him. My Lords, it is a known Objection; it has been often made, and as constantly over-ruled.

The noble Lord says, Some of the Witnesses are Persons interested; that they are criminal, as Accomplices in this Rebellion; and therefore ought not to be believed. Your Lordships will give me Leave to suggest, whether the laying down that as a Rule would not be of very ill Consequence, and, in effect, secure the most wicked Offenders from all Possibility of Punishment and Justice. My Lords, it is from a Principle of right Reason, and absolutely necessary to the Preservation of Government, that those who are concerned with them, should have Liberty to do Justice to the Publick by their Testimony. It is so in all Cases of Robbery, Murder, and other Felonies, and much more in Cases of Treason, where the Whole is in Danger. My Lords, if this was not so, the very End of Government would fail in every Particular, if those who are concerned, and best able to discover the Truth, are not allowed to give Testimony, for the sake of preserving the Nation. But, my Lords, in the present Case, I don't recollect any material Fact against the noble Lord at the Bar, but what has been proved by every Witness *visu voce*, and by every Letter that has been read, wherein not only his corresponding and treasonable Engagements have been made appear, but he has expressed himself, almost in every Letter, as manifesting the Glory he took, and Zeal he shewed, in that wicked Service, which he is proved to be engaged in to the last.

My Lords, we have nothing now to do, but to expect your Lordships Opinions upon the Evidence and Facts that have been laid before you; and in Contradiction to which, there is not one single Evidence produced by the noble Lord.

Here the Prisoner offered to speak.

Lord High Steward. My Lord Lovat, My Lords will be ready to hear every thing that you can offer, which is material for your Defence; but I must acquaint you, That the Commons, by the constant Rules of Proceeding in Cases of this Kind, are intitled to the last Word.

Lord Lovat. My Lords, I am far from blaming the Honourable Managers for the Commons, tho' they prosecute me with great Warmness, and especially the Man at their Head, who was, some time ago, my Friend and Acquaintance. But, my Lords, whatever they were pleased to object against me, as I was forced to speak for myself, I was obliged to answer; and my Lords, since I asked the Favour of this House to force up my Evidence in the Manner they thought fit, your Lordship saying, That no Affidavit was good upon the Subject, my Lords, I have Two very good Witnesses, one a very Reverend Minister of the Gospel, that will prove the

the most extreme Hardships that ever were imposed in this Country, to hinder my Witnesses from coming up to me; so that, if your Lordships do not, in your great Justice and Goodness, think it proper to order, in the Manner your Lordships please, to have my Witnesses come up, I must submit to your Lordships. You may do what you please.

Lord High Steward. My Lord Lovat, I particularly asked your Lordship, Whether you would call any Witnesses to prove what you alledged in your Defence: To which you answered, That you would not.

Lord Lovat. My Lords, I would call Witnesses upon no other Account than this that I have mentioned: I have Witnesses to prove the Falsity of what has been said by the Witnesses against me; but, since I do not get Time to do that, I give it up.

Lord High Steward. Your Lordship does not attend to what I said, which was, That I asked you Two or Three times, Whether you would call any Witnesses to prove any Part of your Defence: To which you said, No. If you had any Witnesses, why did you not call them at that Time?

Lord Lovat. This Minister was brought up as one of the Counter-Evidence. I told your Lordship, That I would call no Witnesses that Day.

Lord High Steward. Is that Minister here?

Lord Lovat. He is here.

Lord High Steward. Gentlemen of the House of Commons, It is certainly an irregular Method, in which the noble Lord at the Bar would proceed, to call Witnesses after the Reply; but I desire to know of you, Whether you oppose my Lord Lovat's calling Witnesses now?

Mr. Attorney General. My Lords, It is a Difficulty upon us, who are appointed Managers, to carry on this Prosecution, and would do it with all the Candour and Indulgence possible, to insist, That the noble Lord, who is trying for his Life, should not now be admitted to produce Witnesses; but it is, perhaps, as difficult to know, how to dispense with that which is the known Course and Method of Proceedings, merely because the Prisoner, in an irregular and improper Manner, thinks fit to desire it. The Managers do not oppose their being produced, from an Imagination that they would say any thing material for the noble Lord at the Bar; but, if your Lordships are to break through all Methods and Rules of Proceedings, your Lordships will consider the Consequence. The noble Lord at the Bar told your Lordships, That he did not intend to call any Witnesses; and, upon that Foot, the Managers replied. He has now told you, That he would do it. But what is it that he would examine them to? Is it to make out any Part of his Defence to the Treason charged on him? That is not pretended; but to prove the Hardships he complains of, in being hindered from having his Witnesses; and the noble Lord at the Bar wants your Lordships Order now for their coming. The Tendency of this, if it means any thing besides Complaint, is to put off the Cause after it is heard; and, unless I had a greater Authority than I have at present, I cannot take upon myself, and I do not find that the rest of the Gentlemen, who are Managers, can take upon them, to depart from the known established Course of Proceeding, and to introduce a Precedent that may be of bad Consequence. And, my Lords, I can hardly think, that the noble Lord at the Bar would insist upon doing it, but because he thought, that the Managers must insist, that he ought not. There is nothing that has occurred now, that did not, must not, have occurred to him before; and when the Prisoner thought fit to declare to your Lordships, after having full Time allowed him for the maturest Consideration, and Counsel appointed for his Assistance, That he would not call any Witnesses, you cannot but think such Determination of his was upon the Advice that his Counsel gave him; and your Lordships will hardly think, that the noble Lord can, at present, thus unadvisedly determine to call any Witnesses, which before, upon the Foot of the Advice he must be presumed to have taken, he determined not to do, from any Expectation that they would be able to do him any real Service, but from Views of another Kind. The Managers therefore doubt not that your Lordships will proceed in this Case, as you would in any other, to consider the Evidence, and give such Judgment on the Whole, as your Lordships shall think most right and just.

Lord Lovat. My Lords, I have often told your Lordships of the Infirmities that I labour under: I have often mentioned them to you; and the Want of Memory is the thing I regret most. I have been a Cripple these Four Years, and therefore not very capable to go to head Men in the Rebellion; yet I am much surprised to hear that Honourable Person, that is at the Head of the Law, and very deservedly placed there, that he should lose his Memory in an Hour's Time. My Lords, the Reason is plain to your Lordships, why I did not adduce Witnesses this Morning: The Reason was, because I begged of your Lordships Time to bring my Witnesses up from Scotland, that they might be produced to prove my Innocence; and the only Reason that I now desire to call these two Witnesses, if your Lordships please, is, that they may prove before that great Man such Examples of extreme Hardships, as he will never find out in all his Law-Books.

Lord High Steward. My Lord Lovat, You mentioned but One Witness at first; and now you mention Two: Who is the other?

Lord Lovat. The Two are, *Donald Fraser* and *Alexander Fraser*.

Lord High Steward. Gentlemen of the House of Commons, Do you oppose my Lord Lovat's being admitted, though it is irregular, to call these Two Witnesses?

Mr. Attorney General. My Lords, I think we cannot, consistently with our Duty to the Commons, give up this Point, which would be attended with many dangerous Consequences, the whole of which your Lordships may not now be able to foresee, if a Man, when he has closed his Defence, and says, That he will examine no Witnesses, and the Managers have replied, should afterwards be admitted, on such a Pretence as this, to examine Witnesses.

Earl of Cholmondeley. My Lords, I am satisfied that the Manner, in which the noble Lord at the Bar desires now to call his Witnesses, is totally different from any Proceeding that I ever saw; but, as the accused Lord, in his Defence, has alledged several Hardships that he has undergone, in having his Witnesses prevented from attending his Trial, and as that contains the highest Reflection upon the Government, and those who are employed under it, I would therefore desire to know of the noble

Lord at the Bar, Whether, upon the Speech that he offered at the Bar, as it contains Objections to the Credit and Weight of the Evidence, and Complaints of undue Practices; whether, upon those Complaints, the noble Lord at the Bar desires the Opinion of the Lords, whether they will give him further Time, in order to produce his Witnesses?

Lord Lovat. My Lords, I was fully determined never to examine any Witnesses, when I found I was under such Disadvantages; and I humbly beg your Lordships Protection and Kindness to give me Time.

MR. SOLICITOR GENERAL.

My Lords,

THE Matter now agitated is of the utmost Consequence not only to the present, but to all future Proceedings of this Kind; and I doubt, whether it is yet thoroughly understood, in its full Extent.

The Witnesses the noble Lord now proposes to call, are not to his Defence, or in Support of his Innocence.

If they were, how irregular soever it may be to offer them now, in my Opinion, and, I dare say, the other Managers are of the same, I should be for consenting to their being called. We should never contend, though in Strictness we might, that any Evidence of this Kind came too late to be heard.

But the Design of calling them, as now opened, is to shew, that, from some Obstruction given to the bringing up his Witnesses, his Trial ought to be put off to an indefinite Time; and that he may have new Orders to summon and compel Witnesses to come from Scotland. This we oppose, because the Application intended to be supported by it cannot now be made.

The Speech made by my Lord consisted of Two Parts: First, a Desire to put off his Trial indefinitely; and, if your Lordships should not think fit to comply with this Desire, then he rested his Defence upon Observations, and Objections to the Force and Credibility of that Evidence which had been offered to prove his Accusation.

In this he was very proper; for though a Person accused calls no Witnesses, yet, if the Charge against him is not clearly made out by legal and credible Evidence, he ought to be acquitted. Being asked, whether he had any Witnesses to call, he declared he had none.

Had he desired to take your Lordships Opinion, whether the Trial should not stay till he could send to Scotland for Witnesses, we should have opposed it. Your Lordships calling to the Managers to proceed, was a Determination, that you would not deliberate about staying the Trial.

I own freely to your Lordships, the Reason why I did not take particular Notice of the noble Lord's Complaint, was, because I understood it to be meant as an Artifice to palliate his not going into any Evidence: And I did not think it necessary, I did not care, to endeavour to wipe off from his Apology any Varnish of this Kind with which he thought fit to colour it. One thing, had I thought of it, I would have taken notice of: He was pleased to say, that several Witnesses, brought up in Support of the Prosecution, were not called by the Managers, because they would have proved the Hardships he complains of. I can assure your Lordships, and every other Gentleman of the Committee will join in what I say, no one Witness was left unexamined for that Reason. It is true, more Persons were brought up to be Witnesses than we called; but the Reason of not calling them was, either because we thought what they had to say not material enough; or else, because they were liable to an Objection the noble Lord had made; which, whether well or ill founded, we did not care to give your Lordships the Trouble of disputing.

In consequence of what fell from your Lordships, we told the noble Lord, in the Course of the Trial, that any Witness examined by us should attend to be examined by him, if he desired it, and would give Notice: We should have done the same with regard to any Person brought up as a Witness, tho' not examined.

As to this whole Matter of Complaint, the Managers are intire Strangers to it. Nothing of that Kind has been done with their Privy or Knowledge.

And this brings me to the Point, Whether Witnesses shall now be heard at this Time, to prove any such Ground for putting off the Trial *fin Die*.

We oppose it, because, true or false, the Trial cannot now be put off; and it would be a most dangerous Precedent, to go into an *Ex parte* Examination of such collateral Matters. Hearing the Evidence supposes your Lordships can do something in Consequence of it: If you cannot, it would be irregular and improper to go into it.

Before your Lordships appoint the Time of Trial you take into Consideration the Nature of the Charge, and the Place where the Facts arise, in order to allow a reasonable Time for Preparation, and bringing Witnesses.

Your Lordships did so in the present Case; and, after weighing all Circumstances, you appointed the 23d of February.

If, thro' any Accident, the Time fixed is too short, your Lordships are always open to Applications, which must be supported by Evidence, to shew the Delay is not affected; that all due Diligence has been used; and that the Witnesses are material, and expected to come within a certain Time.

Upon the Application of the noble Lord, your Lordships deferred this Trial to the 5th of March.

Upon another Application by him, you deferred it to the 9th of March, the Day named in his Petition.

If he had any Ground sufficient for deferring the Trial longer, he should have applied to your Lordships before it began; but, upon the Ground now mentioned, it could not have been deferred, even in that Way, because it is plain, this Matter, whatever there be in it, was within his Knowledge, at the Time of the other Applications. *Hugh Fraser*, his Agent, who went down, as his Lordship says, to bring up his Witnesses, made an Affidavit, annexed to a Petition presented by his Lordship on the 2d of March, for putting off the Trial; and was called in, and examined at your Lordships Bar.

There was likewise an Affidavit annexed to his Lordship's Petition, presented on the 3d of March; and not a Syllable of this Complaint was suggested; which shews, that they thought no Strefs could be laid upon

it; and that it was not to be supported. In the Course of the Trial hitherto your Lordships have heard nothing of it; on the contrary, you have heard of his Witnesses, and what they were to prove.

There is no Precedent of putting off a Trial indefinitely, after the Evidence for the Prosecution is closed; I dare say there never will be such a Precedent. At soonest this Trial could not come on again before the next Session of Parliament.

We oppose the attempting to prove a Matter upon which your Lordships cannot now do any thing; but I desire it may be understood, that we do not oppose, tho' it be at an improper Time, the calling any Witnesses upon the Merits of his Defence, either to disprove the Evidence against him, or to assert his own Innocence.

Then the Duke of Newcastle moved to adjourn to the Chamber of Parliament: And the Lord High Steward going back to his Chair, the House was adjourned accordingly: And then the Lords returned in the same Order as before.

After some Time, the Lords, and others, returned into Westminster-Hall, in the same Order as usual; and the Peers having taken their Places, and the Lord High Steward being seated in his Chair, the House was resumed.

Then Proclamation was made for Silence, as usual.

L. H. S. Lieutenant of the Tower of London, take the Prisoner from the Bar; but you are not to take him away to the Tower yet.

Lord Lovat. If your Lordships would send me to the Highlands, I would not go to the Tower any more.

[The Prisoner was taken from the Bar accordingly.]

L. H. S. Your Lordships have heard and considered the Evidence in this Cause, and every thing that has been alleged by the Managers for the House of Commons, and by the Prisoner. The solemn and established Method of your Proceedings requires, that I should ask your Lordships Opinions severally upon the Question, Whether the noble Lord the Prisoner is Guilty of the High-Treason whereof he stands impeached, or Not Guilty; and that those Opinions should be given in the Absence of the Prisoner. My Lords, this has always been your Rule; and after that is done, the Prisoner is to be brought to the Bar again, and to be acquainted by me with the Result of those Opinions. Is it your Lordships Pleasure to proceed now to give your Opinions upon the Question of Guilty, or Not Guilty?

Lords. Ay, ay.

Proclamation was then made for Silence, as before.

Then the Lord High Steward stood up uncovered; and, beginning with the youngest Peer, said,

L. H. S. Henry Arthur Lord Herbert of Chirbury, What says your Lordship? Is Simon Lord Lovat Guilty of the High-Treason whereof he stands impeached, or Not Guilty?

Whereupon Henry Arthur Lord Herbert of Chirbury, standing up in his Place uncovered, and laying his Right Hand upon his Breast, answered, Lord Herbert. Guilty, upon my Honour.

In like Manner, the several Lords aftermentioned, being all that were present, being respectively asked the same Question, answered as followeth:

Samuel Lord Sandys. Guilty, upon my Honour.
 Richard Lord Edgcombe. Guilty, upon my Honour.
 Stephen Lord Ilchester and Sturges. Guilty, upon my Honour.
 Henry Lord Montfort. Guilty, upon my Honour.
 William Lord Talbot. Guilty, upon my Honour.
 Robert Lord Raymond. Guilty, upon my Honour.
 John Lord Monsen. Guilty, upon my Honour.
 Matthew Lord Ducie. Guilty, upon my Honour.
 Charles Lord Cadogan. Guilty, upon my Honour.
 Robert Lord Romney. Guilty, upon my Honour.
 Richard Lord Onslow. Guilty, upon my Honour.
 Allen Lord Bathurst. Guilty, upon my Honour.
 Samuel Lord Masham. Guilty, upon my Honour.
 Thomas Lord Trevor. Guilty, upon my Honour.
 Francis Lord Middleton. Guilty, upon my Honour.
 Buffy Lord Mansell. Guilty, upon my Honour.
 George Lord Hay. Guilty, upon my Honour.
 James Lord Somerville. Guilty, upon my Honour.
 George William Lord Hervey. Guilty, upon my Honour.
 Charles Lord Cornwallis. Guilty, upon my Honour.
 John Lord Berkeley of Stratton. Guilty, upon my Honour.
 John Lord Ward. Guilty, upon my Honour.
 William Lord Byron. Guilty, upon my Honour.
 Thomas Lord Leigh. Guilty, upon my Honour.
 James Lord Strange. Guilty, upon my Honour.
 Charles Lord Maynard. Guilty, upon my Honour.
 John Lord St. John of Bletsoe. Guilty, upon my Honour.
 Francis Lord North and Guilford. Guilty, upon my Honour.
 Hugh Lord Willoughby of Parham. Guilty, upon my Honour.
 Edward Lord Wentworth of Nettlested. Guilty, upon my Honour.
 Richard Lord Willoughby de Broke. Guilty, upon my Honour.
 Ferdinando Dudley Lord Dudley. Guilty, upon my Honour.
 John Lord Delawar. Guilty, upon my Honour.
 James Viscount Leinster. Guilty, upon my Honour.
 George Viscount Torrington. Guilty, upon my Honour.
 Simon Viscount Harcourt. Guilty, upon my Honour.
 Hugh Viscount Falmouth. Guilty, upon my Honour.
 John Viscount St. John. Guilty, upon my Honour.
 Henry Viscount Londale. Guilty, upon my Honour.
 William Viscount Hatton. Guilty, upon my Honour.
 Charles Viscount Townshend. Guilty, upon my Honour.
 Thomas Viscount Fauconberg. Guilty, upon my Honour.
 Richard Viscount Say and Seale. Guilty, upon my Honour.
 John Earl of Buckinghamshire. Guilty, upon my Honour.
 Francis Earl Branks. Guilty, upon my Honour.
 Hugh Earl Clinton. Guilty, upon my Honour.

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Thomas Earl of Leicester. Guilty, upon my Honour.
 John Earl of Portsmouth. Guilty, upon my Honour.
 William Earl of Bath. Guilty, upon my Honour.
 Robert Earl of Orford. Guilty, upon my Honour.
 Thomas Earl of Effingham. Guilty, upon my Honour.
 John Earl of Ashburnham. Guilty, upon my Honour.
 Benjamin Earl Fitzwalter. Guilty, upon my Honour.
 James Earl Waldegrave. Guilty, upon my Honour.
 Robert Earl Ker. Guilty, upon my Honour.
 William Earl Graham. Guilty, upon my Honour.
 Thomas Earl of Pomfret. Guilty, upon my Honour.
 George Earl of Macclesfield. Guilty, upon my Honour.
 Philip Earl of Harborough. Guilty, upon my Honour.
 Philip Earl Stanhope. Guilty, upon my Honour.
 William Earl Cowper. Guilty, upon my Honour.
 George Earl of Halifax. Guilty, upon my Honour.
 John Earl of Granville. Guilty, upon my Honour.
 Charles Earl of Tankerville. Guilty, upon my Honour.
 William Earl of Strafford. Guilty, upon my Honour.
 Laurence Earl Ferrers. Guilty, upon my Honour.
 Edward Earl of Oxford, and Earl Mortimer. Guilty, upon my Honour.

Charles Earl of Portmore. Guilty, upon my Honour.
 James Earl of Findlater and Seafield. Guilty, upon my Honour.
 James Earl of Moray. Guilty, upon my Honour.
 George Earl of Cholmondeley. Guilty, upon my Honour.
 Francis Earl of Godolphin. Guilty, upon my Honour.
 John Earl Powlett. Guilty, upon my Honour.
 William Earl of Jersey. Guilty, upon my Honour.
 William Earl of Coventry. Guilty, upon my Honour.
 William Henry Earl of Rochfort. Guilty, upon my Honour.
 George Earl of Warrington. Guilty, upon my Honour.
 Robert Earl of Holderness. Guilty, upon my Honour.
 Baptist Earl of Gainsborough. Guilty, upon my Honour.
 Willoughby Earl of Abingdon. Guilty, upon my Honour.
 Augustus Earl of Berkeley. Guilty, upon my Honour.
 George Henry Earl of Lichfield. Guilty, upon my Honour.
 Anthony Ashley Earl of Shaftesbury. Guilty, upon my Honour.
 Richard Earl of Burlington. Guilty, upon my Honour.
 Francis Earl of Doncaster. Guilty, upon my Honour.
 Henry Earl of Carlisle. Guilty, upon my Honour.
 George Earl of Cardigan. Guilty, upon my Honour.
 Philip Dormer Earl of Chesterfield. Guilty, upon my Honour.
 Daniel Earl of Winchelsea and Nottingham. Guilty, upon my Honour.
 Harry Earl of Stamford. Guilty, upon my Honour.
 Charles Earl of Peterborough and Monmouth. Guilty, upon my Honour.

John Earl of Westmorland. Guilty, upon my Honour.
 Edward Earl of Warwick and Holland. Guilty, upon my Honour.
 Henry Earl of Lincoln. Guilty, upon my Honour.
 Henry Earl of Pembroke and Montgomery. Guilty, upon my Honour.
 Thomas Marquis of Rockingham. Guilty, upon my Honour.
 William Marquis of Lothian. Guilty, upon my Honour.
 John Marquis of Tweeddale. Guilty, upon my Honour.
 Henry Duke of Chandos. Guilty, upon my Honour.
 Robert Duke of Manchester. Guilty, upon my Honour.
 William Duke of Portland. Guilty, upon my Honour.
 Thomas Duke of Newcastle. Guilty, upon my Honour.
 Evelyn Duke of Kingston. Guilty, upon my Honour.
 Peregrine Duke of Ancaster and Kesteven, Lord Great Chamberlain. Guilty, upon my Honour.
 Archibald Duke of Argyll. Guilty, upon my Honour.
 John Duke of Montagu. Guilty, upon my Honour.
 John Duke of Rutland. Guilty, upon my Honour.
 Thomas Duke of Leeds. Guilty, upon my Honour.
 Charles Duke of Bolton. Guilty, upon my Honour.
 Charles Duke of St. Albans. Guilty, upon my Honour.
 Charles Noel Duke of Beaufort. Guilty, upon my Honour.
 Charles Duke of Richmond. Guilty, upon my Honour.
 Charles Duke of Grafton, Lord Chamberlain of his Majesty's Household. Guilty, upon my Honour.

William Duke of Devonshire, Lord Steward of his Majesty's Household. Guilty, upon my Honour.
 Lionel Cranfield Duke of Dorset, Lord President of the Council. Guilty, upon my Honour.

Then the Lord High Steward laying his Right Hand upon his Breast, said, Lord High Steward. My Lords, I am of Opinion, That Simon Lord Lovat is Guilty of the High-Treason whereof he stands impeached, upon my Honour.

L. H. S. My Lords, There are One hundred and Seventeen of your Lordships present; and you have unanimously found, That Simon Lord Lovat is Guilty of the High-Treason whereof he stands impeached.

Is it your Lordships Pleasure, that he should be brought to the Bar, and acquainted therewith?

Lords. Ay, ay.

Proclamation was made for Silence; and another Proclamation for the Lieutenant of the Tower to bring the Prisoner to the Bar; which was done in the same Order as before: And then Proclamation was again made for Silence, as usual.

L. H. S. Simon Lord Lovat, The Lords have considered the Charge of High-Treason, which has been brought against you by the House of Commons: They have considered the Evidence, and all that has been offered to maintain the Charge: They have also considered every thing that has been alleged in your Lordship's Defence: And, upon the whole Matter, their Lordships have unanimously found, that you are guilty of the High-Treason whereof you stand impeached.

Lord President. My Lords, I move your Lordships to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

The House was accordingly adjourned to the Chamber of Parliament; and the Lords and others returned in the same Order as before.

And the House being resumed in the Chamber of Parliament,

Ordered, That this House will proceed further, in order to the giving of Judgment against Simon Lord Lovat, To-morrow, at Eleven of the Clock in the Forenoon, in Westminster-Hall.—And

A Message was sent to the House of Commons, by the former Messengers, to acquaint them therewith.

Ordered, That the Lieutenant of the Tower of London, or his Deputy, do take back Simon Lord Lovat, and bring him again to the Bar of this House in Westminster-Hall, To-morrow, at Eleven of the Clock in the Forenoon.

Thursday the 19th of March, 1746.

The SEVENTH DAY.

ABOUT Eleven of the Clock in the Forenoon the Lords and others came from the Chamber of Parliament, in the same Order as on the First Day, into Westminster-Hall; where the Commons, and their Managers, were in the Seats prepared for them respectively, as before: And the Lords took their Places in the Court, and the Lord High Steward in his Chair.

Lord High Steward. The House is resumed. Is it your Lordships Pleasure, that the Judges have Leave to be covered?

Lords. Ay, ay.

Then the Serjeant at Arms made Proclamation for Silence as usual, and afterwards the following Proclamation:

Serjeant at Arms. Oyes, Oyes, Oyes! Lieutenant of the Tower of London, bring forth your Prisoner Simon Lord Lovat to the Bar, pursuant to the Order of the House of Lords to you directed.

The Deputy Governor of the Tower brought the Prisoner to the Bar, in the like Form as before; and then he knelt down.

Lord High Steward. Your Lordship may rise.

The Serjeant at Arms, by Direction of the Lord High Steward, made another Proclamation for Silence.

Lord High Steward. Simon Lord Lovat, When your Lordship was last at this Bar, I acquainted you, That your Peers had found you Guilty of the High Treason whereof you stand impeached, by means whereof you are convicted of that High Treason: And I am now to ask your Lordship, What you have to say, Why Judgment of Death should not pass upon you, according to Law?

Lord Lovat. My Lords, I am very sorry I gave your Lordships so much Trouble in my Trial; and I give you a Million of Thanks for your being so good, in your Patience and Attendance, whilst it lasted. I thought myself very much loaded by one Murray, who, your Lordships know, was the bitterest Evidence there was against me. I have since suffered by another Mr. Murray, who, I must say with Pleasure, is an Honour to his Country, and whose Eloquence and Learning is much beyond what is to be expressed by an ignorant Man like me. I heard him with Pleasure, tho' it was against me. I have the Honour to be his Relation, tho' perhaps he neither knows it, nor values it. I wish, that his being born in the North may not hinder him from the Preferment that his Merit and Learning deserves. Till that Gentleman spoke, your Lordships were inclined to grant my earnest Request, and allow me further Time to bring up Witnesses to prove my Innocence; but, it seems, that has been over-ruled. All now that I have to say, is a little in Vindication of my own Character. I was pointed out by the Honourable Managers as a most inveterate Enemy of the Royal Family now upon the Throne, and the most zealously attached to a Family that is not like to come upon the Throne. My Lords, I humbly beg, that your Lordships will take notice, that my Attachment to the Family of Hanover is proved without Contest, after the great Services I have done. I was honoured by the King's Favour and Countenance, that made me so naturally and gratefully attached to his Person and Family; and as I was for Twelve Years in Germany, almost every Day in Conversation with his Majesty and his Family, I thought it necessary to know the History of his Family; and I read it very particularly; both the publick and private History of it: And I must say, that since your Lordships, and this Nation in general, thought fit to have a King from Germany, you could not have chose one from a more illustrious House; so great, that several Emperors of Germany have been elected from out of that Family; and they always behaved with great Distinction, both in the Wars, and in their own Country. I will only give one Instance of that, which I had from my dear Master the late King's own Mouth (of glorious Memory). I heard him say this to the Emperor's Envoy, after the Siege of Belgrade, when the Envoy told him, That there were Forty thousand Janissaries killed upon the Spot: "Why, says he to the Envoy, I shall be very glad of it; but I know the Nature of those Animals: If 40,000 of them are killed at Night, in the very Place of those that are killed 40,000 will rise up the next Morning. I have had Experience of the War with the Turks: I was with 6000 of my own Men, at the Siege of Buda: And, I believe, they will do me the Justice to say, that both I and my Men behaved as we ought to have done." This shews, my Lords, that I always had a true Notion of the Greatness and Illustration of the Family of Hanover. I gave signal Proofs of it in the Year 1715; and I beg your Lordships will indulge me to repeat a little of what passed at that Time, because there are several Lords here that were not then born. My Lords, when I came into England, in the Year 1714, my Design was, that, with the Assistance of my Friends, the late Duke of Argyll, and the present Duke, I should endeavour to get my Remission, to go down into my own Country, to endeavour to recover my Fortune, and to serve the Government faithfully, in what I was able. In this Situation I was, when my Lord Marshal set up the Pretender's Standard at Aberdeen: It did much alarm the Court. I was sent for, and particularly spoken to by the Earl of Sunderland, and my Lord Townshend, who were always my Friends. My Lords, this present Duke of Argyll was

so generous, that he would follow his brother to Scotland, and expose his Life as a Volunteer; and he suffered by it; for at the Battle of Sheriff-Muir, he had a Ball went through his Side and Arm, and had almost lost his Life, if it had not been by the extraordinary Skill and Diligence of one Mr. Mac Gill, a Surgeon, who attended him. When he went down, he told me, Dear Lovat, you must do your best for us now; and I desire you may meet me in Badenoch, with all the Men you can get together; and I will gather all the Men I can in Argyllshire, and meet you there. I went down on Horseback, and he went down Post. Before I came to my own Country, I found that the Rebels were got together in vast Numbers; and as Inverness was the great Capital of all those Parts, my Lord Marshal resolved to send 2000 Men to reinforce the Garrison of Inverness, that it might not be surprized. The Mac Intosh and the Mac Donalds were gathered together, in order to go to Inverness: When I found it was impossible for the Earl of Ilay to come with his Men from Argyllshire, I resolved to distinguish myself, even though by a desperate Stroke. I had gathered together 200 Men at Strathbarr, with these I marched to Inverness, and invested it. Sir John Mac Kenzie, the then Governor, had 1000 Men in the Town; so I found there was nothing for it but Boldness. I sent a Message, which, indeed, looked like a French Galconade, that I would blow him, and his Garrison, and the Castle, and the strong Steeple, into the Air, if they did not surrender to me before Ten o'Clock the next Day; though I had not Two Pounds of Powder. At the same time, I sent a Party of Men, in which was a pretty Gentleman of Skill, one Captain Ross, the Laird's Brother. Whether Sir John Mac Kenzie heard this Over-night, I can't tell; but he enquired, If I was fully resolved to attack the Town. He told him positively, That I was. Says he, If Simon be there, he is a desperate Fellow; I believe I must leave the Town to him: And accordingly, he run off that Night, with all his Men. This I did, my Lords, before any of the loyal Clans to this Government were raised. After this they were pleased to declare me General of the King's Forces there. When I got together near 2000 Men, of which 1000 were my own, I resolved to attack Lord Seaforth, who was coming with 2500 Men, to join Sir John Mac Kenzie, at Inverness, or to fight any of the Rebels that should meet him: He called them so. He stood his Ground till I came within Half a Mile of him. I drew up the little Army I had in pretty good Order, being an Officer for many Years before: And I can say to your Lordships, that, I believe, I am the oldest Officer in Commission in Great Britain; for Fifty Years ago I was Captain of Grenadiers in King William's Army. They were the Sutherland Men, Lord Ray's Men, and some of the Grants and Monros: But when I came to march up the Hill, to attack Lord Seaforth, I had none followed me but the Monros. When they found I was come within Sight of them, they made a precipitate Retreat to a Bridge that was near them, over a River: And afterwards, by Lord President's Advice, who was then in the Army, Lord Seaforth came, and submitted to me, as General of King George's Forces, promising immediately to lay down his Arms; which he did. This Submission was brought up, and shewn to the Ministry. I then went, and reduced the Duke of Gordon, who gave me the most ample Submission I ever read, to the King; and Assurances of Fidelity to him and to the Government. That Submission I likewise shewed; and, if they are not consumed in my House that was burnt, they are still extant. My Lords, then I pursued the Rebels from Place to Place, and chased them from Hill to Hill. On this Expedition I lost my only Brother, who was a very brave young Fellow; and I never left off pursuing the Rebels till the Rebellion was suppressed and extinguished: So that I may fairly say, that I assisted to keep the Crown upon the late King's Head, as much, if not more, than any one Man of my own Rank in Britain. I had then several Invitations to come to Court; and had Three Letters of Thanks from the King's Person, by the Hands of the great Earl Stanhope, who was Secretary of State then; in which he says, that he was so sensible of my extraordinary and signal Services, that he would, all his Life, give me such Marks of his Favour, as would oblige all the Country to be zealous and faithful to me. Upon this I came to Court; and I was not disappointed. I believe there are Lords in this House, I am sure there are a great many yet alive, that know I was a particular Favourite of the late King's; I believe more than any one of my own Rank in Scotland. I remember my Lord Townshend told me one Day, who was my particular Friend, That I was certainly a great Favourite of the King; and if all the Ministry should join together to hurt me, that it was not in their Power to do it; and that he would do me all the Service he could; and said, the King would not refuse any thing he should ask for me: And the King, to my own certain Knowledge, reproached the Scotch Ministry, that I was not provided for. But that unhappy Nation has been always divided amongst themselves, between the Family of the Argylls, and that of the Montrosses; so that they, knowing me to be a Relation and Partizan of the Family of Argyll, they never would do any thing for me. At last, the King said, he must do it himself; and sent for the Hanoverian Minister, and told him, That he must immediately fix upon a Way to give me a Pension: At last, it was ordered by the King's particular Instruction, that I should have a Letter, or Patent, for myself, for 300 l. a Year; which I enjoyed till now, for any thing I know. Then all the English Ministers, every one of them, were my Friends; and they proposed that I should go into the Army. Lord Cadogan, who, in the Year 1716, went with an Army into Scotland, sent for me; and desired me to bring up 500 Men to Badenoch, to escort him to Inverness: Which I did. They gave out, that the Highlanders were to attack him in the Woods: But when they heard, that I was with him, with the best Part of my Clan, they did not think it proper to attack him. After Lord Cadogan came to Inverness he sent for Sir Robert Monro, who was killed at the Battle of Falkirk: He called me into his Closet with him, and told me, We are now fully convinced, Lord Lovat, that it was you, and a few of the King's Friends that were joined to you, that subdued and suppressed the Rebellion, and extinguished it; and that all that was wrote in the Gazette about Lord Sutherland, was all Romance. Now, I am so sensible of those Services that you have done the Government, that, if you will join yourself to the Duke of Marlborough, to the Earl of

of *Sunderland*, and to me, that are thought the Favourites of the King, we will, in the first Place, immediately make you a Major-General: You shall have a Regiment of Foot, or Dragoons, and 3000*l.* a Year Pension, during your Life. My Lords, if I had accepted of that Offer, I had now had the best Estate in *Scotland*; and would have been fair for being one of the Field-Marshals of *England*, being the oldest Officer: But, my Lords, the Condition was too severe; and I had rather never have any Being, than be ungrateful. The late Duke of *Argyll*, I mean this Duke of *Argyll's* Father, who was one of the greatest Men that has been in our Country for many Ages; he was a Father to me, and protected me as his own Child; he got me Two Remissions from King *William*; and, as he was carrying another Remission in, to be signed by Queen *Anne* (King *William*, to my Misfortune, having died that Year), he found the Door shut; that is, he found that Three Men had turned out all King *William's* Friends, of whom he was one, and the Duke of *Quinsberry*, and several others; and that she brought in Two Families, the Duke of *Hamilton*, and the Marquis of *Athol*, whom she made a Duke; and to please him, with whom my Family unfortunately had a Quarrel about an Estate; to please him, I say, she put 2000*l.* upon my Head, which was 1000*l.* more than ever was usual. So I told the Duke of *Argyll*, that I had nothing for it, but to go to *Hanover*, and there to live and die with Fidelity to the Duke of *Hanover*. He told me, that he was well assured, that the Duke of *Hanover* would be glad to receive me; but, as he was then declared the Protestant Heir, and that Succession depended much upon the good Will of Queen *Anne*, he must, upon her Desire, be obliged to send me back to *England*; and that he did not know a safe Way for me, but to go to *France*, because we were at War with them then. And that was the first thing, my Lords, that obliged me to go to *France*, which was the Foundation of my Misfortunes. Now, my Lords, after what I have told you, I must humbly submit it to your Lordships, whether you do not think it is improbable, that I should be an Enemy to King *George*, and his Family: I, that received more Marks of Favour from the late King *George* than any Subject in the North; I, that got my Estate settled in his Time, both by the House of Commons and Peers; I, that expected never to be out of Favour with the Government, being very zealous to promote any thing that was for the Good of it. My Lords, I commanded a *Highland* Company for Fifteen Years, as their Colonel: And the Country can testify, that there was no Depredation, Theft, or Robbery, committed there during that Time: I took Twenty-five *Highland* Robbers in the *Highlands* in one Night, and brought them all Prisoners to the Tolbooth of *Inverness*. I continued to act in the Manner that General *Wade* from time to time ordered me. I own I did not expect, that he, who reviewed my Company every Year, and called it the best Company that he ever saw in his Life—I must make the Lords laugh upon that Occasion: He told me, that Mr. *Pulteney*, now Earl of *Bath*, said, in the House of Commons, that he knew old *Lovat* very well; that he would never have a Company but in his Pocket: And now I can tell him, That he did not speak Truth. General *Handaside* was present, and his Brother, who is a very pretty Gentleman, when he declared, that he never did see such a fine Company in any Country that he was ever in: And he appealed to the Two *Handasides*, and the other Officers that were there, whether it was not true; and they all agreed in it. So that, my Lords, after this, I very little expected, that, without ever blaming me, or imputing any Crime to me, my Commission should be broke; and not only so, but that I should be ordered to keep 400 Men from it in the Country, to be put into another Company, to make up a Regiment that General *Wade* procured for his Favourite Colonel *Durero*. My Lords, I was certainly much out of Humour to see myself so used; but I never imputed it to the King, nor to his Prime Minister Sir *Robert Walpole*, afterwards Earl of *Orford*. And this is all the Grounds of my being out of Temper, or that they can lay hold of, to say I was against the Government. So, after what I have told your Lordships, and the Manner that I have been used, I hope your Lordships will not think I was capable of any malicious Design against the Government. And, indeed, it was a Loss to the Government more than to me, that my Company was broke, because, if I had commanded the *Highland* Company, as I did for Fifteen Years, the Country had been peaceable, and there had been no Rebellion.

Lord High Steward. My Lord *Lovat*, I must put your Lordship in mind of the Question I asked you, Whether you have any thing to offer in Arrest of Judgment?

Lord *Lovat*. Whatever way I may be over-ruled, I will say, to my dying Hour, that I have met with the greatest Hardships ever practised in *Britain*; and I still insist, that I shall get the Benefit that all Subjects have a Right to, of adducing Witnesses, that may be for the Safety of their Lives and Interests.

L. H. S. Your Lordship has heard the Opinion of the Lords already.

Lord President. I move your Lordships to adjourn to the Chamber of Parliament.

L. H. S. Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. S. This House is adjourned to the Chamber of Parliament.

Then the Lords, and others, returned to the Chamber of Parliament, in the same Order they came down: And the House being there resumed,

The Proceeding entered in the Journal of the 19th of *March*, 1715, in relation to the Giving of Judgment against *George* Earl of *Wintoun* was read: Which being done,

Their Lordships were informed, That the Commons, with their Speaker, and the Mace, were at the Door: Whereupon they were called in: And Mr. Speaker, at the Bar, said,

My Lords,
THE Knights, Citizens, and Burgeses, in Parliament assembled, did, at this Bar, in the Name of themselves, and of all the Commons of *Great Britain*, impeach *Simon* Lord *Lovat* of High Treason, and exhibited Articles against him, and have made good the same: I do therefore,

in the Name of the Knights, Citizens, and Burgeses, in Parliament assembled, and of all the Commons of *Great Britain*, demand Judgment of your Lordships against *Simon* Lord *Lovat* for the said High Treason.

And they being withdrawn,

Ordered, That, when Judgment shall be pronounced against the said Lord *Lovat*, it be the same as was pronounced against the late Earl of *Wintoun*.

Then the House was again adjourned into *Westminster-Hall*: And the Peers, and others, went down in the same Order as before; and the Peers being in their Places, and the Lord High Steward in his Chair, and the Commons and their Managers in the Seats prepared for them respectively; the House was resumed: And the Serjeant at Arms made Proclamation for Silence, as usual.

Lord High Steward. My Lord *Lovat*, As some Time has intervened since I last asked you the Question, Whether you had any thing to offer in Arrest of Judgment, I am now to ask you again, Whether you have any thing to say, why Judgment of Death should not pass upon you, according to Law?

Lord *Lovat*. No! I have said all that I had to say; and beg your Lordships Pardon for the rude, long Discourse I made to your Lordships. I had great need of my Cousin *Murray's* Eloquence for half an Hour, and then it would have been more agreeable.

Proclamation was made for Silence, as usual.

Lord High Steward.

Simon Lord *Lovat*,

YOU have been impeached by the Commons of *Great Britain*, in Parliament assembled, of High-Treason, charged upon you by particular Articles, containing different Species, and various Overt Acts, of that Treason.

To these Articles your Lordship thought fit to put in an Answer, amounting to a general Plea of Not guilty to the Whole; and, after a long and impartial Trial, upon the clearest and most convincing Evidence, against which you offered no Defence by Witnesses, your Peers have unanimously found you Guilty.

What remains is the disagreeable, but unavoidable, Part of proceeding to that Judgment, which is the necessary Consequence of such atrocious Crimes. Happy had it been for your Lordship, if before you engaged in them, you had suffered the Terrors of that Consequence to have their due Weight, when the sacred Ties of your Allegiance, and your Oaths, were not strong enough to restrain you.

In this Proceeding, the Zeal and dutiful Affection of the Commons to his Majesty, and their Country, and the Justice of the House of Peers, have shone forth in their full Lustre. The Commons found your Lordship to be one of the principal Conspirators, who contrived and carried on the late detestable Rebellion, to destroy our Religion and Liberties, and to subvert that Legal Settlement of the Crown in his Majesty, and his Royal Family, under which alone we can live Free and Happy.

They rightly judged, that this, which is the common Cause of all the People of *Great Britain*, ought to be prosecuted by the United Voice of the People: That it became them to investigate and lay open, in full Parliament, the Source of those Calamities, which we have lately suffered, and the deep-laid and long-meditated Conspiracy, in which your Lordship had so considerable and so flagitious a Part. They rightly judged, that no Judicature was equal to such an important Proceeding, but this High Court, on whose Penetration and Justice they relied, and before whom, in this Great Assembly, Publick and Indubitable Satisfaction might be given.

Before your Conviction, I have spoken to your Lordship upon a Presumption of your Innocence; but now I am bound, by the unanimous Decision of my Lords your Peers, to take the Evidence against you to be True, and to address myself to you as a Guilty Person.

Your Lordship has, in your Answer, endeavoured to avail yourself of former Services to his late Majesty and the Protestant Succession, which you have this Day enlarged upon at the Bar. How unfortunate have you been in referring back to such cancelled Merit, since thereby you have furnished an Opportunity to the Commons, to shew, for how long a Track of Time you have conceived and nursed up this Treason in your Heart! Whatever your Pretences were, so infected was your Mind, and so forward your Zeal, in the Cause of that Pretender, whom you had then abjured, as to engage in that rash and weak Attempt from *Spain*, in his late Majesty's Reign. Yet, at or very near that Time, it appears, by the Evidence (out of which every Observation I will make shall naturally arise), you were soliciting or accepting Favours and Trusts from that very Government, which you had thus engaged to destroy. What Use did you make of those Trusts? The Instance of *Roy Stewart*, now an Attainted Rebel, speaks it too plainly. Whilst you were Sheriff of the Shire of *Inverness*, the largest County in *Scotland*, and one of the greatest Consequence, you suffered that Criminal, in the Year 1736, to escape out of your publick Prison; harboured him afterwards in your own House; then charged him with Messages, and Assurances of Fidelity, to the Pretender; and to procure for you a Commission of Lieutenant-General, and a mock Title of Honour, from that Pretended Prince.

If any thing could surpass this Treachery, it is the Association, which your Lordship signed and sealed, together with Six other Persons, and sent to *Rome* and *Paris*, by *Drummond* of *Bochaldie*, in the Beginning of 1740. The Substance of this was, to assure the Pretender, whom you always called your lawful King, of your Readiness to appear openly in Arms for his Service; and to solicit an Invasion from *France* against your Native Country, to support this desperate Design.

It should seem, by the Evidence, that the Foreign Enemies of *Britain* were less forward in this Measure to disturb her, than her degenerate, Unnatural Sons. Whether that Reluctance proceeded from a Distrust of so false a Set of Men, or from a Conviction, that the Body of this Great People was not to be shaken in their Loyalty to a King, who possesses the Throne by the most Rightful Title, and governs them in Justice and Mercy, according to their Laws and Constitution; in either Case they

they were in the Right. What Dependence could the Court of France have on a few abandoned Traitors? What Hopes could they entertain, that a general Infatuation would, on the sudden, seize and delude a Brave, a Free, and a Happy People, to seek their own Slavery and Ruin?

From this Time till the Year 1743, the Conspiracy lingered in its Progress, though great Efforts appear to have been made to render it more extensive, and more formidable. Then it happened, as it always has happened, that when France saw such an Enterprize, whether successful or not, might be made a convenient Engine of her own Politicks, that Court set about an Invasion in earnest. Great Preparations were made, and ready at Dunkirk; but the Providence of God disappointed them. To be capable of proving Transactions of this Kind by strict Evidence in the Forms of Law, is not common, nor, in the Nature of the Thing, ordinarily to be expected. But this the Vigilance of the Commons has effectually done, to the Conviction of all well-intentioned Persons, and to the Shame and Confusion of those, who, though they believed, and perhaps knew it themselves, were industrious to propagate a pernicious Incredulity in others.

Thus the Commons have traced and brought down the Series of the Conspiracy to the remarkable Era of July, 1745, when the Eldest Son of the Pretender landed in *Moidart*, unsupported by any Foreign Troops, unattended, and almost alone.

The appearing Rashness of this Attempt gave Rise to some Apprehensions, some Misgivings, in the Breasts of your Lordship, and your Fellow-Conspirators, proceeding from a Concern, not for the KING, or for your Country, but for your own private Interest and Safety. A French Invasion had been long solicited; a French Force was depended on, to secure you against the just Vengeance of your Native Country; and the Failure of that damped your Hopes, and produced your Expressions of Disappointment. However, such was your Zeal, that, in this rash Enterprize, your Lordship joined; not indeed personally (this you often excused, complaining of your Infirmities), but by Sending, or rather Forcing out your Clan; and committing every other Species of the blackest Treason, which the Articles of Impeachment have charged upon you.

Permit me to stop here a little, and lament the Condition of Part of this United Kingdom; happily United in Interests both Civil and Religious; happily United under the same Gracious Monarch, and the same Publick Policy: And yet the common People, in some of the remote Northern Counties, are still kept in such a State of Bondage to certain of their Fellow-Subjects, who, contrary to all Law, and every true Principle of Government, have erected themselves into Petty Tyrants over them, as to be liable to be compelled into Rebellion against their Lawful Sovereign, under the Peril of Fire and Sword. Astonishing it is, that such a dangerous Error in Government, such a Remain of Barbarism, should have subsisted so long in any Quarter of this Civilized, Well-governed Island: But, since such is the Misfortune, let it be accounted one good Fruit of this Inquiry, that it has appeared in this solemn Manner. The Knowledge of the Disease shews the Way to the Cure; and it calls aloud for a Remedy.

This usurped Power was audaciously made use of over your Clan. It is true, your Lordship's Activity in exerting it rose and fell, in Proportion to the Appearances of the good or bad Success of the Pretender's Cause; But, after the Advantage gained by the Rebels at *Preston-Pans*, which you vainly called "A Victory not to be paralleled in History," you thought it Time to throw off the Mask; and, with less Caution, to espouse a Party, which, you then hoped, might be espoused with Impunity.

I forbear to enumerate the many Overt Acts of your Treason. It would be tedious to this Assembly, who have heard them so much better from the Witnesses, and from the Recapitulation of the Managers. It would be grievous to your Lordship, if your Heart is, by this Time, touched with any Remorse for your Guilt. But one Thing I cannot help observing upon,---the Excuse you expressly made for this traitorous Conduct, even after you were taken Prisoner; to which you have this Day artfully endeavoured to give a different Turn. Being asked, How you could act such a Part against a Government, from which you had received many Favours? Your Lordship's Answer was, "That it was in Revenge to the Ministry, for their ill Usage of you, in taking away your Commission of Captain of an Independent Company of High-landers." An Excuse almost as false as it was profligate. False, because some of your Treasonable Practices were committed whilst you were possessed of that very Commission. Profligate it was, in the highest Degree. Is Allegiance no Duty? Are Oaths to His Majesty, and His Government, no Obligation upon the Conscience? Is Loyalty to our Lawful Sovereign, and the Love of our Country, to depend on the Enjoyment of extraordinary Favours and Emoluments, which no Man has a Right to; can, in the Nature of Things, be enjoyed but by a Few; and are in the Pleasure of all Governments to confer or deny? A Person actuated by, and avowing, such Principles as these, must be lost to all Sense of Virtue, and of Shame, and of every Natural, as well as Civil, Sanction of Society.

Sorry, very sorry I am, to see this last Reflection so strongly verified by the Proofs against your Lordship. It has appeared, that you used your Paternal Influence over your Eldest Son, a Youth not above the Age of Nineteen, to compel him to go into the Rebellion; and afterwards unnaturally endeavoured to cast the Crime and Reproach of it upon him. If this be true, it is an Impiety which makes one tremble. It is the celebrated Saying of a wise Writer of Antiquity, and shews his perfect Knowledge of Human Nature, "That the Love of our Country includes all other Social Affections." For we see, when that is gone, even the tenderest of all Affections, the Parental, may be extinguished with it.

I have said these things, not with a View to aggravate your Lordship's Crimes, but, as becomes This Place, and This Occasion, to rouse your Mind, which, there is Reason to fear, may have been too much hardened, to a just and deep Sense of your unhappy and dreadful Situation.

Were I to attempt this from Topicks of Religion, I should be at a Loss, whether to apply to you as a Protestant or a Papist. Your Open Profession, your Solemn Oaths, and Publick Actions, speak on one Side: But, if I am to believe the Evidence, your Private Discourse and Declarations testify on the other. I will apply no Suppositions on this Head particularly to your Lordship; but from hence I would draw an instructive Lesson, which well deserves the serious Attention of this Whole Nation; of what important Consequence it is, to preserve not only the Name and outward Form of the Protestant Religion amongst us, but the real Uniform Belief and Practice of it. Indifference to all Religion prepares Men for the External Profession of any; and what may not That lead to? Give me Leave to affirm, before this Great Assembly, that, even abstracted from Religious Considerations, the Protestant Religion ought to be held in the highest Reverence, as the surest Barrier of our Civil Constitution. Ecclesiastical Usurpation seldom fails to end in Civil Tyranny. The present Happy Settlement of the Crown is, in Truth, and not in Name only, THE PROTESTANT SUCCESSION. And the inviolable Preservation of that Wise and Fundamental Law, made since the Revolution, whereby every Papist, or Person marrying a Papist, is absolutely excluded from Inheriting to this Crown, will, in future Times, be a solid Security for our Posterity, not only against the groundless and presumptuous Claim of an Abjured Pretender, and his Descendants, but also to prevent this Kingdom from becoming a Province to some of the great Popish Powers, who have so long watched for the Destruction of our Liberties.

But, to return to your Lordship: Suffer me to exhort you, with great Earnestness, and in great Charity, to deliberate seriously upon your own Case, and to deal impartially with your own Conscience. If, according to the Evidence given at this Bar, you have led a Life of Craft, Disimulation, and Perfidy, consider how that Scene has closed; what Desolation you have thereby endeavoured to bring upon your Country; how fatally it has ended for yourself. Consider, that the Sentence which I am obliged to pronounce, may soon send you to a Tribunal, where no Disguise or Artifice can avail you.

The Sentence of the Law is, and this High Court doth adjudge;

"That you, *Simon Lord Lovat*, Return to the Prison of the Tower, from whence you came; from thence you must be drawn to the Place of Execution; when you come there, you must be Hanged by the Neck, but not till you are Dead; for you must be cut down Alive; then your Bowels must be taken out, and burnt before your Face; then your Head must be severed from your Body, and your Body divided into Four Quarters; and these must be at the King's Disposal."

And God Almighty be merciful to your Soul!

Lord Lovat. My Lords, I hope your Lordships will not take it amiss, that I should let you know, though it be in a very barbarous Language, both the Affection I had for his late Majesty, and the Service I did for him and his Family. And I must say, I have for that the Testimony of one of the King's Evidence, that I declared my Affection to his present Majesty: And I have Reason so to do; for when he was Regent of these Kingdoms, and his Father was in *Hannover*, he was so good as to give me a *Noli Prosequi* for the great Laird of *Mac Intosh* that was at the Battle of *Preston*: And when I complained of the Hardships the Duke of *Roxburgh* put every Day upon me, in an Audience he was pleased to admit me to, in his Closet at *Kensington*, he was so good as to say, that, if he was King, he would defend me against all my Enemies, not only the Duke of *Roxburgh*, but all my other Enemies. Now, my Lords, when a Man has but a very few Days, in Appearance, to live, what he says should be relied upon, if there is not immediate Evidence to the contrary. I have shewn your Lordships my Esteem for the illustrious House of *Hanover*. I have shewn my Attachment for my dear Master the late King, and my Respect for his present Majesty; and therefore all that I have further to say, is most humbly to implore your Lordships Intercession, and to recommend me to his Majesty for Mercy.

Lord High Steward. Have you any thing further to offer?

Lord Lovat. Nothing, my Lords, but that I make the same Prayer to the Honourable the Members and Managers of the House of Commons; and that, I hope, as they have been stout, they will be merciful.

Lord High Steward. Would you offer any thing further?

Lord Lovat. Nothing but to thank your Lordships for your Goodness to me. God bless you all, and I bid you an everlasting Farewell. We shall not meet all in the same Place again, I am sure of that.

Lord High Steward. Lieutenant of the Tower, Take the Prisoner from the Bar.

Which being done, Proclamation was made for Silence, as usual.

Then the White Staff being delivered to the Lord High Steward by the Gentleman Usher of the Black Rod, upon his Knee, his Grace stood up uncovered; and, holding the Staff in both his Hands, broke it in two, and declared that there was nothing farther to be done by virtue of the present Commission, and pronounced the same to be dissolved; and then leaving the Chair, came down to the Wool-Pack, and said, Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House was adjourned to the Chamber of Parliament; and the Lords and others returned in the same Order as they come down.

And the Prisoner was carried back to the Tower of London.

XLIII. The Trial of ARCHIBALD STEWART, Esq; late Lord Provost of Edinburgh, before the High Court of Justiciary in Scotland, June 8, 1747. for Neglect of Duty and Misbehaviour in the Execution of his Office, as Lord Provost of Edinburgh, before and at the Time the Rebels got Possession of that City, in the Month of September 1745.

[Extracted, under the Hand of the Clerk of Justiciary, from the Books of Adjournal of that Court.]

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, vigesimo quarta Die Mensis Martii 1747. per honorabiles Viros Magistros Alexandrum Fraser de Strichen, Patrium Grant de Elchies, & Carolum Areskine de Tinwald, Commissionarios Justiciarii dict. S. D. N. Regis.
Curia legitime affirmata.

Lord Strichen Præses.

THE which Day compeared Patrick Haldane of Bearcrofts, Esq; his Majesty's Solicitor, and Advocate-Depute, and produced, in presence of the said Lords, a Writ of Recognizance, signed by his Grace the Duke of Newcastle, of Date the 23d Day of January last by-pass, which was ordered to be read and recorded; and whereof the Tenor follows.

Middlesex and Westminster.

To wit; Be it remembered, That, upon the 23d of January, in the Twentieth Year of the Reign of our Sovereign Lord George II. King of Great Britain, &c. came before me, and acknowledged themselves to be severally indebted unto our said Sovereign Lord the King as follows, viz.

Archibald Stewart, of Edinburgh, Merchant, the Sum of £.	3000 0 0
David Scot, of Scotstarvet, in the Shire of Fife, Esq; the Sum of	2500 0 0
James Oswald, of Dunnikier, in the said Shire of Fife, Esq; the Sum of	2500 0 0
Alexander Campbell, of the Parish of Allhallows-Staining, London, Doctor of Physick, the Sum of	2500 0 0
James Baird, of Downing-street, in the Parish of St. Margaret's Westminster, Esq; the Sum of	2500 0 0

To be levied upon their several Goods and Chattels, Lands, Tenements and Hereditaments, by way of Recognizance, upon Condition, that if the said Archibald Stewart do personally appear before his Majesty's Court of Justiciary at Edinburgh, at the first Sitting of the said Court after the Twentieth Day of March next, then and there to answer to all such Matters as on his Majesty's Behalf shall be objected against him; and also appear from time to time when thereunto required, and not depart the said Court without Leave thereof; and, in the mean time, be of the good Behaviour, then this Recognizance to be void, or else to remain in full Force and Virtue. Signed

HOLLES NEWCASTLE.

Immediately after reading whereof, compeared the said Archibald Stewart, Merchant in Edinburgh, and judicially sifted himself in Court before the said Lords, in Terms of and agreeable to the said Writ of Recognizance, and humbly insisted, that thereby the Condition of the said Writ was fulfilled, and the same fell to be voided, and he dismissed, if there was no Person on his Majesty's Behalf ready to insist against him.

To which Mr. Patrick Haldane, his Majesty's Advocate-Depute, made Answer: That the Writ of Recognizance was not only for Mr. Stewart's Appearance this Day, but thereafter, from Time to Time, when thereto required; that, having only had occasion lately to see the said Writ, he was not just now ready to insist in any Matters on his Majesty's Behalf against the said Archibald Stewart, as therein mentioned; and moved their Lordships would appoint a farther Time for his Appearance again.

Mr. Stewart, without making any Reply, submitted his Case to the Court.

The Lords Commissioners of Justiciary, having considered the said Writ of Recognizance, and above Debate, they continue the Diet, for the said Archibald Stewart's Compearance, to Monday the eighth Day of June next, and ordain him to sift himself personally in Court that Day, without Prejudice to the Lord Advocate to insist against and prosecute the said Archibald Stewart sooner, in Behalf of his Majesty, if he shall see Cause.

Signed

ALEX. FRASER. I. P. D.

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, octavo Die Mensis Junii 1747. per honorabiles Viros Magistros Alexandrum Fraser de Strichen, Patrium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, Commissionarios Justiciarii dict. S. D. N. Regis.
Curia legitime affirmata.

Lord Strichen Præses.

THE said Day, in obedience to the foregoing Order, compeared the said Archibald Stewart, and sifted himself in Court, when he and Messieurs Lockhart, Ferguson, Home and Stewart, Advocates, his Procurators, insisted, That, in obedience to the last Order of Court, in consequence of the Recognizance therein mentioned, he had appeared a second Time; that, as he pled first, so he now did, that the Condition of the said Writ of Recognizance was fulfilled; and that the same ought to be voided, and he dismissed, if there was no Person yet ready to insist against him on his Majesty's Behalf, which he had Reason to believe was the Case.

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To which Mr. Patrick Haldane, his Majesty's Advocate-Depute, made Answer: That the Lord Advocate, who, at the last Diet, attended the Service of his Country in Parliament, was, contrary to Expectation, still detained, although he intended to have been in Scotland long before now, when he could and would have proceeded to bring Mr. Stewart to Trial in the ordinary Way: That, for his Part, as Advocate-Depute, he had no such Instructions as he could move in that Matter, either just now, or by a proper Process; and all he was instructed to ask of their Lordships, was a Delay of eight Days, which could be no Prejudice either to Mr. Stewart or his Cautioners, and against which Time he was pretty well assured his Majesty's Advocate would be present, and shew Cause why the Writ of Recognizance should continue, and satisfy Mr. Stewart how or when he would be brought to Trial.

It was replied for Mr. Stewart, that he expected, if there was any thing to be objected to him on behalf of his Majesty, considering the long Space of Time intervening betwixt this and his former Appearance, he would have been brought under some Prosecution for it ere now; that the Absence of my Lord Advocate, however necessary, and his Depute's not being properly instructed, was to Mr. Stewart or his Cautioners nothing to the Purpose; that Mr. Stewart's Appearance, now and before, and nothing objected to him, was, as to his Cautioners, a Liberation of their Bail, which was so very great as must appear to be a Hardship if it should last any longer; and therefore craved that he might be dismissed, and the Bond voided.

It was replied by Mr. Haldane, that the Delay sought was so small, as plainly shewed that there was no Intention of putting a Hardship on any Person; and, without farther Argument, he doubted not but the Court would continue Mr. Stewart's farther Compearance, in Terms of, and agreeable to the Writ of Recognizance, till Monday next the 15th Instant.

The Lords Commissioners of Justiciary, having considered the above Debate, they continue the Diet for the said Archibald Stewart's farther Compearance to Monday the 15th Day of June Instant, and ordain him to sift himself personally in Court that Day, without Prejudice to the Lord Advocate to insist against and prosecute the said Archibald Stewart sooner, if he shall see Cause.

Signed

ALEX. FRASER. I. P. D.

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, decimo quinto Die Mensis Junii 1747. per honorabiles Viros Magistros Alexandrum Fraser de Strichen, Patrium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, Commissionarios Justiciarii dict. S. D. N. Regis.
Curia legitime affirmata.

Lord Strichen Præses:

THE said Day compeared the said Archibald Stewart, in obedience to the last Order of Court, and sifted himself agreeable to his Writ of Recognizance, and craved the said Writ might be declared void; and he dismissed, in case the Lord Advocate was not yet ready to insist against him, as, if he was, he had at least got no Notice of it, nor so much as of any Time for his Trial.

The Lord Advocate thereupon appeared, and represented the former Delays were not owing to him, but, in some measure, to Mr. Stewart's own Friends, who applied to him at London for a Delay, till he should come to Scotland and be present himself; which truly was the Reason of his not raising and executing a criminal Process against Mr. Stewart to the last Diet he appeared. That, to shew his Lordship had no Inclination to give Mr. Stewart any unnecessary Delay, he now was ready to insist, and for that End gave in, and presented to the Lords, a Bill signed by him, craving Warrant for criminal Letters against the said Archibald Stewart, for the Crimes and Misdemeanours therein mentioned, and fixing the Diet for his Trial to the third of July next.

Thereafter Mr. Lockhart moved, in Behalf of the Cautioners for Mr. Stewart, that the Writ of Recognizance should be voided; and for Mr. Stewart, in place thereof, that he was willing to find new Bail for any Sum the Lords should appoint and judge reasonable, as the Bail he was presently under was by far too extravagant.

To which the Lord Advocate made answer: That the Writ of Recognizance, on which Mr. Stewart was liberate, was still in force, and behaved to continue, as the Cautioners and Mr. Stewart not only became bound that he should appear such a Day, but from Time to Time thereafter, as the Lords should appoint, and not to depart, without Leave, out of the Court; that this Bail was taken by, and given to one of the highest Authority, and that it must necessarily continue, agreeable to the said Writ, till he be dismissed.

Whereupon Mr. Stewart himself, and Mr. Elliot his Procurator, waved the Motion made by Mr. Lockhart anent renewing the Bail, and agreed that the former stand good, and he had no Objection why the next Diet of Compearance might not be the third of July next.

The Lords Commissioners of Justiciary, having considered the above Debate, they continue the Diet, for the said Archibald Stewart's farther Compearance, till Friday the third Day of July next to come. Signed

ALEX. FRASER. I. P. D.

Upon

Upon the third of July the Diet was continued to the Thirtieth of that Month.

Curia Jusciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, decimo tertio Die Mensis Julii 1747. per honorabiles Viros Magistros Alexandrum Frazer de Strichen, Patrium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummorie, Commissionarios Jusciarii dicti S. D. N. Regis.

Curia legitime affirmata.

Lord Strichen Praeses.

Intra.

Archibald Stewart of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel.

Indicted and accused at the Instance of William Grant of Prestongrange, Esq; his Majesty's Advocate for his Majesty's Interest, for the Crimes of Neglect of Duty, and Misbehaviour in Offices and Places of publick Trust, and the Violation of the Trust and Duty of such Offices, in manner at Length mentioned in the criminal Libel raised against him thereanent, making mention, That Whereas, by the Laws of this and all other well governed Realms, all Neglects of Duty, and Misbehaviours of Persons employed in Offices and Places of publick Trust; and all Violations of the Trust and Duty of such Offices, are Crimes of a high Nature, and severely punishable; and the public Justice of the Realm requireth a vigorous Prosecution of such Offenders, especially when such Neglects of Duty and Misbehaviours are incurred by the chief Magistrate of any great or considerable City, in a Time of publick Danger, and open Rebellion; and particularly by an Act made in the fourteenth Parliament of King James the Second of Scotland, Chapter seventy-sixth, intituled, The Punition of negligent Officers, 'It is ordained and determined, That if any of the King's Officers or Sheriffs, Mayors, Bailies, Crowners, Serjeants, Provost of Burghs, and their Ministers both to Land and to Burgh, be found faulty or negligent in the Execution of their Offices, and it may be lawfully proved on him, or notoriously kend; if the said Office pertains to him in Fee and Heritage, he shall tyne his Office, and the Profit thereof, for an Year and a Day, and to be punished by the King in his Person and Goods after the Quantity of his Trespas; and if his Office pertains to him not in Fee and Heritage, he shall tyne his Office for all the Times he has it, and to be punished in his Person, after the Quantity of his Trespas, at the King's Will.' Yet true it is and of Verity, That the said Archibald Stewart of the City of Edinburgh, Merchant, and late Provost of the said City, is guilty, Actor, or Art and Part of the said Crimes, or one or other of them, aggravated as aforesaid; In so far as he, being Lord Provost of the City of Edinburgh, in the Year One thousand seven hundred and forty-five, when a most bold, desperate, wicked, and unprovoked Rebellion was raised and carried on against his Majesty within this Realm, by a large Body of armed Traytors, headed by the eldest Son of the Pretender to his Crown, and assisted with Troops and Money from his Enemies abroad, and, at such a Juncture, it being his Duty, as the chief Magistrate of the said City, and the King's Lieutenant therein, having Authority to command the military Force of whatever Kind within the City, to have exerted himself with Fidelity, Vigilance and Zeal, for opposing the Progress of the Rebellion by all lawful Methods in his Power, and particularly for preserving the City intrusted to his Care from falling under the Power of the Rebels, or becoming a Prey to them, he, the said Archibald Stewart, was grossly faulty or negligent in the Execution of his said Office and Duty on so important an Occasion, in manifest Violation of the Trust and Duty of his Office: and particularly was thus guilty on the Fifteenth and Sixteenth Days of September, in the Year of our Lord One thousand seven hundred and forty-five, and upon several other Days and Times in the said Month of September, and the Month of August preceding, within the said City of Edinburgh, where he was resident for the Time. And moreover, the said Archibald Stewart was not only faulty or negligent in the Execution of his Office, and notoriously known to have been such, but was guilty of Malversations and counteracting the Duty of his Office, in such an Exigency, in many Instances, and particularly, amongst others, in these following: *First*, That whereas the Preservation of the City of Edinburgh, from falling into the Hands of the Rebels, was of great Importance to that City itself, and to the King and the Kingdom in general, and the Care of it especially incumbent on the Lord Provost for the Time being, and ought to have been looked after with the utmost Attention, Zeal and Vigour, in such an Exigency, as when the Rebels got to the Southward of the Body of the King's Troops under the Command of Sir John Cope, of which Advices came to Edinburgh in the latter End of August One thousand seven hundred and forty-five, from which there was Reason to fear that the Taking of that City would be attempted by the Rebels, and to hope that the King's Army might soon after come to its Relief: Yet, in these Circumstances, he, the said Archibald Stewart, then chief Magistrate, and sole military Governor of that City, did nothing of his own accord towards providing effectually for the Defence thereof; and, on the contrary, every Measure for that Purpose proposed, and pressed by the honest Zeal of the then Magistrates and Council, and of many of the Citizens and Inhabitants, instead of being heartily encouraged and promoted by him the Provost, were by him thwarted and retarded, or else absolutely refused or declined; and in this Manner it was that he received a Proposition made to him in the latter End of August One thousand seven hundred and forty-five, for raising a Regiment of one thousand Men, by voluntary Subscription, for Defence of the City; against which he formed Objections on account of the Expence, and affected Doubts concerning the Legality thereof. And, *Secondly*, He treated in like manner another Application made to him in the Beginning of September One thousand seven hundred and forty-five, by a Number of Gentlemen or Citizens, for Leave to associate themselves under his chief Command, as Volunteers, for the Defence of the City, and Service of the Government; and, after his Objections to the Legality of that Measure were over-ruled, he would

not suffer it to be published or given out that he heartily approved, but barely that he acquiesced in that Measure; and yet his Reluctancy or Aversion to it, or Uneasiness under it, continued to discover itself on frequent Occasions, and particularly by the cold, if not the rude Manner in which he behaved towards those Volunteers, consisting of a Number of very respectable Gentlemen and Burgeses, when he went to a public Meeting of them, in the New Church Isle of Edinburgh, to name their Captains. *Thirdly*, That, in like manner, through the Misbehaviour of the said Archibald Stewart, when certain Repairs of the City Walls, and other Works for making it defensible for some Time, against an Enemy who had no Artillery, and were very unskilful in making Sieges, had been proposed and advised, amongst others, by the now deceased and famous Mr. Colin Mac Laurin, Professor of Mathematics in the College of Edinburgh, and were ordered by the Council of the City of Edinburgh to be made, the Execution whereof was chiefly incumbent on the Lord Provost for the Time being, yet the same was carried on very slowly and imperfectly, notwithstanding frequent Remonstrances and Complaints made by divers of the faithful and zealous Inhabitants; and, as late as Sunday the Fifteenth of September One thousand seven hundred and forty-five, when the Rebels were marching to, and were come within a few Miles of the City of Edinburgh, he the said Archibald Stewart refused to give Orders for loading the Cannon planted upon the City Walls, and, about the same Time, he refused to apply for some of the Sailors from on Board one of the King's Ships of War for managing of those Cannon, when he could not otherways be provided of fit Persons to act as Gunners. *Fourthly*, That, about the same Time, he the said Archibald Stewart refused to listen to, or to follow several salutary Propositions that were made and pressed by well-affected Inhabitants, for the greater Safety and better Defence of the City; such as, that the Trained Bands, consisting of a promiscuous Number of Burgeses, whereof many were known to be disaffected, should be laid aside, as had been practised during the Rebellion in the Year One thousand seven hundred and fifteen, and that Arms should only be trusted in the Hands of such as were known to be well-affected, and that a general Search for Arms should be made within the City, and that a Number of the ablest bodied Men of the Tradesmen's Servants should be employed and armed for assisting to defend the City when it should be attacked, upon the Encouragement of a Guinea to be given to each of them; towards defraying which Expence an Offer was made to the said Archibald Stewart, on the Part of the Volunteers, to have raised or advanced the sum of Five hundred Pounds Sterling. *Fifthly*, That the said Archibald Stewart misbehaved himself in like manner, in respect of the Succours that were brought at the Time aforesaid from the Country in the Neighbourhood of Edinburgh, consisting of Numbers of well-affected and zealous Subjects, under the Conduct of Gentlemen of known Loyalty and good Affection, who came and voluntarily offered their Service to assist in defending the City of Edinburgh, without any Fee or Reward, upon that dangerous and pressing Occasion, the Approach of the Rebels to that City; but these very seasonable and laudable Offers were by the said Archibald Stewart very coldly received and ill-treated: For Instance, he proposed to Sir Robert Dickson of Inveresk, who came to Edinburgh upon Sunday the fifteenth Day of September One thousand seven hundred and forty-five, from Musselburgh, with about One hundred and fifty Volunteers, to offer their Services for the Purposes aforesaid, that these Men should enlist themselves for three Months as Soldiers in the Edinburgh Regiment; a Proposition which, instead of being calculated sincerely to provide for the better Defence of the City, could be no otherways received by those Volunteers, than as an Insult and Discouragement to their Zeal, who, being Tradesmen or Husbandmen, did not mean to leave their Occupations, and enlist themselves as Soldiers for Hire, but had bravely offered to serve gratis in the then present Exigency, which could not last above a few Days, before the End of which the City of Edinburgh must either have been relieved or surrendered. *Sixthly*, That, on the Morning of Monday the Sixteenth of September One thousand seven hundred and forty-five, the said Archibald Stewart received a Message from the Camp of the Rebels, by Andrew Alves, Writer to the Signet, importing, that the City of Edinburgh would be ill treated by them, unless it should be readily or speedily surrendered; being a Message to the same Effect with that contained in a Letter from the Pretender's Son, bearing Date from his Camp that same Day, addressed, For the Lord Provost, Magistrates and Town-Council of Edinburgh, and which Letter was thereafter that same Day delivered; and yet he the said Archibald Stewart did not immediately commit the said Andrew Alves to Prison, for bringing or delivering to him such Message, neither did he give Notice to any other of the King's Officers, Civil or Military, that he had received such Message. *Seventhly*, That upon the same Monday, the Sixteenth of September One thousand seven hundred and forty-five, about three of the Clock in the Afternoon, he received a Petition from certain of the Inhabitants of the City who opposed the Defence thereof, and insisted to have a general Meeting called of all the principal Inhabitants, to consult what was proper to be done, and he accordingly held and presided in a Meeting in the New Church Isle in the Afternoon of that same Day, upon the ringing of the Fire-Bell, which was the appointed Signal for the Volunteers to repair to their Alarm-Post; the Consequence of which was, that few or none of those Volunteers, who consisted of a Number of the most substantial and best affected Burgeses, were or could be present at that general Meeting: In which Meeting, as every one who had a mind got Access, there were Numbers of Persons present of known Disaffection to his Majesty's Government; and thus, by ill Design upon their Part, and by the Timidity of others who were thus assembled in a tumultuous Manner, and a very improper Council with which to take Measures in a Time of immediate and pressing Danger, the general Cry was given for surrendering the City, and giving up all Thoughts of making a Defence: And the said Archibald Stewart thus held and took the Sense of this Meeting, notwithstanding that before he went to it, it was very well known that the Rebels were ill armed, and that an Offer had been made to him, in Aid of the other Forces with which the City was provided, to send one hundred out of two Regiments of Dragoons in the King's Service, or as many of the Dragoons of those

those Regiments as he should desire, to assist in defending the City; but he refused to give his Consent or Authority for receiving any of these Dragoons, though he had requested such Party of Dragoons, about an Hour or two before in that same Day, by a Writing under his Hand, addressed to Lieutenant General Joshua Gues, then in the Castle of Edinburgh. And moreover, at this Meeting there was brought in, and delivered to the said Archibald Stewart, the Letter above-mentioned from the Pretender's Son; immediately, or soon after the receiving whereof, that Meeting was dissolved, and he, with others of the Magistrates and Council, withdrew to the Council-Chamber, where (which is the eighth Article charged upon him the said Archibald Stewart) he caused or suffered the said Letter from the Pretender's Son to be publicly read, and moved or agreed that an Answer should be given to it; which was accordingly sent, first by one, and then by another Deputation from the Council: All which Intercourse was in him the said Archibald Stewart, then Lord Provost, the more criminal, that any Danger or Necessity that might be alleged, in order to avoid the same being punishable as High-Treason, was owing in great Measure to his own Backwardness to discharge his Duty, by taking all the proper Precautions against such Danger, with that Fidelity and Vigour which he owed, by his Allegiance and his Station, to the City of Edinburgh, and to the King and Kingdom. Ninthly, That all this while he the said Archibald Stewart refused or neglected, though frequently applied to for that Purpose, to give any Orders to the Volunteers of the City of Edinburgh, who had been long standing upon the Street under Arms, how or in what Manner they should dispose of themselves, and employ these Arms, or how they should dispose of the Arms, if they were not to be used or employed for the Defence of the City, for which they had been first taken up; and, upon such his Refusal or Neglect, the said Volunteers took and executed the Resolution to carry back their Arms to the Magazine in the Castle of Edinburgh, in order to prevent the same from falling into the Hands of the Rebels. Tenthly, That, on the Evening of the same Monday the sixteenth of September One Thousand seven Hundred and Forty-five, he the said Archibald Stewart refused or declined to give his Licence or Authority for a Party sent by the said Lieutenant-General Gues, or by Lieutenant-General George Preston, Governor of the Castle of Edinburgh, to remove or spike up the Cannon that were then planted upon the City-Walls; and, about the same Time, he the said Archibald Stewart gave Orders to Thomas Dalziel, one of the Captains of the City-Guard of Edinburgh, whose Turn it was to be on Duty that Night, to keep Guard with the usual Complement in peaceable Times, of One-third of the City-Guard, or Company, and no more; and, about the same Time, he the said Archibald Stewart gave Orders to the Parties of the Trained-Bands of the City of Edinburgh, who had been upon Guard at the several Gates of the City, to quit their Posts, and to dispose of their Arms in the Parliament-House, or some other Place or Places, where they must be exposed to fall into the Hands of the Rebels, as soon as they should enter or become Masters of the City. And, Eleventhly, In the same Evening of the sixteenth of September, One Thousand seven Hundred and Forty-five, it was proposed and urged in Council, where the said Archibald Stewart was present, and presided, That the whole City Arms, being in Number about twelve hundred Firelocks and Bayonets, should be lodged and secured within the Castle of Edinburgh, in order to prevent their falling into the Hands of the Rebels; but he the said Archibald Stewart refused or declined to give any Order for that Purpose, neither in Fact were the City-Arms so lodged and secured, but were seized by the Rebels upon their entering the City the Day following, who came to Edinburgh so imperfectly armed, that the Supply of Arms which they thus received, appears to have been one principal Cause of the Disaster that befel the King's Forces near Preston-Pans, on the twenty-first Day of the same Month of September, One Thousand seven Hundred and Forty-five. And, lastly, By Occasion or Means of the several Instances above-recited, and other Instances during the Time above-mentioned, upon one or other of the Days of the Months of August or September, One Thousand seven Hundred and Forty-five, of the Misbehaviour of the said Archibald Stewart within the City of Edinburgh, of which he was then Lord Provost, it came to be very notoriously known, that he was highly faulty and negligent in the Execution of his Office, and to be farther violently suspected and believed, amongst the King's faithful Subjects in that City, that he the said Archibald Stewart was secretly in the Interest of the Pretender, by reason of the Uniformity of his Behaviour from the Beginning to the End of these Transactions, discovering a constant Unwillingness or Backwardness to provide for, or heartily prosecute the Measures that were in a Manner forced upon him, in order to the Defence of that City, at a Time when, if he had observed a contrary Conduct, there was at least a high Probability, that the City might have been preserved from falling into the Hands of the Rebels: And in Fact the same did fall into their Hands, in a very strange and suspicious Manner, by a Party of the Rebels entering the City at the Netherbow Port, early in the Morning of Tuesday the seventeenth of September, One thousand seven Hundred and Forty-five, when that Port was guarded with nothing more than a Serjeant's Command of the City-Guard, and was opened to suffer a Hackney-Coach to go out, which had just returned from bringing back the second Deputation sent by the said Archibald Stewart, and other Magistrates and Councillors of Edinburgh, to the Pretender's Son: All which Misfortunes were, in great Measure, owing to the Misconduct of the said Archibald Stewart, and served to bring a heavy Calamity on the City of Edinburgh, and the Kingdom in general; at least, at the Time and Place aforesaid, he, the said Archibald Stewart, being Lord Provost of the City of Edinburgh, was highly faulty or negligent in the Execution of his Office, at a Time of publick Danger and open Rebellion against his Majesty. And for proving that the said Archibald Stewart was guilty as aforesaid, there would be produced against him, by Way of Evidence, besides very credible Witnesses, certain Documents in Writing, which should be lodged in the Hands of the Clerks to the Court of Justiciary, that he might see the same, and whereof a List should be delivered to him, along with the List of Witnesses to be adduced against him. All which enormous Neglects of Duty, and Misbehaviours, or Part thereof, or his being Art and Part of the same, being found proven against the said Archibald Stewart by the Verdict of an Assize, before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, he, the said Archi-

bold Stewart, ought to be punished with the Pains of Law, to the Terror of others to be guilty of the like in Time coming.

Pursuers.

William Grant of Prestongrange, Esq. his Majesty's Advocate,
Mr. Patrick Haldane, and Mr. Alexander Home, his Majesty's Solicitors,
Mr. Francis Garden,
Mr. John Grant.

Procurators in Defence.

Mr. James Ferguson, Mr. John Stewart,
Mr. Henry Home, Mr. Gilbert Elliot,
Mr. Alexander Lockhart, Mr. David Dalrymple,
Mr. George Sinclair, Mr. William Binning,
Mr. Charles Hamilton-Gordon.

The Pannel having, agreeable to a Clause contained in an Act past the last Session of Parliament, intituled, *An Act for taking away and abolishing the heritable Jurisdictions in that Part of Great Britain called Scotland, &c.* given in to the Clerk in Writing a signed Account of the Facts relating to the Matters charged upon him in the said Libel, with the Heads of such Objections or Defences subjoined, as he was advised to make at his Trial;

And the said Libel being this Day openly read, and full Debate thereupon, and upon the said signed Account of Matters of Fact, and Heads of Defences given in for the Pannel, in Presence of the Pannel, Court and Jury, The Lords Commissioners of Justiciary, in respect of the Importance and Difficulty that may occur in this Case, and by virtue of the Power reserved to them in the said Act of Parliament, ordain both Parties to give in Informations to their Lordships, and the Clerks of Court; the Pursuers to give in their Informations against Monday the twentieth instant, at six o'Clock at Night, and the Procurators for the Pannel to give in theirs against Friday thereafter, the twenty-fourth instant, at the same Hour; and, at the particular Desire of both Parties, ordain the Clerks of Court to record the said Informations in the Books of Adjournal, in place of the Minute directed to be made up and entered in the said Books by the Act of Parliament; and continue the Diet in this Cause, and the said Archibald Stewart his Compareance, upon his Bond of Recognizance formerly recorded, till Friday the thirty-first of July current, at Four of the Clock Afternoon, in this Place; and ordain Parties, Witnesses and Affizes, then to attend, each under the Pains of Law.

July 20, 1747.

INFORMATION for his MAJESTY'S ADVOCATE for his Majesty's Interest, Pursuer,

AGAINST

ARCHIBALD STEWART of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel or Defender.

THE Libel, at the Pursuer's Instance, against Mr. Stewart, late Lord Provost of the City of Edinburgh, charges him the Pannel with being guilty of very high Crimes and Misdemeanours, in having many ways acted contrary to his Duty, when he was chief Magistrate of the City of Edinburgh, in the Months of August and September 1745, a Time of publick Danger and open Rebellion, headed by the eldest Son of the Pretender to his Majesty's Crown, assisted with Troops and Money from his Majesty's Enemies abroad; at which Juncture the Pannel, by his Misbehaviour, suffered the City of Edinburgh, with the Cannon and Arms therein, as well as other Supplies of various Sorts, to fall into the Hands of the Rebels, in manifest Violation of the Trust and Duty of his Office. This is the general Charge against the Pannel, which is in the Libel more particularly specified, by a Deduction of many particular Instances of Misbehaviour alleged against him in Support of that general Charge, which Particulars it is unnecessary here to repeat; but for them the Pursuer begs Leave to refer to the Libel itself.

The Pannel having been duly served with a Copy of this Libel, did first of all, in pursuance of the late Act of Parliament for abolishing the heritable Jurisdictions in Scotland, &c. give in to the Clerk of Court, the Day before his Trial was to come on, signed by one of his Counsel, his Account of the Facts relating to the Matters charged upon him, together with the Heads of certain Objections and Defences which he makes to the Libel, and therein says, 'That he is not guilty of all or any of the Neglects or Misbehaviours laid to his Charge, and that there is no Ground for supposing him disaffected to the Government, but much to the contrary; and, in particular, he avers, that his Conduct, upon Occasion and at the Time of the late Rebellion, will, upon Proof, afford the strongest Evidence of his real Attachment to the Government;' and farther says, upon the several Matters charged against him,

In the first Article, 'That he thwarted no Measures that were proposed that seemed legal and expedient; that where any Doubts or Difficulties occurred, either as to the Legality or Expediency of any Particular proposed, some of which seemed rather to be intended as a Snare, he delivered his Opinion with a becoming Freedom, submitted his Reasons to the Council or Committee, and heartily went into whatever they resolved, after taking Advice, in Points of greatest Importance, with those who bore the highest Offices, both Civil and Military, that were at the Time in this Town.'

As to the second Article of the Indictment, Mr. Stewart says, 'That the Proposal made for associating a Body of Volunteers was a Point of so much Delicacy, as must justify him for desiring Advice as to the Legality of what was thereby proposed. That so soon as the Magistrates found they could safely go into the Proposal, the Lord Provost readily acquiesced, and shewed a Willingness to have it carried into Execution; and that, upon every Occasion, he behaved towards them with the utmost Civility.'

As to the third Article, 'The Magistrates of Edinburgh, with the rest of a Committee appointed by the Council to provide for the Defence of the Town, readily listened, and cheerfully received every Proposal that appeared calculated for the Defence of the Town, in which nothing was by them delayed; and the Execution of these Matters was com-

mitted

mitted to proper Persons, chosen and appointed for that Purpose by the Council and Committee. He does farther say, That the Guns were charged in the proper time, and all Endeavours used to supply the Town with proper Gunners.

The Provost does in like manner say, That what is loosely charged in this Article of the Indictment, of his having refused the Proposals of those who were zealously affected, is not well understood: Every Conversation was freighted with a Proposal, many of them contradictory, and some of them from sinister Motives; such particularly was the Proposal mentioned in this Article, which, if sincerely meant, ought to have been proposed in Council, which never was done.

As to the fifth Article, The Provost thinks he behaved kindly to every Man who came, or pretended that he came, to the Assistance of the Town; and denies the Instance charged in the Libel, nor can he imagine that it was, or can be presumed an Affront, although he had offered the putting Sir Robert Dickson's Volunteers in the Way of receiving Pay, supposing that to have been the Fact.

As to the sixth Article, Mr. Stewart apprehends there can be no Crime in it; for he did communicate the Message by Mr. Alues, immediately after he received it, to the Gentlemen of the Council, who were of Opinion, that the Message delivered by Mr. Alues ought not to be divulged, for fear of intimidating the Inhabitants; and soon after he waited of the then Lord Advocate, to impart that Affair, and get his Advice what ought to be done, and, conform to the Advice then given, committed the said Andrew Alues, so soon as he understood that it was lawful and proper, and there was no criminal Delay in committing him.

As to the seventh Article, Mr. Stewart says, That the Meeting in the New Church Isle was not in consequence of any Petition delivered him by the Inhabitants, which Petition was never once under Consideration of the Committee, nor did he order the Alarm-Bell to be rung to convocate the Inhabitants. Denies that he ever refused to admit any Dragoons into the Town; but, on the contrary, he expressed a Willingness to receive them, providing they were sent.

As to the eighth Article, Mr. Stewart refuses that he received or gave Orders to read any Letters from the Pretender, or that he gave Orders in consequence of any such Letter; any Deputation that might have been sent, was the Effect of the Fears of the Inhabitants, who had more of the Government of the Town at that time than the Magistrates.

As to the ninth Article, The Volunteers carried their Arms to the Castle without applying to Mr. Stewart for his Orders, and before he understood the Town to be in a defenceless State.

As to the tenth Article, Mr. Stewart says, That it was the Sense of the Committee the Provost should give no Orders; and he believes it will appear, that the Messenger from Mr. Gust was told he was at Liberty to spike up the Cannon, if the General thought proper; nay, he farther believes the Messenger was farther told, that he should be shewn where the Cannon were. Mr. Stewart does not remember that Captain Dalziel was ordered to have but a Third of his Guard on Duty, but believes that the whole Guard at that time were not in a Condition to do Duty, after the Fatigue they had previously undergone; the Inhabitants had before this time resolved not to stand upon their Defence; the Provost remembers nothing of the Orders said to have been given to the Trained-Bands, but believes the contrary will be proven.

As to the eleventh Article, the Provost repeats the first Part of his Answer to the preceding Article, and says, That if any of the City-Arms fell into the Hands of the Rebels, it must have proceeded from various unavoidable Causes, but cannot be imputed to any Fault of Mr. Stewart.

As to the twelfth Article, Mr. Stewart is confident there must appear, upon his Part, a zealous Attachment to the Interest of the Government, by the Uniformity of his Conduct from the Commencement of the Rebellion, until the Time that the Town fell unhappily into the Rebels Hands; for such is and must be the natural Construction of his unwearied Application to every Part of his Duty, and upon considering the Proposals made by him in Council, with the Directions given to those that acted under him.

From this Account of the Provost's Conduct, in relation to the Matters charged upon him, his Defences against the Libel are:

1^{mo}. That the Whole of the Charge is laid in a Manner too loose and general to be past to the Knowledge of an Assize.

2^{do}. That the Facts therein contained are either misrepresented, or in their Nature not criminal.

3^{io}. That no Error in point of Judgment, if any thing of that kind shall appear, ought to be made the Foundation of a criminal Prosecution, especially that he was only one of a Committee, and acted by their Direction.

Before the Pursuer proceed to recite the Arguments that were offered on behalf of the Pannel, in Support of these Defences, when the Trial came on in the Court of Justiciary on Monday the 13th current, together with the Replies made on the Part of the Pursuer to these Defences, he shall here, for the better understanding of the true Merits of the Case, first of all briefly set forth, without any Argument, the principal Facts which occurred at and about the Time libelled, such as he believes can be proved to be true, either by Authentick Writings, or by parole Evidence.

[23d August 1745. Council Record.] The Lord Provost produced in Council a Letter from one of his Majesty's Principal Secretaries of State, by Direction of the Lords Justices, bearing Date 13th August 1745, giving him Notice, That they had received Intelligence that the Pretender's Son was already landed, or intended to land in Scotland, and recommending it to him the Lord Provost to exert his Care and Vigilance on this Occasion, and make use of such Precautions as he should judge necessary for preserving the publick Peace within the City of Edinburgh. And produced also a Copy of his Answer to that Letter, bearing Date 17th of August, promising, *inter alia*, not to sit down in Security, but to keep a watchful Eye, in order to prevent, as far as possible, every thing that might disturb the Peace of this City; of which Answer the Council approved.

The same Day the Council resolved to levy and raise the Number of thirty Centinels to be added to the City-Guard, and recommended to the Lord Provost and Magistrates to direct and ordain the Captains and Subalterns of the Trained-Bands to make up full Lists of the Persons belonging to their several Companies, and to report the same to the Magistrates against Wednesday then next.

At the same time another Order was made, for directing the Constables of the City, to make out Lists of all the Inhabitants and Residents within their several Bounds and Districts, and that they be diligent in inquiring and finding out what Strangers may happen, from Time to Time, to come within this City, and lodge within their several Districts; and that all Inn-keepers, Stablers, and others, who lodge and entertain Strangers, should from Time to Time, and as oft as any Strangers shall lodge with them, give in to the Captain of the City-Guard, a Note of their Names and Designations at their Arrival, and of the Time of their Departure from thence, and order the Captain of the Guard to report to the Magistrates in Writing, every Morning, Lists of the Particulars that should be delivered in to them by the Inhabitants.

[Tuesday, 27th August 1745.] These Resolutions were reported by the Lord Provost, and the other Magistrates, with the Conveener of the Trades, to a Meeting of substantial and well-affected Burgesses, which it had been proposed to summon to give Advice on the present Occasion. This Proposal was made to the Lord Provost on the Saturday preceding, being the 24th of that Month, by a Citizen of Edinburgh, who had been some time a Magistrate, and had been commissioned by other well-affected Citizens to propose such Meeting to the Provost, as had been formerly practised on important Occasions, and which he represented as what they judged necessary at this Time, in order to take Measures for putting the City in a Posture of Defence. This Proposition the Provost received at first with a Sneer or Laugh; but, upon the other's pressing him, as being the Opinion and the Wish of many substantial Burgesses, and what had been formerly practised on the like Occasion, the Provost at last consented that there should be such Meeting; but said it could not be that Day, being Saturday, as many of the Burghers would be out of Town; and accordingly it was not held till the Tuesday following.

At this Meeting, which was held in the New Church Isle at Five o'Clock in the Afternoon, consisting of a great Number of the most respectful Burgesses, of undoubted Loyalty to his Majesty, they unanimously approved of the Steps already taken, and offered their Advice as to the farther Steps to be taken, and particularly That the City should be forthwith put in a Posture of Defence, and a Body of Men raised and armed for the Defence thereof and the Service of the Government. The former of these could be of little Use without the latter; and to the latter the Provost objected, that the same would be treasonable or illegal, without special Warrant from the Crown. They replied, That if a Warrant was necessary, That might be applied for and obtained. Then the Provost said, That, supposing they should get a Warrant, he doubted much if Money could be raised by Subscription for paying them. To which last Objection it was answered by some Citizens of considerable Wealth and Credit there present, That they were ready to undertake and oblige themselves to find Money to pay a Regiment for three Months. Upon this it was resolved, that a Committee should be named, out of the Council and of the other Burgesses, to consult with and take the Advice of the Lord Justice-Clerk, and such of the other Judges as could be found in Town, and his Majesty's Advocate and Solicitor, with regard to what farther Steps the Magistrates and Council and Community could legally take for preserving the Peace of the City, and contributing to defeat the Designs of the Rebels; and next Day the Council named their Committee accordingly; the Result of which was, that Application was made to his Majesty, in order to remove all Doubts, for his special Warrant and Licence to raise such Regiment.

[Saturday, August 31st, 1745.] Advice was received at Edinburgh, that Sir John Cope, with the Troops under his Command, instead of marching directly to the Rebels, as he had proposed, and was expected, had, upon his March at Dalwinnie, the Place where the Fort-Augustus and Inverness Roads meet, marched forward towards Inverness, whereby the Rebels were now got to the southward of the King's Army, when there was no Force left to oppose their marching southward where they should think fit, which gave no small Alarm to the Cities of Edinburgh and Glasgow, and all the Country to the southward of the Rivers of Forth and Clyde.

[Monday, September 2.] The Council of Edinburgh ordered the Town-Guard to be augmented to the full Number of 126 Men, Officers, Sergeants, and Drums included.

[Eodem die. The decess Mr. Mac Laurin's Journal.] The Accounts from the North becoming more and more unfavourable, above twenty Gentlemen of known good Affection to his Majesty and the Government, met at Mrs. Clark's Tavern, and agreed to apply to the Lord Provost, that he would give Orders for putting the Town in as good a State of Defence as possible with all Expedition. It was complained of in this Meeting, that an Application which had been made the Week before to his Lordship had not met with due Encouragement, but that the Persons who waited on his Lordship, and their Zeal, had been ridiculed, and made the Subject of insipid Jokes. The Company (however) resolved, that, whatever Discouragements they might meet with from those whose Duty it was to have animated them, they should meet frequently, and promote, to the utmost of their Power, whatever may tend to the Defence of the Town: In the mean time they appointed two of their Number, a Gentleman who had formerly been a Bailly, and Mr. Mac Laurin, to wait on the Provost next Morning, with a general Instruction to beg he would see to the Defence of the Town, and offer their Assistance; and three particular Instructions, first, That he would order making Moulds for Bullets, it having been found on Trial that all in the Shops had been bought up of late by Cadies, (or Link Boys) who had been sent for them. 2^{dly}. That the Sluice of the North Loch, by which the Water issues from it, should be shut and secured, that it might fill up. 3^{dly}. That they should propose to his Lordship the making a Distinction betwixt the Inhabitants of known good Affection, and such as were suspected, when he came to intrust them with the Town's Arms, and

and take proper Measures that the City should not be in Danger from within, as (had been taken) in 1715.

Lord Provost did give a satisfactory Answer to the two first of these, but as to the third, he did not give the Satisfaction desired; but, after a good deal of Reasoning, he said, That, if the Town came to be attacked, he would so far make a Distinction as to intrust the Town's Arms with the most substantial Burghers; he said, That, if a thousand Men had a mind to get into this Town, he could not see how he could hinder them. In answer to this, the Number of Trades-Lads in *Edinburgh*, of the Gentlemen who would associate to save the Town, the Unskillfulness the *Highlanders* had always shewn in attacking Stone-Walls, their Want of Artillery, and being ill-armed, with the Assistance that would be got from the Dragoons, in all Probability, were urged: It was insisted, our doing something was requisite to save the Reputation of the Town, to divert the Enemy from coming this Way, and to raise a Spirit in the Country.

To this he answered, That, to pretend to do when we could do little, was to expose us to Ridicule. Other discouraging Expressions were used; but, at the End, he said he would be glad of Advice from sensible Burghers, and have regard to it.

[*Thursday, Sept. 5th.*] Little material past till *September* the 5th, when the same Company, with some Addition of other Gentlemen, met at the same Place; and now the Danger appearing more imminent, they entered into an Association, as Volunteers, to serve for the Defence of the City at the Hazard of their Lives and Fortunes, under the Direction of the Lord Provost. This was signed by all present, and by a hundred before Twelve the next Day. They appointed some of their Number to present this to the Lord Provost, to desire they might be allowed to chuse their Officers, and that he would apply to General *Gust* for Arms to them: They were likewise ordered to intreat that the Parapet of the Town-Wall might be cleared, which, in many Places, had been stopp'd up with Stone and Lime to prevent smuggling; that Stairs should be made for getting up to it at proper Distances; that Cannon should be got from the Ships to be placed on the Flanks and Gates.

This Spirit for putting the Town in a Posture of Defence was so generally prevalent amongst the well-affected, and even the least warlike Part of the Inhabitants, that, of this Date, a Representation to the Lord Provost, Magistrates and Council, was signed by the Principal and Professor of Divinity, and Twelve more of the Ministers of the City of *Edinburgh*, of whom the total Number is Sixteen, so that three only were absent or wanting; which Representation sets forth, that they have seen and considered a Petition to their Lordship and Honours, subscribed by a considerable Number of the Inhabitants of this City, well-affected to his Majesty's Person and Government, praying, that the City may be put in a proper Posture of Defence against the common Enemy; that they, the Ministers of *Edinburgh*, judged it their Duty to testify their hearty Approbation of such Design, and their firm Resolution to promote the same in their Sphere and Station, and thereby engage cheerfully to contribute for defraying the necessary Expence with their Fellow-Citizens.

The Ministers were as good as their Word as to this Article; for, out of their moderate Stipends, they joined in subscribing for the Pay of one hundred Men out of the thousand proposed to be raised.

The Lord Provost, however, found also considerable Difficulties as to the Legality of this Measure, which was pressed upon him, of raising the *Volunteers*, and did not give way to it until he had first one signed Opinion of his Majesty's Advocate and Solicitor, 'That it was lawful for the Magistrates to authorize the Subscribers, and other well-affected Inhabitants, to take up Arms in Defence of the City, and Support of the Government.' And the Provost, it seems, not being fully satisfied with this Opinion, there was subjoined to it, and signed by the same Gentlemen, a farther Opinion, [*Eodem die, Sept. 6th.*] 'That it was lawful, and not treasonable, for the Magistrates to comply with the Desire of the said Petition of the Volunteers.'

[*Mr. Mac Laurin's Journal.*] The Lord Provost declared now, and always afterwards, 'That he would insist on the Privileges of his Office, and did not leave the Nomination of the Officers to the Volunteers, but allowed them to make up a List of 30 or 40, or more, from which he would chuse them. He walked with some of the Magistrates and Volunteers about a Part of the Town-Wall; he then said, he could not see but if two thousand Men had a mind to get into the Town, they must succeed; after looking at a Part of the Wall, he desired Mr. *Mac Laurin*, one of the Volunteers, to take the Trouble to make a Plan of it; which he promised to do.

It was thought proper to draw up an Article of News concerning this Association, to encourage others to join, and rouse the lethargick Spirit of the Country: After it was written, it was thought decent and dutiful to shew it to the Provost; the Words, *That this Proposal was accepted by the Lord Provost*, were altered by him; he would have it, *that the Lord Provost acquiesced in this Proposal*. This Alteration was much regretted by those who were sincerely zealous in this Cause, being sensible, that, in so critical a Time, more than acquiescing was requisite in the Magistrates, to animate the Burghers, and foreseeing, as it happened, that the Trades would not be warm when the Magistrates were so cool. The Volunteers however soon rose to 400. The Expences of the Works proposed were much talked and complained of, at this Time and afterwards.

[*Saturday, Sept. 7th.*] The Lord Provost moved in Council, that an Address should be drawn up and presented to his Majesty, which was unanimously agreed to; and accordingly a very dutiful Address was made out and signed; and that same Day it was resolved in Council to authorize the Magistrates and Conveener to employ Persons, with all possible Speed, to put the City in a Posture of Defence, and particularly the Walls thereof.

[*Eodem die, Sept. 7th, Mr. Mac Laurin's Journal.*] 'The Plan of the Wall was made ready, and presented to the Council at Six o'Clock; the weak Places were pointed out, and what was most necessary to be done proposed. The Lord Provost desired an Estimate might be made of the

Expence; but it was answered, That it could not easily be done, and would require Time. It was proposed the Flanks should be first taken care of, as the Time which the Rebels would take to come to *Edinburgh* was uncertain; that the doing as much as we could did not hinder the capitulating, if necessary; that there was a double Chance for Relief, either from Sir *John Cope*, or the *Dutch*, so that holding out one Day or two might save the Town; but that Dispatch was necessary above all things, and all the Workmen that could be got ought to be employed.'

[*Sunday, Sept. 8th. Mr. Mac Laurin's Journal.*] 'The Workmen cleared a Part of the Parapet; but the Number was very small for this Day, and indeed for the whole Week, till *September* 15th. Of this Complaints were made every Night, but to little or no Purpose; sometimes there were only two Dozen, when there ought to have been as many Hundreds; for now the Rebels were at *Perth*. It was found that the Parapet, when cleared, was too narrow in several Places, and that it was necessary to add to it by Scaffolding. This was done in some Places, but so few Men were employed, that in others it was not executed.'

[*Monday, Sept. 9th. Council Record.*] The Lord Provost produced in Council a Sign-Manual from his Majesty, addressed to the Lord Provost, Magistrates, and Town-Council of *Edinburgh*, reciting: 'That it had been represented to his Majesty, that the Lord Provost, Magistrates, Town-Council, Burghesses, and others of the City of *Edinburgh*, from their great Loyalty and Affection to his Person and Government, were at this Juncture willing and ready to raise and maintain, at their own proper Charge and Expence, by voluntary Subscription and Contribution, one thousand Foot for the Defence of the said City and the Support of his Government, and that they were desirous of obtaining his Royal Licence and Authority for the same: His Majesty does grant the same accordingly; and does farther ordain and command, that the said one thousand Men shall be under the Direction of the Lord Provost, Magistrates and Town-Council of *Edinburgh*.'

This Warrant having been read and considered by the Magistrates and Council, 'They appointed, as a Committee, the present and old Magistrates, Conveener, Deacons *Lauder* and *Porteous*, or any five of them, the Lord Provost being always one; and, in case of his Absence, any Nine of them to be a *Quorum*, to consider what is most proper to be done upon this Occasion, for levying the said 1000 Foot, and particularly to take in the Subscriptions of such of the Inhabitants as are willing to contribute for levying and maintaining the said 1000 Foot, with their proper Officers to be named, for the Purposes mentioned in the said Sign-Manual, for the space of three Months after they shall be so insisted; as also to consider what is proper to be done farther for the Safety of the City, and for Support of the Government; which Committee shall meet at the Goldsmiths Hall twice each Day, at the Hours of Eleven in the Forenoon, and Four in the Afternoon; and recommended to the said Committee to keep a Book, into which all their Proceedings and Actings shall be regularly ingrossed, to the end the same may be reported to the Council from Time to Time.

And the Magistrates and Council nominate and appoint the Lord Provost to be Colonel and Commander of the said 1000 Foot, with Power to his Lordship to conduct and direct them, and the other Officers who shall be named to command under him, as the Council shall think proper, or as the Exigencies of Matters shall require.'

[*Eodem die, Sept. 9th. Mr. Mac Laurin's Journal.*] 'The Work went on but slowly; some of the Embrazures in the Flanks for the Cannon, and in the Curtain for the Musqueteers, were opened.'

[*Eodem die.*] 'A Letter was delivered to the Lord Provost, signed by three old Provosts, *Drummond*, *Mac Aulay*, *Osburn*; and three old Bailies, *Nimmo*, *Blackwood*, *Wilson*; on Behalf of themselves and the other Volunteers, praying his Lordship to apply to the Commander in Chief for 200 Stand of Arms; and that he would appoint a Place where the Volunteers might be instructed in the Use of the Firelock and Bayonet.'

[*Sept. 10th. Council Record.*] 'The Council appointed *Allan Burns*, late of the Lord *Rothes's* Regiment, to be Adjutant to the 1000 Foot commanded by the Lord Provost, which were now levying, and recommended to his Lordship to find out proper Persons to be Officers, to command each hundred Men under his Lordship.'

[*Eodem die. Mr. Mac Laurin's Journal.*] 'A Scheme of what was most necessary to be done was drawn up by a Volunteer above-mentioned, and shewn to General *Gust*, and at his Desire to an old Officer of the Dragoons; being approved by him, it was presented to the Lord Provost. It was insisted, that a high House, which takes a Part of the Wall near the *Potter-Row* Port, should be possessed by a Party, and a Communication made from the Wall to the House, to relieve or bring off the Men as Occasion might require; but this, so much insisted on, was not yielded till *September* 16th, when Captain *Murray* approved of it; and then, though it was begun, there was not Time to finish it.

Unhappily at this Time the Elections of their Deacons so much employed the Trades, that few came to work on the Wall; and it never appeared, that, after repeated Complaints, proper Authority was employed to oblige them to work in this Time of the greatest Danger.'

The Lord Provost reported, That he had procured from General *Gust* an Order to *David Lyon*, Store-Keeper of the Castle, to deliver to his Lordship, or his Order, upon Receipt, two hundred Muskets, Bayonets, and Cartouch-Boxes, and the like Number of Flints, with one Barrel of Powder, and an equal Proportion of Ball, which are to be distributed among the Gentlemen Volunteers.

The Council also authorized the Bailies of *Potter-Row* and *Portsburgh* to give Receipts for sixty Stand of Arms, to be by them distributed amongst the Inhabitants on proper Receipts.

The Council appointed the respective Deacons to make Choice of six Persons out of each of their Incorporations, to be given in to the Council on *Friday* next, that, out of the same Lists of six, three may be chosen by the Council, to the Effect the Corporations may elect their several Deacons for the Year ensuing.

[*Eodem Die, Sept. 11th.*] The Committee above-mentioned, appointed by the Council on the 9th, met for the first Time, the Lord Provost present, when they gave their Opinion concerning some Things to be done for the Reparation of the Walls, that the same should be forthwith executed so far as hitherto undone.

[*Eodem Die, Mr. Mac Laurin's Journal.*] Some Cannon were got from Ships; and it having been earnestly recommended to the Lord Provost, that some Hand Granadoes should be got, and the City-Guard and Volunteers taught to use them, a Message was sent to the General, and by him to the Castle; but it was answered, That they had not above two hundred, and could not spare them. Afterwards, however, one of the Volunteers, surprised that there should be so few in such a Garrison, so well provided with Stores, made a Visit to the Castle, and was told by the Store-Keeper, that he had five times that Number, and was desired to tell the Provost, that he had a hundred at his Service, if he had a mind for them. The Message was delivered, but the Granadoes never appeared. We found twenty-three that had lain in a Chest since 1715, in the Town's Armoury, but they were never examined.

A Ditch that had been ordered at Wallace's Tower, had been carried on right for some time, but was afterwards, by some Mistake, or bad Advice, cast on the wrong Side of the Dyke. This Day this was stoppt, and a Remedy proposed, but not executed for want of Time.

[*September 12. A. M.*] The Committee above named, came to some farther Resolutions about fortifying the City-Walls, and, *inter alia*, recommended to Mr. Mac Laurin to go along with the Tradelmen to explain the tenth Article of his Memorial, in relation to the putting the Wall at Leith-Wynd in a better Posture of Defence.

[*Committee's Record.*] In pursuance of the Lord Provost's Recommendation, the Committee resolved, That it be recommended to some of the City-Guard, Edinburgh Regiment, and Gentlemen Volunteers, that they do learn the Exercise of throwing the Hand-Granadoes.

[*Eodem Die, P. M.*] The Committee resolve, That the Council should invite those who have any Quantities of Grain at Leith, or other Parts near to the Town, to bring the same into this City, to be lodged in the City's Granaries, to be kept therein from the Enemy, Rent-free.

[*September 13. Council Record.*] The Provost reported, That, on the 12th current, he had given Receipt to the Store-Keeper of the Castle for a hundred Muskets, Bayonets, and Cartouch-Boxes, with half a Barrel of Powder, and Ball in proportion, for the Use of the Volunteers of this City; and also that he had given Receipt for two hundred Stand of more Arms to the Use of the City's Regiment.

The Proceedings of the Committee for levying the City-Regiment, and forwarding the necessary Steps to be taken for the Safety and Defence of the Place, named the 9th current, were read over, and unanimously approved by the Council, which recommended to the Committee to continue in their Diligence.

The Council then proceeded to make the short Leets for the Election of new Deacons; after which there is nothing entered in the Council Record, till the 18th of September, the Day after the Rebels got Possession of the Town, when there were some Proceedings relating to the annual Election, which did not take effect.

[*Eodem Die, Minutes of the Committee.*] The Lord Provost, and other Members of the Committee present, recommended to Bailie Robert Baillie, and his Committee upon the publick Works, and such of this Committee as pleased to attend, or any three of them, Bailie Baillie being always one, to see the whole Particulars contained in the former Minutes fully executed, without Loss of Time, and to take the Advice and Direction of such proper Persons without Doors, as they shall judge necessary for executing the whole Particulars: with Power to the said Committee to prefs such Workmen as shall be judged proper for compleating the whole Works before specified.

[*September 13. Mr. Mac Laurin's Journal.*] The Day of the Election of the Deacons there was very little done on the Wall; the Deacons could not be got; some Houses in St. Mary's Wynd, that had large Windows into the Town, were shewn to some Magistrates, and afterwards to the Provost; but no Orders were given about them. This Day the Carriages of the Cannon were examined, and any necessary Reparation ordered.

[*Saturday, September 14th, Committee Record.*] The Lord Provost in the Committee reported, That he had this Day signed an Order for Payment of 1000 l. Sterling to the Receiver General, to Account of the Cess due by the City.

The Committee resolve, That the Cess Books, and those by which the Annuity and Poor's Money is collected, shall be transported from the several Collectors Offices to the Castle of Edinburgh for Preservation; and the Provost wrote a Letter to General Preston, the Governor of the Castle, praying him to receive the said Books, and keep them for the Use of the City.

This is the last Entry made in the Register of the Proceedings of this Committee, which does not appear to have met again after this Saturday the 14th.

[*Eodem Die, Mr. Mac Laurin's Journal.*] Little Work on the Walls and Scaffoldings, the Cannon were all proved and the Shot got ready.

[*Sept. 15. dit. Journal.*] The Lord Provost brought Captain Murray to Town to give his Advice, and, not till this Day, he ordered some Works within the Gates, which were begun immediately. There were more Men employed this Day than ever before; and every body seemed to exert themselves: But the Lord Provost having never named the Field-Officers to the Volunteers, they were now nine independent Companies; and, upon a Motion to go out with Colonel Gardner, they unhappily divided in Opinion, which produced some Heat amongst them. A most unlucky Signal was pitched on to call them to their Arms, the ringing of the Fire-Bell, which never fails to raise a Panick in Edinburgh. This happened in time of divine Service; the Churches dismissed in Confusion and Terror: And this was the first Appearance of Fear in the Place: This Signal ought not to have been proposed or allowed by the Magistrates at such a Time, the Rebels not being far from us.

This Day most of the Cannon were carried to the Flanks, and in

this as much Regard as possible was had to the weakest Places; so that there were three on St. Mary's Wynd, which raked in. About Six, one of the Volunteers, with the Chief of the Bombardiers, came to the Provost, to have an Order to load them; he kept them waiting till Eight, and then desired another to sign the Order for him. They began, though in the Night; but, after they came to the Bristle Port, they were obliged to wait from Half an Hour after Ten, till near One, for want of a Centinel to place on the loaded Gun, though they sent Messages for Centinels to the Guard and Council. This put a Stop to their Progress that Night; the Guns were all loaded with small Shot, and, as they flanked the Curtains and Gates, it was the more dangerous to leave them without Centinels during all that Time, while the rest of the Wall was guarded, and, *All is well*, was heard go round regularly; there were no Centinels from Bristle Port to the West Port, but one or two below.

On the Evening of this 15th of September, when the Rebels were within a few Miles of the City, and it was apprehended that they might have come up to it during that Night, it was resolved at a Meeting with the Lord Provost, and others of the Council, with the Captains of the Volunteers, That 700 Men should be upon Duty all Night, to guard the Walls all round the Town, who were to consist of 400 Trained Bands, 40 of the new Regiment, 100 Volunteers, 90 Seceders, 40 Dalkeith Volunteers, 30 Excise-Officers.

[*Monday, September 16. Mr. Mac Laurin's Journal.*] The Works went on cheerfully till Four or Five at Night; a Work was thrown up to defend the Pass to Mountfry, some Gates were shut up, some more Cannon were got, and carried to the Bastions and Gates; we were told that only five Gunners were got at One o'Clock, but were promised that Pains should be taken to get more.

Between Two and Three o'Clock, some Burghers were said to be carrying about for Subscriptions a Petition to the Magistrates, praying the Town should capitulate. The Alarm being great at the West Port, the Guns there were loaded, and the other Works pressed on, so that they were almost finished, when an Account came, that a Meeting in the New Church had agreed to capitulate. One of the Volunteers called for the Provost, to know what was to be done to the Cannon; but was told, that his Lordship had not Time to speak to him. The Call of, *All is well*, did not go round the Wall this Night as the former, and the Town seemed to be quite off its Defence; the Volunteers delivered their Arms into the Castle.

Here Mr. Mac Laurin's Journal ends, which is all in his own Hand-Writing; and, as he was himself a Volunteer, and served the Town as a chief Engineer, to devise and direct the Methods of fortifying the same; as he was a Person of great and eminent Abilities, of excellent Judgment as well as great Learning, and of perfect Probity and Veracity; as he had Opportunity to know all the Facts which he relates, and which he set down in Writing recently after they happened, with great Distinctness and Precision; and as the Pursuer has reason to believe that his Relation will be confirmed by the Testimony of living Witnesses, he has chosen, in this Deduction of the Facts, in order to make the Charge and the Defence better understood, to make use of the very Words of Professor Mac Laurin, as the most accurate and genuine Relation of the Facts that could be made, so far as he goes.

The Events of Monday the 16th, when, after so much Preparation for a Defence, the City of Edinburgh was in effect surrendered, and opened its Gates to the Rebels, were various, and deserve to be more minutely recited. In the Morning of that Day Provost Stewart received a Message from the Camp of the Rebels, which was delivered to him by Andrew Alves, Writer to the Signet, importing, That the City of Edinburgh would be ill-treated by them, unless it should be readily or speedily surrendered. Upon receiving which, the Provost did not commit the said Andrew Alves to Prison, neither did he give Notice of this Incident to any other of the King's Officers, Civil or Military, nor did he so much as advise or charge Mr. Alves to forbear repeating or relating that Message of his in the Town, who went directly from the Provost to the Street, and repeated his Story to a Circle of People who came round him, amongst whom one Gentleman advised Mr. Alves to go and tell what he had been relating to his Majesty's Advocate; upon his doing which, the Advocate advised the Lord Provost to commit Mr. Alves to Prison, which was now done too late to prevent the disclosing or spreading the threatening Message which he had brought.

About Two o'Clock in the Afternoon of that Day, a Petition was set on foot, which was put into the Lord Provost's Hands about Three, addressed to the Lord Provost, Magistrates and Council, and intitled, Representation of the under-subscribing Inhabitants of the City of Edinburgh, and it is signed by 48 Persons, setting forth, 'That being deeply affected with a Sense of the great Danger to which the City is presently exposed, by a rebellious Army marching up thereto in order to attack it, and being, at the same time, sensible of our Inability to make such a Defence as with any Probability may defeat their Design of entering the same, without endangering the Lives and Properties of the Inhabitants, and exposing the City to Rapine and Plunder, in the Event of our being obliged to surrender, and that there is but small, if any Prospect of Assistance from the Military; therefore praying them, who are the Governors of the City, that, before they come to any Resolution, either of defending or giving up the Town, they will call a Meeting of all the principal Inhabitants and Heritors at present in the Place, to consult with them what is proper to be done in an Affair of so great Importance.'

About the very time that this Petition was going forward, a Letter was signed by the Lord Provost, together with his Majesty's Advocate and Solicitor, addressed to the honourable Lieutenant-General Guesf, in the Words following. 'Edinburgh, 16th September 1745. Sir, We are of Opinion, that it would be for his Majesty's Service, that one hundred of the Dragoons should be ordered in to the Town of Edinburgh, to assist in defending this Town.'

A little after this, and betwixt the Hours of Three and Four of the Afternoon of this Day, Mr. Walter Grefet was sent by the Lord Justice-Clerk to the Lord Provost of Edinburgh, to know whether he the Provost intended to defend the Town or not, to prefs the Defence thereof, and

to assure him, that, if he resolved to defend it, not only the 100 Dragoons he had applied for, but as many more as he pleased to desire, should forthwith be ordered in to his Assistance. Mr. Grosset, in his Way to Edinburgh, met the Lord Advocate coming from the Town, and having acquainted him with the Message Lord Justice-Clerk had sent by him Grosset to the Provost, he the Advocate approved thereof, and desired Mr. Grosset to make all possible Haste in delivering the same, and getting the Provost's Answer.

Mr. Grosset found the Lord Provost in the Goldsmiths-Hall, delivered to him the above Message, and insisted for a direct Answer, and that, to prevent Mistakes, the same might be put in Writing; which, after some Conversation on the Subject, the Provost gave him in Writing, directed to the Lord Advocate and the Lord Justice-Clerk, in the following Words: 'You know the Councils I was Witness to: Was I to desire his Majesty's Troops to come into the Town now, I might be upbraided, after that, for having laid a Snare for his Majesty's Forces; should I refuse them, I may afterwards be accused for tamely delivering up the Town of Edinburgh: I desire your Lordships to be explicit, and tell me whether it is your Opinion or not they should come in; and send your Orders in Writing.'

Upon Mr. Grosset's receiving this Answer, he told the Lord Provost, that he had already assured him, that it was the Lord Justice-Clerk's Opinion, that the Town should be defended, and that therefore he must answer for the Consequences of this unnecessary Delay; and as for the Lord Advocate's Opinion, That had already been given in Writing an Hour or two before, when he, along with the Lord Provost himself, had signed a Letter to General Gues, requesting 100 Dragoons to assist in defending the City.

About Four o'Clock in the Afternoon, that is, about an Hour after the Petition above-recited was presented to the Lord Provost, praying for a general Meeting of the Inhabitants, to consult or deliberate with the Magistrates and Council, whether to defend or give up the Town; such Meeting was accordingly held in the New Church Isle, the Lord Provost being in the Chair, and presiding.

At this Meeting there happened to be present some of the Reverend Ministers of the City of Edinburgh, and some other Persons of known good Affection to his Majesty and his Government, according to whose Observation, the far greater Part of the Persons there assembled were reputed of a quite contrary Character; and indeed it was impracticable, at this Meeting, to gather the true Sense of the Citizens in general, supposing it had been now seasonable or fit to deliberate in a popular Assembly, when to give up or pursue the Defence of the City, for which hitherto so many Preparations had been making, because the greater Part of the most substantial and well-affected Burgesses, who were in Arms as Volunteers, had no Notice of this Meeting, or the Intent of it, and could not possibly attend it, being at that very Time under Arms with their respective Officers, waiting for Orders from the Lord Provost or Colonel, in what Manner they should be disposed of, or act for the Defence of the City.

At the Meeting thus assembled, and thus composed, the general Cry was for giving up the City without making any Defence; and the Reverend Mr. Logan Minister, and others, who attempted to speak in Opposition to this Measure, were borne down with Clamour and Noise.

During this Meeting Mr. Lindsay, Deputy Secretary of War, came with a Message from General Gues to the Lord Provost, upon the General's hearing the Rumour that there was a Meeting of the Inhabitants to deliberate about giving up the Town to the Rebels, to ask the Provost if he continued to be of Opinion that the Dragoons should come into the Town. To which the Provost answered, That he would neither bid nor forbid them, but that the General might do what he thought proper. Upon which Mr. Lindsay very naturally asked him, how he came to scruple about giving Directions concerning the Dragoons, when he had an Hour or two before sent a written Request to the General to obtain them. To which the Provost answered, That he had only signed that Request at the Desire of the Lord Advocate.

Towards the Close of this general Meeting, there was brought into it, in a Manner that appeared somewhat mysterious, being handed in from the Door, from one Person to another, in the Crowd, a Letter addressed, For the Lord Provost, Magistrates, and Town-Council of Edinburgh, signed Charles P. R. bearing Date, From our Camp this 16th September, 1745, and in the following Words:

'Being now in a Condition to make our Way into the Capital of his Majesty's ancient Kingdom of Scotland, we hereby summon you to receive us, as you are in Duty bound to do; and, in order to it, we hereby require you, upon Receipt of this, to summon the Town-council, and take proper Measures in it for securing the Peace and Quiet of the City, which we are very desirous to protect: But if you suffer any of the Usurper's Troops to enter the Town, or any of the Cannon, Arms, or Ammunition now in it, whether belonging to the Publick, or to private Persons, to be carried off, we shall take it as a Breach of your Duty, and a heinous Offence against the King and us, and shall resent it accordingly. We promise to preserve all the Rights and Liberties of the City, and the particular Property of every one of his Majesty's Subjects: But if any Opposition be made to us, we cannot answer for the Consequences, being firmly resolved at any Rate to enter the City; and, in that Case, if any of the Inhabitants are found in Arms against us, they must not expect to be treated as Prisoners of War.'

This Letter was not read out in the general Meeting in the Church; for, as soon as the Subscription to the same was read, the Meeting broke up, and the Lord Provost, with the Members of Council there present, returned to their Council-Chamber, where this Letter was again produced and read; after which it was moved, or agreed to by the Provost, that an Answer should be sent to it, which was accordingly sent, first by one, and then by another Deputation from the Council, who went out to the Camp of the Pretender's Son, who was then about two Miles to the South-West of the City, upon the Water of Leith, in the Parish of Colinton. The Return, brought in Writing, to the first of these Deputations, was in the Words following: 'His R. H. the Prince Regent thinks his Majesty, and the King his Father's Declaration already published, are a sufficient Capitulation for all his Majesty's Subjects to accept of with Joy. His present Demands are, to be received into the City as the Son

and Representative of the King his Father, and obeyed as such when he is there. His R. H. supposes, that since the Receipt of his Letter to the Provost, no Arms or Ammunition have been suffered to be carried off or concealed, and will expect a particular Account of all Things of that Nature. Lastly, He expects a positive Answer to this before Two o'Clock in the Morning, otherwise he will think himself obliged to take Measures conform. At Gray's-Mill, 16th September, 1745. By his Highness's Command,

(Signed) J. MURRAY.

It is proper here to observe, that after the first Deputation was sent out to the Camp of the Pretender's Son, Notice was brought to the Lord Provost, and the others assembled with him in the Council-Chamber, that Sir John Cope, with the Troops under his Command, was arrived off Dunbar. This News was brought by Mr. Walter Grosset, who brought the original Letters from Dunbar, giving Notice of this Event, together with a Letter from the Lord Advocate, who was then at Musselburgh, certifying, that these were the original Letters. All these Mr. Grosset delivered to the Lord Provost in the Council-Chamber; upon perusing which the Provost said, This News had come too late, for they had come to a Resolution to capitulate, and had sent a Deputation to the Camp of the Rebels for that Purpose, and shewed to Mr. Grosset the Letter above-recited from the Pretender's Son, as the Occasion of that Resolution. Mr. Grosset then proposed to send after the Deputies to bring them back; and for that Purpose another Member of the Council was accordingly sent, but he did not overtake them.

About this Time Mr. Drummond and Mr. Mac Aulay, Captains of the Volunteers, and who had been both formerly Provosts of Edinburgh, (as the former now is) upon hearing of Sir John Cope's Arrival, came to the Council-House, and insisted that the Defence of the Town should be now resumed, as there was so near a Prospect of their obtaining Relief, and proposed the ringing of the Alarm-Bell, as a Signal to bring every Body back to their Posts.

To this the Provost answered, That he must be careful of the Blood of the Inhabitants; and that, as certain of their Number had been sent out as Deputies to treat, should they be in the Hands of the Rebels whilst the Alarm-Bell was rung, they, the Deputies, might be ill used by the Rebels; and also urged the former Objections, of the Difficulty and Danger of defending the Town. To this Mr. Grosset replied, That he knew the Situation of the Town so well, and the Condition of those who were to come against it, who had no Cannon and few Arms, that he would undertake to be one of Fifty that should defend the weakest Place of it, till the Troops should come to their Relief. To which one of the Council assenting, the Lord Provost seemed to give Way to the Resolution of defending the Town, provided General Gues would agree to let them have from the Castle what Arms should be wanted. This Mr. Grosset undertook to procure, and went directly, accompanied by Provost Counts, one of the Council, to General Gues in the Castle; who told him for Answer, That he was glad the Provost had come to a Resolution to defend the Town, who might depend upon the utmost Assistance that he the General could give them; and that as soon as the City Arms should be put into proper Hands for that Purpose, what farther Arms were wanting should be ready to be delivered to them from the Castle.

Upon their Return to the Provost, and reporting the General's Answer, Mr. Grosset was told, 'That as the Person who had been sent to bring back the Deputies had not overtaken them, the Provost and Council, as they had entered upon a Treaty, had come to a Resolution not to defend the Town.'

It was then proposed and insisted on, that the Cannon and Arms should be delivered into the Castle. For Answer to which the Provost referred to the Letter from the Pretender's Son, and observed the Danger which the Town would incur, if they should remove their Arms. To which Provost Drummond replied, That if they, by giving up the Town, assisted the Rebels with Arms to fight against the King's Troops, would not they, upon retaking the Town, be apt to look upon the Inhabitants as Enemies, and use them accordingly?

After Receipt of the above Answer to the first Deputation, the Council agreed to send out a second Deputation, in order, if possible, to gain some more Time. The Answer to which second was also brought in Writing, though not signed, as the former was, and in the following Words: 'His Royal Highness has already given all the Assurances he can, that he intends to exact nothing of the City in general, nor of any in particular, but what his Character of Regent entitles him to: This he repeats, and renews his Summons to the Magistrates to receive him as such.'

This second Deputation returned to Edinburgh early in the Morning of Tuesday the 17th of September, in a Hackney-Coach, which entered the City at the West Port, and set down the Deputies at Mrs. Clark's Tavern, where the Lord Provost and others of the Council were waiting for them, to receive their Report, and then the Coach drove down the Street towards the Cannongate; and at the Netherbow Port, which was then kept by a Serjeant's Command of the City-Guard, the Gate was opened to let out the Hackney-Coach, and a Body of Rebels, who were waiting without the Gate, headed by Sullivan and Lochiel, rushed in at the Gate, and became at once Masters of this Capital.

The Rebels, immediately after their becoming Masters of the City, seized all the Cannon, Arms, and Ammunition belonging to it; and the Day following, being Wednesday the 18th, they issued a Proclamation, requiring all Persons in the Shire of Edinburgh, forthwith to deliver up, at the Palace of Holy-Rood-House, all the Arms and Ammunition they had in their Custody, on Pain of being treated as Rebels. And on Thursday the 19th, they sent a Message in Writing to the City of Edinburgh, requiring, on Pain of military Execution, that one thousand Tents, two thousand Targets, six thousand Pairs of Shoes, and a proportional Number of Water-Cantines, should be furnished to their Army against the 23d, and promising Payment as soon as the present Troubles should be over. All which were accordingly furnished; and for that Purpose a Tax laid upon the Inhabitants of 2s. 6d. upon each Pound of their real Rent, within the City, Cannongate, and Leith.

Thus was the City of Edinburgh, which had, in their Address to the King of the 7th of this very Month, said with great Truth, 'That this City hath

both always distinguished itself by a firm and steady Attachment to Revolution and Whig Principles; and a hearty Abhorrence of all Popish and arbitrary Government; and particularly, that, during the Rebellion in the Year 1715, their Zeal for his late Majesty was equalled by few, and surpassed by none; and, at the same Time, assured his present Majesty, that, at this Time, they would stand by him with their Lives and Fortunes, and employ every Power they were possessed of, and all the Means his Majesty should put in their Hands, to disappoint the Attempts of *France* and the Pretender. This City, which had given so many Reasons to expect better Things of it, was, after mighty Preparations for a vigorous Defence, thus poorly delivered up, without striking one Blow, to an half-armed Rabble, at a Time when the King's Army was within a Day's March of the City, to the great Discredit and Reproach of the City itself, in the Eyes of the World, who were ignorant of the particular Circumstances and Causes of so strange an Appearance, to the hearty Grief and Sorrow of all its well-affected Inhabitants, who are by far the greater Part of them, to the Triumph of the Pretender's Son and his Adherents, to the Ruin of many unfortunate Persons, who, by this Appearance of Success, were encouraged to engage in the Rebellion, to the real and high Detriment, not of the City itself only, but of the Publick; the Rebels, by this Capture, having been there furnished with Arms, Tents, and Provisions of all Kinds, which contributed chiefly to their obtaining the Victory at *Presston-Pans* a few Days after; and that again, to the Continuance and farther Progress of the Rebellion, to the immense Addition to the Expence of the Publick, the great Interruption of Commerce and Credit, the Progress of his Majesty's Enemies abroad, and the Interruption of the internal Tranquillity of this Kingdom, until that was happily restored by the Conduct and Success of his Royal Highness the Duke.

It was natural for all the World, at first Sight, to lay the Blame of an Event, which has brought on and contributed to so many and great Mischiefs, principally on the Lord Provost of *Edinburgh* for the Time, being the chief Magistrate and Governor of the City; and the Question now brought to Trial is, Whether he was, or was not guilty or culpable in his Department in that high Office, during the Transactions libelled, and above more particularly recited? The Libel charges, That he was guilty of gross Neglect of Duty, and Misbehaviour in his Office on that Occasion; and whether he was or not, must depend upon a due Comparison of the Duty of his Office, with his actual Behaviour, to see how far the one comes up to the other, and wherein he was alledged to be deficient; and to have counteracted his Duty, the Libel fairly and particularly sets forth, and thereby gives him the better Opportunity to clear himself, if he be able.

Upon the Libel being read in Court on the 13th current, and the Pannel being asked by the Court, as usual, what he had to say for himself, he said, in effect, that he was not guilty, and that his Conduct, upon the Occasion libelled, had been agreeable to his Duty; and then left it to his Counsel to offer and make good his Defence at large; of whom five were accordingly heard at great Length, and the Substance of their Arguments, as far as the Pursuer could observe and recollect them, was as follows.

They took Notice that the Pannel had already suffered very great Hardships by his long Confinement, for the Space of fourteen Months, without being brought to Trial, which, to a Man engaged, as he is, in considerable Trade and Business, they said was a Punishment greater than he merited, supposing all that is alledged in this Libel were true. They said, that the Source of this hard Usage was the Malice of certain Enemies of the Pannel in the City of *Edinburgh*, who, in order to ruin his Credit and Interest in this City, had set themselves to find Fault with his Conduct during the Rebellion, had industriously misrepresented that Conduct, and raised a popular Clamour against him, which, having reached the Seat of Government, had produced the Severities he has already met with.

That he was however now glad of an Opportunity of having his Conduct brought to Trial by the certain Test of judicial Evidence, hoping that he would now be declared innocent upon Examination, who, by popular Clamour, had been pronounced guilty without Examination.

At the same Time it was also urged, though not very consistently with this last Declaration, that the Pannel could not competently be brought to Trial at all in this Court upon this Libel; that the particular Statute of King *James* the Second, upon which it is laid, was almost three hundred Years old, and was gone into Disuetude; that, whilst it was in force, it was never meant to concern any more than the Behaviour of Magistrates in their judicial Capacity, or ordinary Administration on such Occasions as commonly or yearly occur, but never to concern the extraordinary Office of Magistrates in Time of War or open Rebellion, when it may be very incident to them to err or commit Mistakes, as many an honest Burgess may be very well qualified to discharge the Duty of Provost, or other Magistrate of his Burgh, in quiet and peaceable Times, from whom it cannot be expected, that, in such an Exigency as an open Rebellion, he should be able to act the Part of an expert military Commander or Governor of a Town, and that the Department of the Provost on such Occasion, could not be tried at all at common Law; that it was an improper Question to be tried by a Jury, who might very properly try a single Issue, as whether a Man was guilty of Murder, Robbery, or the like, but very unfit to give Judgment upon a Series of Facts relating to the Department of a Provost, whether it was or was not agreeable to his Duty; and therefore it was said, that the only competent Method, by the Constitution of this Kingdom, for trying and punishing Trespases such as those alledged in this Libel, was by the Authority of the Legislature itself, in such Manner as had been practised in the Case of *Alexander Wilson*, who had been Lord Provost of *Edinburgh* at the Time of the Murder of Captain *John Porteous*.

It was farther said, by way of more particular Answer to the Matters charged in this Libel, that the same contained nothing criminal; that, as to the first Article, concerning the raising of the *Edinburgh* Regiment, it was no Crime in the Provost to entertain a Doubt concerning the Legality thereof, and to hesitate to commit what he apprehended might have been treasonable, and that he was justified in his Doubt by the

ablest Advice given for applying for his Majesty's special Warrant, which was accordingly obtained.

That, as to the second, concerning the Volunteers, he had the same Reason to doubt concerning the Legality of that Measure, and it was no Crime in him that he could not perceive any Difference between authorizing a Body of armed Men who were to serve without Pay, and another Body who were to receive Pay; or that the one might be authorized without his Majesty's special Warrant, which had been advised to be necessary or proper in respect of the other; that, more particularly, as to this Article, the Provost had Reason to take Offence, that the Measure was so far concerted and carried on by the Volunteers, as that they brought him a Petition, signed by ninety or a hundred Persons, without his Privy, or previously consulting with him: This he had Reason to consider as a designed Neglect and Insult upon him; and yet, as soon as he was advised that the Thing might be lawfully done, he gave way to it; and it was a very slender Circumstance to be charged as a Crime, that he chose to have it said that he acquiesced in that Measure, rather than that he heartily approved it, or that he should be charged with a Defect of Civility or good Manners towards these Volunteers.

As to the Third, concerning the Repairs of the City Walls, it was observed in general, That the Provost was not the sole Person answerable for any Slowness or Defect of Care and Diligence in this respect, though he had been singled out, and made the sole Object of this Prosecution. He was but one of many, who behaved to act by the Authority of his Council, and of the Committee appointed to take the special Direction of what concerned the Defence of the City; and that all his Conduct was agreeable to the Sense of these two Bodies, and approved by them, and without them he could do nothing; for that the King's Warrant concerning the Regiment, being addressed to the Lord Provost, Magistrates and Council, and having ordered that the Regiment should be under the Direction of them all, and the Council having appointed a Committee for that Purpose, and to consider what farther should be done for the Safety of the City, the Provost was thus limited in the legal Exercise of the known Duty of his Office; that, however, the Committee, whereof he was one, had given the necessary Orders for the Repairs, and Warrants for impressing Workmen for that Purpose; that the Cannon upon the Walls were actually loaded on Sunday the 15th, and Applications were made to procure Gunners for managing them.

To the fourth Article it was said, That no Proposition could be accepted or rejected by the Provost alone, but by the whole Council; that as to the Proposition in the Article mentioned concerning the Trained Bands, of the purging that Body of disaffected or suspected Persons, it was true that the Provost was averse to it, and chose rather to undergo any Hazard, than take upon him to fix such Mark of Infamy upon a Number of his Fellow-Citizens, without any certain Ground of Charge against them.

To the fifth Article, That here again the Pannel was charged with Defect of Civility or good Manners (a very unusual Point of Dittay); and that supposing the Fact true, of the Conversation with Sir *Robert Dickson*, it was not unreasonable, nor could justly give Offence, for the Provost to propose such Method for finding Subsistence to the ordinary Men, as insisting them in the *Edinburgh* Regiment, which would also be a Means to insure their Attendance and Service for a limited Time, so as they might not be at Liberty to withdraw at Pleasure, and this perhaps when the City should be under the most pressing Exigency.

To the sixth, That the only Thing here imputed to the Pannel as an Offence, was his not immediately committing *Andrew Alves* to Prison, the doing which might have been of bad Consequence, to deter others from bringing Intelligence to the Provost concerning the Rebels or their Designs; and that at best it was not a very clear Case, that it was at all lawful or competent to commit Mr. *Alves* for only repeating to the Provost what the Rebels had said to him, when they seized him and made him their Prisoner; that his receiving the Message, or hearing what Mr. *Alves* said, could be no Crime; and, as soon as he heard it, he repaired to the Council-Chamber, then held in the Goldsmiths Hall, where he imparted this Piece of Intelligence to some others of the Council, who agreed that it should be concealed, lest it should intimidate the Inhabitants that, however, soon after, the Lord Provost saw the Lord Advocate, and, in pursuance of his Advice, actually committed Mr. *Alves*.

To the seventh and eighth Articles it was said, That Monday the 16th of September 1745, was a Day of universal Distraction in the City of *Edinburgh*; that the two Regiments of Dragoons of *Hamilton* and *Gardner*, who, with the whole City-Guard, had been posted at the *Coltbridge*, a Mile West from *Edinburgh*, about three Afternoon, retreated, and past by the North Side of the Town, Eastward, which greatly heightened the Pannick of the Citizens, being thus abandoned by the only military Force they had in their Neighbourhood, and no News of Sir *John Cope* or his Army was now come, and at the same Time the chief civil Officers of the Crown had left the City; and yet, in this Situation, the Lord Provost, in the Goldsmiths Hall, where many of the Council and other Inhabitants were assembled, declared himself ready to act his Part for the Defence of the Town; but that he was now seconded by few: But at this Juncture, one Mr. *Groset* arrived, and delivered a Message to the Provost, that he should send for, or consent to receive a Party of Dragoons; at which he, the Provost, was surprised, having been present the Night before at a Council of War, where it was resolved to be improper to bring any of the Dragoons into the City; upon which he gave his Answer in Writing to that Message, which is above recited: That the Inhabitants, anxious to know the Resolutions of the Council, pressed into the Room in a Crowd; and then Somebody else, not the Provost, proposed to adjourn to the New-Church Isle; that, on the Way thither, a Gentleman on Horseback told loudly, that the Rebels were near eight thousand strong, which still heightened the Pannick; that yet, in the New-Church Isle, the Lord Provost spoke as he had in the Council-Room, declaring himself ready, if the Citizens were so disposed, to do his Part for Defence of the City; that at this Meeting, the Letter from the Pretender's Son was brought in, to the Reading of which he, the Provost, objected, and thereupon returned with his Council to the Goldsmiths Hall.

That the Inhabitants had now the Direction of Affairs in their Hands, and they were governed by their Fears and Terrors; that the higher Civil Officers

Officers of the Crown being gone, the Magistrates sent to their own Adversaries for Advice; but they also were all gone, excepting one, who declined giving any explicit Opinion on such high Matters; upon which the Letter was read, and found to be to the same Purpose with *Alva's* Message, and then they thought themselves under an unavoidable Necessity to send out a Deputation, in order to procure a Delay, and gain some Time for the expected Relief to come.

To the ninth and tenth it was said, That the Defence of the Town was now given up as impracticable; and that upon serious Deliberation it was the unanimous Opinion of the Council, that no direct Order should be given by the Lord Provost concerning the Arms of the Volunteers, or the Cannon upon the City-Walls, for fear of incensing the lawless Multitude of Rebels to put their Threats in Execution.

The same Answer was given to the eleventh Article relating to the City-Arms, to which there was now added, and not till now, a Matter of Fact never formerly alledged by the Pannel, neither in his Examination before the Committee of the Privy-Council, on the 7th December 1745, nor in the signed Answers returned by him to his Libel, and it must appear very strange, if it was true, that the most plausible Answer he had to make to this very heavy Article should never have been once mentioned till now, being, that he the Provost could prove that he sent a Message to General Guesb, proposing that he should send a Party of Soldiers to take away the City-Arms and carry them up to the Castle.

Upon the twelfth Article it was said, That the Opinion of the Citizens of Edinburgh, or any Number of them, concerning the Pannel, could afford no Evidence that he was actually guilty; and that, upon the whole, the Surrender of the City was owing to a Train of unavoidable Accidents, for which he the Provost was not blameable.

Notice was also taken more than once, by the Pannel's Counsel, that he himself had a very large Property, consisting of a Stock of Wines, lying in his Cellars at *Leith*, which would be exposed to the Discretion of the Rebels in case of their coming to *Edinburgh*; but the Conclusion drawn from this Fact was not, to the Pursuer's Observation, distinctly spoke out or explained by his Counsel; so that the Pursuer is still at a Loss to know what Use was meant to be made of that Observation, whether by way of Argument to evince the Sincerity of Mr. Stewart, in desiring to keep the Rebels at a Distance, that his own moveable Estate, of so great Value, might not come under their Power; or if it was meant to be offered by way of Excuse for him, that he was afraid of giving offence to the Rebels, by opposing them with Vigour and Zeal, because they might have it in their Power to hurt him deeply in his private Fortune or Effects; and therefore the Pursuer must leave it to them to explain their own Meaning or Intent, in alledging and insisting on this Matter of Fact.

It was farther observed for the Pannel, though not very consistently with the Allegation, that there was nothing material relevant or criminal charged upon him in these Articles; that the Charge therein contained, if it amounted to any Crime at all, was no less than that of High-Treason; for that such, no doubt, it was, if he pursued Measures that had no other Tendency than to betray the City, whereof he was chief Magistrate, into the Hands of the Rebels: It would have been this Crime in case the Provost had acted with that ill Intention, which is the essential Requisite to render the Actions of Men at all criminal or punishable; and if the Provost had no such Intention, then, supposing he had committed several Errors in his Conduct, these were no more than Errors in Judgment, and such Mistakes in Matters prudential, in difficult and dangerous Times, when a Magistrate must act one Way or other, ought never to be imputed to him as a Crime; for though the Part he chuses do not prove successful, the opposite Conduct might have been no more so, and, in that Case, that very opposite Conduct might, with the same Facility, have been laid hold of as the Ground of a Prosecution: For Example, if he had brought in the Dragoons into the City, and these afterwards had fallen into the Hands of the Rebels; or, suppose he had found Means to suppress the threatening Letter from the Pretender's Son, and the Inhabitants had stood to their Defence, and yet the Town had been stormed, and the Rebels had then cut the Throats of the Inhabitants, supposing he had escaped the Massacre, it is easy to imagine what a heavy Charge might have been formed against him, as having been the Author or Cause of such Calamities: And therefore, since his Conduct is not alledged to have been directly treasonable, it proceeded at worst from Mistake, or Errors in Judgment, which is no Crime at all that is punishable by the Law in a free Country, such as this is.

It was farther observed, that the Pannel was not so much as charged in the Libel with Disaffection to his Majesty's Government; and that however the Facts libelled might be apt to make some Impression, in maintaining a Charge of that Sort, they could not be combined or laid together to an End or Purpose that was not directly libelled; that the Facts alledged in the Libel might indeed amount to a Proof of this Proposition, that the Provost was in his Judgment averse to the Measure of defending the City of *Edinburgh*, as a thing that was impracticable, and therefore not eligible or prudent to be attempted; and it was contended, that this was not even an Error in Judgment, for that he was in the right in being of that Opinion, for that the City of *Edinburgh* is no strong or fortified Place; and though it is surrounded by an old Wall, and a Lake upon one Side, and that the Rebels had no Artillery, it had been very practicable for them to have made their Way into the Town; they might have blown up the Gates, or a Part of the Wall, with Gun-Powder, or have set Fire to the Houses on the West-Side of *St. Mary's Wynd*, that enter from without, and yet are a Part of, and adjoining to the Town.

All this was, so far as the Pursuer could observe or recollect, the Substance of what was urged by the several Counsel for the Pannel in his Defence; and in reply to these Things, it was, and is now, on behalf of his Majesty, and for the publick Interest, observed as follows:

It is admitted for the Pursuer, that the Counsel for the Pannel have rightly observed, that the Facts charged upon him, if it had been charged that they were done *dolose & malo animo*, of set Purpose or Design, to have put the City of *Edinburgh* into the Hands of the Rebels, would have amounted to High-Treason; for the Lord Hale says, in his *Pleas of the Crown*, Vol. I. p. 168. 'If a Captain, or other Officer that hath the Custody of any of the King's Castles or Garrisons, shall treacherously, by Combination with the King's Enemies, or by Bribery, or for Reward, deliver them up, this is Adherence to the King's Enemies.' And again, p. 169. he says, 'The Truth is, if it were delivered up by Bribery or Treachery, it might be Treason: But if delivered up upon Cowardice or Imprudence, without any Treachery, though it were an Offence against the Laws of War, and the Party subject to a Sentence of Death by Martial Law; yet it is not Treason by the Common Law, unless it was done by Treachery.'

And if the Pannel, without being engaged in the Interest of the Pretender, or without receiving any direct Bribe from him or his Adherents, did even suffer himself to be moved by the Fear of their hurting his private Property in his Wine-Cellars at *Leith*, to neglect or counteract any Part of his Duty as Lord Provost of *Edinburgh*, this was at least bordering extremely near upon High-Treason.

The Atrocity and the Nature of High-Treason is excellently described in the Digests of the Civil Law, in the Title *Ad legem Juliam majestatis*, l. 1. in these Words: *Proximum sacrilegio crimen est, quod majestatis delictum, § 1. majestatis autem crimen illud est, quod adversus populum Romanum, vel adversus securitatem ejus committitur, quo tenetur is, cujus opera, dolo malo, concilium initum erat,—quo armati homines cum telis lapidibusve in urbe sint, convenienter adversus rempublicam; locave occupentur, vel templa; quove cætus conventusve fiat, hominesve ad seditionem convocentur:—Quove quis contra rempublicam arma ferat: quique hostibus populi Romani nuntium literasve miserit, signumve dederit, feceritve dolo malo, quo hostes populi Romani concilio juventur adversus Rempublicam.*

It is true, that, in this Description, the *dolus malus*, or the ill Design, is an essential Ingredient; and it is in general true concerning all Crimes, as it is well expressed in the Rescript of the Emperor *Hadrian*, l. 14. *ad legem Cornelianam de sicariis,—in maleficiis voluntas spectatur, non exitus*: But the *voluntas*, or the *dolus malus*, is to be gathered from the Facts by the Judgment of the Court or the Jury, by whom the Party is tried, against whom the Facts are charged, which may very possibly have proceeded from a treasonable Design against the Crown or the Publick.

The King, however, may, if he be so graciously pleased, waive the insisting against a Criminal for the highest Crime with which he may be possibly chargeable; so the Lord Hale, p. 374. 'All Treason is Misprision of Treason and more; and therefore, he that is assisting to a Treason, may be indicted of Misprision of Treason, if the King please.' *Stanf. P. C.* 37. 6. *Co. P. C.* 36. 2 R. III. 10. 6.

The Judgment in Case of Misprision of Treason, is Loss of the Profits of his Lands during his Life, Forfeiture of Goods, and Imprisonment during Life.

And the same Lord Hale, p. 143. reports 'a Case, where there was a Consultation of the Judges, where he was present, in the Year 1675. relating to the Weavers in and about *London*, being offended at the Engine-Looms for making of Ribbons, who rose in great Numbers to destroy those Engines in different Counties, and did Damage to the Value of several Thousand Pounds.

Five of the Judges seemed to be of Opinion, that this was Treason within the Act 25th *Edward III.* upon the Clause of levying War against the King; or at least upon the Clause of the Statute of the 13th *Charles II.* Chap. 1.

The other five Judges were not satisfied that this was Treason within either of these Statutes.

Many of them therefore concluded, that if Mr. Attorney should think fit to proceed as for a Treason, the Matter might be specially found, and so left to farther Advice—

Upon the Conclusion of this Debate,—Mr. Attorney, upon Consideration of the whole Matter, it seems, thought fit to proceed for a Riot, and caused many of them to be indicted for Riots, for which they were convicted, and had great Fines set upon them, and were committed in Execution, and adjudged to stand upon the Pillory.'

In the present Case, the Doubt is not concerning the Tendency of the Facts charged upon this Pannel, namely, That it was to give up the City of *Edinburgh*, the Capital of *North-Britain*, not to the King's Enemies only, but to a Pretender to his Crown; and the Doubt is only, *quo animo* this was done, whether with a treasonable Intent, or through Cowardice, or Negligence, or Imprudence; and this might have been left to the Jury to judge, in case he had been charged with High-Treason. It is therefore one signal Instance of the Mildness and Benignity of his Majesty's Government, that the Pursuer has been ordered to prosecute this Pannel, 'not for High-Treason, but for a High Misdemeanour, in having many Ways acted contrary to his Duty, and thereby suffered the City of *Edinburgh*, with the Cannon, Arms, Ammunition, and Provisions, to fall into the Hands of the Rebels;' and when the Pannel's own Counsel are sensible that the Facts charged upon him are such, as, at least, border so near upon High-Treason, and might have been charged as such, they cannot be permitted at the same Time to plead, or, at least, they ought not to be listened to when they plead, that the Facts here charged have no Relevancy in them, or do not amount to any Crime or Offence whatsoever.

The other Observations above recited were extremely groundless, That this Libel does not charge the Pannel with Disaffection to the Government, and that the Opinion of the well-affected Citizens, mentioned in the 12th Article, That he was secretly in the Interest of the Pretender, cannot infer his being actually guilty of any Crime whatever, for Disaffection is not the Name of a Crime known in the Law; no Man can be tried for that Disposition of his Mind, but for the Effects which it produces; and, if the Facts here charged had been alledged to have been done by the Pannel through Disaffection to his Majesty and his Government, that would have been in Reality, or in Effect, a Charge of High-Treason, which was not the Thing intended in the present Case.

And as for the other Remark, it was far from the Meaning of the Pursuer to alledge, that any Man can be punished merely for the Opinion of others concerning him: But that Fact is mentioned in the Libel for this Reason, That, when the main Question, moved by this Trial, is, Whether

the Pannel was, or was not culpable or negligent in the Execution of his Office as Lord Provost of Edinburgh, during the Rebellion, it is a Fact or Circumstance strongly tending to evince that he was so guilty, if it be true that the whole Tenor of his Behaviour was such, as to induce a general Suspicion or Belief amongst the well-affected Inhabitants, that their Provost was secretly in the Interest of the Pretender; for, whether they were or were not in the right in that Suspicion or Belief, they, being so immediately and so deeply interested, could not fail to be constantly attentive to the Conduct of their Provost; and, if that was such as produced in them such Apprehension or Belief, that very Thing is one Demonstration, supposing that they carried their Conclusion too far, that his Conduct was not such as became a faithful, vigilant, and zealous Magistrate upon that Occasion.

The Nature of the Office of Lord Provost of the City of Edinburgh is well known to this Court. It is partly the same that belongs to the chief Magistrate of every Royal Burgh in the Kingdom, and partly arises from the particular Grants to the City of Edinburgh; they are Sheriffs within themselves; the Lord Provost is the High Sheriff, and, of late Years, as well as formerly, has acted as such, and tried Causes even capital, and the Bailies are, *ex officio*, his Deputy Sheriffs.

The Lord Provost is the King's Lieutenant within the City, he is Colonel of the City-Guard by the Act of Parliament authorising that, and he is chief Commander of the City Trained-Bands or Militia; and this very Provost claimed, and was allowed to be the Colonel of the Volunteers, and was by the Council declared to be Colonel of the Edinburgh Regiment of 1000 Men, that was to be raised and paid by the voluntary Subscriptions of the Inhabitants: In short, the whole military Power within the City was in him, and the chief executive Power, in all Respects.

Neither is it true, that the Order in the King's Sign-Manual for the Regiment, that the same should be under the Direction of the Lord Provost, Magistrates, and Council of Edinburgh, was either intended, or had the Effect to derogate in the least from the legal Powers and Privileges of the Lord Provost; that Warrant was granted on the Application of the whole Council of Edinburgh, the Regiment was to be maintained by them and their Fellow-Citizens, the End proposed by it was the Defence of his Majesty's Government, but more especially the Preservation of the City of Edinburgh against the Rebels; it was therefore very properly and graciously declared, that this Regiment should be under the Direction of the Magistrates and Council of Edinburgh; that is, it should not be withdrawn from the immediate Service of that City, or sent elsewhere, like the rest of his Majesty's Troops, at the Discretion of his Generals, where it might be of Use for his Service, without the Consent of the Magistrates and Council of Edinburgh. But this did not hinder the Lord Provost from being, according to the Constitution of the City, the Colonel or chief Commander of that Regiment, as well as of all the other Military Force within the City. It cannot be supposed to have been the Sense of his Majesty's Order, that the whole Town-Council, consisting of thirty-three Persons, should act the Part of a Colonel, or have the immediate Command of a Regiment; the utmost Effect that Order could have, was, that the whole Council should have Power to give general Orders as to the Manner of employing the Regiment, such as every Prince or State are daily known to give to the Generals or Commanders of their Armies, who are not the less vested with the Powers of Commanders, that they are subject to such Direction or Controul.

Neither is it true, that the Appointment of a Committee, in the Terms above-recited, was an Obstruction or Hindrance to the Provost's acting in the Manner that the Libel requires of him, unless he can say, which he has not done, nor can do by any Thing that appears on Record, that either the Council or the Committee resisted his Will, or that they opposed or over-ruled him, by Majority of Voices, in any one Thing that he proposed to be done towards the Preservation of the City.

His Station, therefore, gave him Power sufficient, and rendered it his Duty to be the chief Person to devise, order, and execute every Thing that was proper for preserving his own City from the Rebels; and, if the Facts be true that are in this Libel charged, it is left to the Judgment of this Court, whether his Conduct was agreeable to his Duty; or if he was not, on the contrary, faulty or negligent in the Execution of his Office, and guilty of manifold Misbehaviours in it on the Occasion libelled.

That Occasion called for the most earnest, vigilant, and active Discharge of the Duty of chief Magistrate, vested with such Powers as he had; and, to illustrate this, the Pursuer begs Leave to quote a Passage from a learned Author, *Aerodii rerum ab omni antiquitate judicatarum pandectae*, in the Title, *De officio praefecti vigilum*, whereof the Rubrick is in these Words: *Negligentiam, in iis qui ad summum reipublicae pertinent, esse capitale, cap. 1. M. Militius, Cn. Lolius, L. Sextilius, triumviri nocturni, cum incendiis arrendi causa, quod Romae in sacra via exortum esset, cum hamis & dolabris, omnique familia publica evocati, tardius advenissent: a tribuno plebis die dicta ad populum, damnati sunt: leves ob causas, inquit Valerius: sed disciplina necessaria.*

Idem fere apud nos, senatus judicio, cum adhuc illic essemus advocati, Gabastoni, praefecto vigilum, accidit: qui vocatus ad sedendam scholarium de suo prato seditionem, non venit. Nam indignum esse, qui, ut excubet reipublicae, ab omnibus aliis muneribus excusatur, & praesens vice est absentis: is in tanta necessitati, ubi minima mora summi momenti est, segnem, tardum ac negligentem se praebeat, aut (quod minus quoque est ferendum) contumacem.—Et quando omnibus viribus opus est, nulla causa, nulla excusatio proficit.

Cap. 2. P. Bilius quoque triumvir nocturnus, à P. Aquilio, tribuno plebis accusatus, quod vigilas negligentius circumisset, populi judicio concidit. Nam quod levius sit in aliis causis: in his, ut in re militari, capitale esse. Quia puncto saepe temporis, maximarum rerum occasiones amittuntur: neque in hujusmodi his errare fas est, aut dicere, Non putabam.

It was upon the same Principles that are here set forth, and followed in Practice in the Roman Republick, as well as the French Monarchy, that our old Statute 1457, in the Libel recited, was made, for the Punition of negligent Officers, and namely, 'Provosts of Burghs, and others, who should be found faulty and negligent in the Execution of their Offices, and it may be lawfully proved on them, or notoriously known; but

with this Difference indeed, that every Offence of this Kind is not made capital, as *missioe pena nobis semper placuit*; but only that they be punished, in their Persons and Goods, after the Quantity of their 'Trespass, at the King's Will.' This is such a Statute as hardly enacts any thing positive, or other than what is included in the Common Law of this and all other civilized Nations, and therefore never can go into Disuetude. And it seems unnecessary to offer any Answer to the groundless Distinction advanced by the Pannel's Counsel, betwixt the Duty of a Provost, or other Magistrate, upon common or ordinary, and extraordinary Occasions; there is neither Law nor Reason for that Distinction. No Man should undertake the Office of a Pilot, who can only hold the Helm in his Hand in serene Weather, and is incapable to do his Duty when a Storm rises. And the Allegation of this Distinction ill becomes the Pannel, who is a Gentleman by Birth and Education, and, as such, superior to the ordinary Rank of Burghesses, who may be, and often are raised to the Office of chief Magistrates.

Such, for Instance, was the Character of Provost Wilson, a Brewer in Edinburgh, who was Lord Provost of that City when Captain Porteous was murdered, who, upon the same Principles that are above-mentioned, was punished by an Act of the roth of his Majesty, merely for being faulty or negligent in the Execution of his Office; for the Act recites the Murder of Captain Porteous, 'And that, for some Time before the committing the said Murder and Riot, it was commonly reported in the said City of Edinburgh, that some such atrocious Fact would be attempted, which, by proper Care in the Magistrates, Citizens and Inhabitants of the said City, might have been prevented; notwithstanding which, Alexander Wilson, Provost of the said City, and then actually resident therein, and fully apprised of the said wicked Design, did not take any Precautions to prevent the said Murder and Riot, nor use the proper or necessary Means to suppress the same, or to preserve the Peace of the said City, or, after the Perpetration of the said Fact, to discover, apprehend, or secure the Authors, Actors or Abettors thereof, in manifest Violation of the Trust and Duty of his Office of Chief Magistrate of the said City.—And to the End that the said enormous Misbehaviours and Neglects of Duty may not go unpunished, and that other Persons may not presume, through Hopes of Impunity, to be guilty of the like for the future, it is enacted, that the said Alexander Wilson be disabled from holding any Office of Magistracy, &c.'

Here the Conviction by the Parliament itself proceeds altogether upon Negatives, or Neglects of Duty in the Provost or chief Magistrate, upon a very singular and extraordinary Occasion; and so far it is a Precedent in point to the present Case, which in other respects appears to be vastly more atrocious than what Provost Wilson was guilty of, who, it seems, did not give Credit to the Reports that were current before that extraordinary Attempt was made, and suffered himself to be surprised and disconcerted, when the Mob was suddenly raised which committed that Murder; instead of which, here was long Warning, and many Precautions seemingly taken by the Provost, heartily intended by many of the Citizens, to avert Evil of a much higher Nature, tending to overthrow the Constitution and Establishment of this united Kingdom.

It appears quite unnecessary to answer the Allegation offered for the Pannel from this Precedent, which has surely not the least Tendency to prove, that the Offence, which was here punished by the Legislature itself, was no ways punishable by the Common Law, or the general Statutes of this Realm.

And as little can it avail the Pannel to enter now into an Argument upon the Expediency of the Resolution in general, of putting the City of Edinburgh in a Posture of Defence against the Rebels; for though it be true, that before any Resolution was taken upon this Question, it was very lawful and competent for the Lord Provost to declare his Opinion, if it was such, for the Negative; yet, after it was a Resolution formed by the Council of the City, with the Consent and Approbation of the most considerable Citizens of all Ranks, many of whom had previously solicited that such Measures should be taken; and after he, the Lord Provost, had seemingly concurred, and given way to the general Sense of the Citizens, as well as of the Council, it surely then became his Duty as the first Magistrate, who had the chief executive Power in his Hands, to exert himself, *bona fide*, for the Execution of the general Measure that had been thus resolved; for better indeed had it been never to attempt such Defence, than not to go through with it until actually overpowered by superior Force; or that, to the great Expence and Discredit of the City, after many Preparations to provide a Force for its Defence, and Application to the Crown, which was readily granted, for a Warrant to authorize the Regiment, and to the Inhabitants for a Subscription to pay it, which was filled up with great Alacrity, and many of the chief of them pressed for Leave to venture their Persons, as well as contribute their Money for the Cause which they had so much at Heart, when, to furnish Arms, the King's Arsenal in the Castle was at their Command, and a considerable Force assembled, that the Provost should so manage Matters, as that the Defence should be thrown up just at the Time that it became needful to make use of all these Preparations.

This will require some better Excuse, than that the Provost, in his private Opinion, was averse to the Measure in general of defending the City, or that he was afraid of provoking the Rebels to rob his Wine-Cellars at Leith, (if that be meant by taking notice of his great Property there) for it is certain the Provost professed to concur with the general Sense of the City, to provide for and resolve to make a Defence; and, even upon Monday the 16th of September, in the Afternoon, in the Council-Chamber, and at the general Meeting in the New-Church, it has been alledged, as a Part of his Defence, that he still declared stoutly for adhering to that Resolution; and in these Circumstances, for his Counsel to say for him, by way of Apology for his Conduct in the Articles libelled, that the same proceeds from, or is to be accounted for, by his disapproving in his Judgment of the general Measure of making any Defence, and offering Reasons now in support of the Justice of that Opinion, instead of excusing him, is in reality to accuse him very deeply of acting all along with a Duplicity, which must have been highly criminal, professing to concur in the Execution of a Measure, which

which in his Heart he disliked, and, as the Execution of it chiefly belonged to him in virtue of his Office, managing that in such a Manner as to defeat the Design.

As to that Design itself, the most sanguine Promoters of it never pretended to maintain that the City of *Edinburgh* was capable of holding out a regular or a long Siege; the very Number of the Inhabitants, and the Mouths to be fed, must render this impracticable; but, as the Circumstance which exposed them to be at all visited by the Rebels, was the Misfortune of *Sir John Cope's* getting to the Northward of the Rebel Army in the *Higlands*, and as he was known to be returning from *Inverness*, through the low Country, along the Eastern Coast, and as other Succours were daily expected from *Holland*, it was very reasonably concluded, that the Pressure upon the City of *Edinburgh* could be but of short Endurance, and that, very possibly, keeping out the Rebels a single Day might save the City altogether from falling into their Hands; and the Event in a great measure justified the Expectation; for, upon the Evening of *Monday* the 16th *September*, when the first Deputies were sent out by the Provost and others to the Rebels Camp, to treat about the Surrender, demanded by the Letter from the Pretender's Son, those Deputies had not yet reached that Camp, when authentick Advice came, that *Sir John Cope*, with his Army, was arrived at *Dunbar*, which is but twenty Miles from *Edinburgh*: A very signal Instance of the Truth of what is said in the Passage above quoted from *Erodian*, *Quod puncto saepe temporis maximarum rerum occasiones amittuntur*.

What then was the Occasion, or whence arose the Necessity that obliged the Pannel, on the Afternoon of *Monday* the 16th *September*, to abandon the Defence of the City, for which so many Preparations had been made and continued till this very Hour, and when, though the Enemy was at hand, there was all the Reason in the World to believe that Succour and Relief from the King's Troops was not far off, as the Event that very Evening accordingly proved, by the actual Arrival of *Sir John Cope* off *Dunbar*, and authentick Notice thereof being sent to *Edinburgh* at the Juncture of Time already mentioned.

The Answer to these Questions made for the Pannel, in the Debate upon his Libel, have been, 'That, on the Afternoon of this *Monday*, the 16th of *September* 1745, the City of *Edinburgh* was in great Consternation, occasioned by the Approach of the Rebels, and the threatening Messages sent from them, by the Retreat of the Dragoons from *Glasgow*, and the withdrawing of the Civil Officers of the Crown from the City; that, in these Circumstances, the general Cry of the Inhabitants, at a publick Meeting assembled, was for abandoning the Defence of the City; after which the Fears of the Inhabitants was the governing Principle, the Multitude had the Power in their Hands, and there was no longer any Regard paid to Magistrates or legal Authority.'

But to this it is replied, That the Retreat of the Dragoons the Pursuer does not take upon him to approve or justify; very possibly it was made sooner and farther than it was necessary, though it cannot be said that the two Regiments of Dragoons, with the City-Guard of *Edinburgh*, if the whole Rebel Army had come up to them, ill armed as it was, would have been a Match for such a Superiority of Numbers: But when the Resolution was taken to defend the City of *Edinburgh*, they did not, nor could reckon upon these two Regiments of Dragoons, as what they could rely upon, or promise themselves to be always attending for their Assistance; and when the Defence of the City was abandoned, they were no farther removed than *Musselburgh*, which is but four Miles off, and an Offer was made to the Lord Provost to bring them back, or any Number of them he should desire, to assist in the Defence of the City.

That the withdrawing of the Civil Officers could afford no just Cause for abandoning that Defence; the Lord Justice-Clerk had only gone from *Edinburgh* that Day about Noon, to dine at his own House about three Miles off, and was returning in the Afternoon to the City, when he got Notice by the Way, that the Rebels were by that Time at the West Port of the City, which was not true, but afforded a very just Reason for his returning to his own House; and though the Lord Advocate at this Time also withdrew from the City, and went as far East as *Musselburgh*, yet, before he left the Town, he had concurred with the Provost and the Solicitor, in procuring an Order from General *Guest*, for one hundred Dragoons to march into the City, to encourage and support the loyal Inhabitants in Defence of the Town. And he renewed his Advice by Mr. *Groft*, whom he met going into the City in the Afternoon, with a Message from the Lord Justice-Clerk relating to those Dragoons. And of what use could a single Civil Officer be in the Case of a Siege? Or, to what purpose should he shut himself up within the Walls, and expose himself, in case of the Town's being taken, to become a Prisoner in the Hands of the Rebels?

And as for the affrighted Multitude, who are said to have got the Government into their Hands, it was the Fault of the Lord Provost if he permitted this to be: None of the Forces under his Command were withdrawn, and he had still at least twelve hundred well-armed Men under his Command, the Walls of the City repaired and planted with Cannon, and the Castle and its Garrison ready to assist him: And, in this Situation, why did he suffer himself to be despoiled of his Authority, or to be governed by the real, or by the affected Terrors of the timorous, or of the disaffected Multitude? Why did he give way to a general Meeting, in the Church, of an Assembly so composed? Why did he not tell them that the City had already taken its Measures and its Resolution to stand upon its Defence, and order all who did not chuse to depart the City, or to act in its Defence, to repair to their respective Houses, and keep within Doors? He had still the legal Authority in him, and the Means in his Hands to make that to be respected, when he had so great a Body of Men in Arms under his Command.

In these Circumstances, the Methods he pursued demonstrated the End which he had in View, namely, to deliver up, instead of defending the City; for, in order to justify himself in abandoning that Defence, he ought to have gone another Way to work, than to assemble a promiscuous Multitude in the Church, exclusive of the Volunteers. If there was truly any Change of Circumstances occurred, that made it reasonable now to lay aside Thoughts of that Defence which had been so long

provided for and pursued, he should have summoned a Council of the same, or the like Persons with those who had first contributed to the Resolutions of making any Defence at all, that is, his own Fellow-Magistrates and Councillors, with the Chief Officers of the Volunteers and Trained-Bands, and deliberated with them upon the supposed Change of Circumstances; and if, in such Council, it had been debated and resolved, by Plurality of Voices, to be now impracticable, or inexpedient to persist any longer in the Measure formerly concerted, of defending the City, that Resolution might have justified or acquitted him; but nothing of this Kind is alledged, and thereby he has taken the whole upon himself. He consulted with a disaffected Multitude, as some of the Persons present in it, of undoubted Credit, say it was: And there is no Record of any Resolution of the Town-Council, or of the Committee above-mentioned, of *Monday* the 16th of *September*, when this Change of Measures was brought about, nor any Record of the Council after *Friday* the 13th, before the Rebels entered the City, nor of the Committee after *Saturday* the 14th.

As for the particular Facts or Articles charged upon the Pannel, the Pursuer has Reason to believe he can prove every one of them; but he now says, that neither the separate Relevancy, nor the Proof of every one of them, is essential to the Conclusion of this Libel, whereof the general Scope and Averment is, That the Pannel, at the Time and upon the Occasion libelled, was faulty and negligent, or guilty of Malversation in the Discharge of his Duty; and, for making out this, particular Articles are specified: And altho' every one of these shall not appear separately material, or shall not be proved, it is no Matter, if enough be proved to make out or support the general Charge.

The Case is of the same Nature as if a civil Action were brought, for Instance, for removing a suspected Tutor by the Kindred of the Infant, in order to which a Number of Articles of Misbehaviour were alledged in the Libel; in which Case, tho' some of these Articles should not be proved, or well accounted for by the Defender, yet, if any Number should be made good and accounted for, the general Allegation of the Libel would be proved, and the Pursuers behoved to prevail in the Conclusion of their Action.

At the same time, to touch briefly at the particular Articles, it is replied to the Answer to the first, That it is not the Pannel's Doubt concerning the Point of Law that is charged as a Crime, but his urging that Doubt, *inter alia*, demonstrates his Backwardness to pursue any Measures for Defence of the City, for the Doubt itself was extremely groundless. There are sundry old Laws against private Leagues or Bonds among the Subjects, which have nothing to do with the present Case; but the only Law, upon which the Pannel's Objection, that it would have been High-Treason to arm without Authority from the Crown, can be founded, is the 5th Act of the Restoration Parliament 1661, intitled, *Act asserting his Majesty's Royal Prerogative in the Militia, and in making Peace and War*, &c. which Act declares, 'That it is and shall be High-Treason to the Subjects of this Kingdom, or any Number of them more or less, upon any Ground or Pretext whatsoever, to rise or continue in Arms, to maintain any Forts, Strengths or Garrisons, to make Peace or War, or to make any Treaties or Leagues with foreign Princes or Estates, or among themselves, without his Majesty's special Authority and Approbation first interposed thereto.'

Now, in the first place, whilst this Act continued in force, it surely could never be meant to comprehend the Case of the King's Subjects being called out, by the Magistrates acting under his Authority, to take Arms for his Service; for Instance, if the Militia of any County should be called out by the High Sheriff, or Lord Lieutenant, to resist a foreign Enemy, or a domestick Rebel: And the chief Magistrate of a Burgh, within his District, has the like Power to the Sheriff, or Lord Lieutenant, to defend the Burgh over which he presides.

But, 2dly. This Act, upon which the Doubt is singly founded, is repealed by the Act of the 7th of *Queen Anne*, Chap. 21. which provides, That nothing shall thereafter be High-Treason in *Scotland*, but what is such in *England*. And farther provides concerning certain Crimes therein mentioned, *viz.* Theft in landed Men, Murder under Trust, Fire-raising and Assassination, which were declared to be Treason by particular Statutes in *Scotland*, shall hereafter be adjudged and deemed to be capital Offences. But concerning the Fact which is made Treason by this Act 1661, no such Provision is made.

The Pursuer's Replies concerning the other Articles are already in Substance made in the foregoing Argument, and he shall not prolong this Paper to go through them minutely, and shall only farther observe, That, as to the new Defence offered to the eleventh Article, concerning the *City-Arms*, that though it comes with a bad Grace to be now for the first Time proposed, the Pursuer does not oppose the Pannel's being allowed to prove this Allegation, and all other Facts and Circumstances that have been by him alledged for his Vindication or Defence against the Charge contained in this Libel.

In respect whereof, &c.

WILL. GRANT.

July 28, 1747.

INFORMATION for ARCHIBALD STEWART, of the City of *Edinburgh*, Merchant, and late Lord Provost of the said City, Pannel or Defendant,

AGAINST

His MAJESTY'S ADVOCATE for his Majesty's Interest, Pursuer

BEFORE entering upon the Objections to the Relevancy of this Libel, it may not be improper, first of all, to lay before the Court a genuine and succinct Account of every Fact and Circumstance which any way concerns the Conduct of the Pannel, or can give any Light to form a Judgment of it during the Period mentioned in the Libel.

Upon the 17th of *August* 1745, the Pannel, then Lord Provost of the City of *Edinburgh*, had the Honour to receive a Letter from the Marquis of *Tweeddale*, one of his Majesty's Principal Secretaries of State of the 13th current, acquainting him, 'That their Excellencies the Lords Justices, having received Intelligence, that the Pretender's Son was already landed, or intended to land in *Scotland*, had recommended it to him

him to give Notice to the Provost thereof, that he might exert his Care and Vigilance on this Occasion; and make use of such Precautions as he should judge necessary for preserving the publick Peace within the Bounds of his Jurisdiction.

To this Letter the Lord Provost wrote an Answer on the 17th, as follows: 'It is with Pleasure I assure your Lordship, that this Town was never better affected, nor more peaceable than at present. Nothing shall be neglected on my Part to preserve People in their Duty towards their King and their Country; and we trust in God that no threatened Dangers shall ever reach us; at the same Time, we are not to sit down in Security, but will keep a watchful Eye, in order to prevent, as far as it is in our Power, every thing that may disturb the Peace of this Place.'

The above Letter was laid before the Magistrates when it came to Hand, and the Answer was approved of by the Town-Council, at a Meeting on the 22d of August, and, in pursuance of these Resolutions taken by the Lord Provost and Council, the following Orders were forthwith issued.

August 23. Orders were given to levy and raise thirty Centinels to be added to the City-Guard, agreeable to the Powers given them by Act of Parliament, and to provide them with Clothing and all other Necessaries.

Recommended to the Lord Provost and Magistrates to direct the Captains and Officers of the Trained-Bands, forthwith to make up full Lists of all the Persons belonging to their several Companies, and to report the same to the Magistrates against Saturday next; and that the Captains warn and premonish them all to be ready, in case of any Disturbance, to appear with their best Arms, upon an Hour's Warning, at the ordinary Places of Rendezvous.

Orders were given for directing the Constables of the City to make out full and ample Lists of all the Inhabitants and Residents within their Districts, and report the same to the Magistrates; and to be diligent in inquiring and finding out what Strangers may happen from time to time to come within the City, and lodge within their several Districts.

Orders for a Proclamation, requiring and ordaining all Inn-Keepers, Strangers, and others, who lodge and entertain Strangers, from time to time, and as oft as any Stranger shall lodge with them, to give in to the Captain of the City-Guard a Note of their Names and Designations at their Arrival; and of the Time of their Departure, under a Penalty for each Transgression; and the Captains of the Guard ordered duly to report to the Magistrates, in Writing, every Morning, Lists of the Particulars that should be delivered in to them by the Inhabitants.

These Orders, most of which proceeded upon Motions made by the Lord Provost, were all agreed to by the Magistrates and Council, and signed by him in their Presence; and Care was taken of the due and punctual Execution of them all, without any Loss of Time.

The next Day, being Saturday, August 24th, it was suggested to the Lord Provost that it might be fit to call a general Meeting of the Inhabitants, to consider what was to be done on this Occasion; to which he agreed, and communicated the Proposal to the Council at their next Meeting on Monday, August 26. who also approved of it; and accordingly the Meeting was ordered, and the most substantial and well-affected Burgesses were invited to assist with their Counsel and Advice; and at the Meeting, which could not be convened sooner than next Day, August 27. the above Resolutions and Orders were reported to them by the Lord Provost; and the Meeting unanimously approved thereof, and gave his Lordship and the Council their hearty Thanks for the wise and prudent Measures they had already taken; and, farther, offered it as their Advice to the Magistrates and Council, to name some of their own Number, and such other of the Burgesses as they should think fit, as a joint Committee to consult with and take the Advice of the Lord Justice-Clerk, Lord Advocate, Mr. Solicitor, and such of the Lords of Session as can be found in Town, with regard to what farther Steps the Magistrates, Council and Community can legally take for preserving the Peace of the City, and contributing to defeat the dangerous and wicked Designs of the Enemies to his sacred Majesty, his Royal Family, and present happy Constitution.

August 28. The Committee were accordingly named by the Council next Day, and that very Evening met with the King's Counsel, and such of the Judges as were in Town, at the Lord Justice-Clerk's House, where it was proposed, that a Regiment of a thousand Men should be levied for the Defence of the Town, and Service of the Government, to be subsisted, for three Months, on the Charges of such of the Inhabitants as were willing to sign an Association for that Purpose. And as it had been, for some time, a general Subject of Conversation and Debate without Doors, how far it was legal to levy such Regiment without a special Order from his Majesty, the Opinion of the learned and honourable Persons present was asked upon this Point, and they all agreed, that it could not be legally done without his Majesty's Warrant. Upon which it was resolved that the Lord Advocate should make Application for such Warrant; and that, in the mean Time, Trial should be made of the Inclinations of the Inhabitants to concur in this Measure, how soon the Warrant should be obtained from his Majesty.

August 30. The Lord Provost and Magistrates were employed in receiving Proposals for putting the Town in a Posture of Defence; and the Lord Provost wrote Letters to the Magistrates of Boroughs, and Ministers, for about the Distance of fourteen Miles round the City, begging that they would send as early Intelligence as possible, by Express on Horseback, of any Bodies of armed Men they could discover marching towards this City.

August 31. About the same time many different Orders were given by the Lord Provost to proper Persons, with a View to put the Town in a Posture of Defence, which were afterwards executed, particularly for clearing the Town Wall, building Stairs to get up to the Wall, making Communications from one Place to another, raising a Work at Wallace's Tower, to prevent the Communication by the Back of the Castle. This last Work had been directed at first in a very proper Manner by Bailie Robert Baillie, Overseer of the publick Works for this Year; but Bailie Gavin Hamilton afterwards stopt it, and gave a different Direction, by which that Work was for some time retarded.

Monday, September 2. The Lord Provost signed an Order in Council for augmenting the Town-Guard to the Number of 126 Men.

September 3. Bailie James Stewart and Mr. Colin Mac Laurin applied to the Lord Provost, with a Message from some Gentlemen who had met the Evening before, desiring in general that he would see to the Defence of the Town; and particularly, 1st, That he would order Moulds to be made for casting Bullets. 2^{dly}, That the Sluices of the North-Loch should be filled up. And, 3^{dly}, That a Distinction should be made betwixt the Inhabitants of known good Affection and others, before he came to intrust them with the Town's Arms.

The Lord Provost agreed to the first two Proposals, and ordered the immediate Execution of them; but as to the third, he demurred. He observed to them the Inconvenience of making Distinctions amongst Inhabitants upon bare Suspicions, especially about the Time of an approaching Election, when Parties were forming, which would lead them to spread Calumnies against one another upon By-Views; that this might occasion Heats and Dissentions dangerous to the Peace of the Town, and even strengthen the Disaffected by combining them together; that, where any real Ground of Complaint could be condescended, he was ready, not only to exclude such Persons from serving in the Trained-Bands, but also to oblige them to find Security for their good Behaviour. After this Reasoning the Gentlemen did not insist farther upon that Part of their Proposal, nor lay it before the Council, who were the proper Judges of the Expediency of such Measures, had they thought it fit to be insisted on.

September 4. The Lord Provost met with the same two Gentlemen, and several other Burgesses, in a Tavern, and, after a good deal of Conversation upon the several Expedients proposed for Defence of the Town, he desired they would digest their Proposals, and give them in, in Writing, which he would either immediately comply with, or give them an Answer in Writing. This they seemed cheerfully to agree to, and promised to give him in their Proposals, but never did it.

September 6. Some of the same Gentlemen presented to the Provost a Petition signed by about 80 or 90 of the Inhabitants, offering to serve as Volunteers for Defence of the City against any Attack; and particularly in contributing to erect the necessary and proper Barricado's for defending the Ports and several Avenues to the City, and praying that the City-Wall might be instantly repaired, and Stairs put up, &c. to appoint proper Places of Rendezvous, furnish them with necessary Arms, and allow them to name their Officers.

The Provost told the Gentlemen who had met with him two Days before, That, after what had past at that Meeting, he expected they would have communicated to him their Intentions, as they promised; but he never would mind any personal Neglect in a Matter where the publick Safety was concerned, and therefore should take care to present their Petition to the Magistrates without Delay, and return their Answer.

September 7. He did accordingly order a Meeting of the Magistrates to be summoned against Eleven next Forenoon; and, that there might be no unnecessary Delay from any Doubtfulness concerning the Legality of this Measure, the Provost advised with the Lord Advocate upon that Point in his Way to the Meeting; and, having got his and the Solicitor's Opinion of the Lawfulness of it, he forthwith met with the Magistrates, and laid the Petition and Opinion before them; upon which they cheerfully approved of the Proposal, and applauded the Zeal of the Petitioners.

Immediately after the Provost went to the Volunteers, who were met in the New Church Isle, and told them their Petition was to be complied with in every Particular, except the Nomination of their Officers: But, notwithstanding that did of Right belong to him, yet, as he wished of all Things they might have such Officers as they inclined to obey, if they would give him a List of 20 or 30 of their Number, he would confine his Nomination to that List. They complied. He named six of the fittest Persons in the List for Captains, with whom they were highly pleased, and he left the Nomination of the Subalterns to themselves, for which they returned him Thanks.

The same Day the Lord Provost moved in Council, that an Address should be drawn up and presented to his Majesty, which was unanimously agreed to; and a dutiful Address was accordingly drawn out, approved and signed; after which it was resolved, 'To authorize the Magistrates and Conveener to employ Persons with all possible Speed to put the City in a Posture of Defence, and particularly the Walls thereof.'

In consequence of this, Workmen were immediately sent for, and the Lord Provost ordered them forthwith to fall to work, under the Direction of Mr. Mac Laurin, and to work Night and Day, Sundays not excepted, till all was finished, and gave Warrants for impressing Workmen.

September 8. The Provost, of his own Accord, ordered all the Powder that was in the Town's Magazine to be carried to the Castle; which was so punctually executed, that he behoved afterwards to take from the Castle what was necessary for the Service of the Town.

About the same Time he wrote an Order to Robert Davidson, Tackman of the Meal-Market, to clean out the Granaries, and provide Meal.

September 9. This Morning the Provost having occasionally heard that his Majesty's Sign-Manual, authorizing to levy the Regiment proposed, had come the Day before to the Lord Advocate's Hand, he went and waited on his Lordship, and, upon receiving the Sign-Manual, he immediately called a Council, and produced the same, which was addressed to the Lord Provost, Magistrates and Town-Council of Edinburgh; and recites, 'That it had been represented to his Majesty, that the Lord Provost, Magistrates, Town-Council, Burgesses, and others of his City of Edinburgh, from the great Loyalty and Affection to his Person and Government, were at this Juncture willing and ready to raise and maintain, at their own proper Charge and Expence, by voluntary Subscription and Contribution, One thousand Foot for the Defence of the said City, and the Support of his Government; and they were desirous of obtaining his Royal Licence and Authority for the same: His Majesty therefore, reposing intire Trust and Confidence in the Lord Provost, Magistrates and Town-Council of his said City, did thereby authorize and empower them to raise, form and discipline One thousand Foot to be employed for the Purposes above-mentioned; and his Majesty did thereby farther order and command, that the said One thousand Men shall be under the Direction of the Lord Provost, Magistrates and Town-Council of Edinburgh: For the doing whereof this shall be a sufficient Warrant.'

As by this Warrant the Direction of the Regiment was placed in the Magistrates and Town-Council, so, as soon as it was read, they took the Direction into their own Hands, and appointed, as a Committee, the present and old Magistrates, Conveener, Deacons *Lauder* and *Per-* *son*, or any five of them, the Lord Provost being always one, and, in case of his Absence, any Nine of them, to be a Quorum, to consider what is most proper to be done upon this Occasion for levying the said Thousand Foot; and particularly to take in the Subscription of such of the Inhabitants as are willing to contribute for levying and maintaining the said Thousand Foot, with their proper Officers, to be named for the Purposes mentioned in the said Sign-Manual, for the Space of three Months after they shall be so intitled; as also to consider what is proper farther to be done for the Safety of this City, and for Support of the Government; which Committee shall meet at the Goldsmiths-Hall, twice each Day, at the Hours of Eleven in the Forenoon, and Four in the Afternoon; and recommended to the said Committee, to keep a Book, into which all their Proceedings and Actings shall be regularly introlled, to the end the same may be reported to the Council from Time to Time.

At the same Time, the Council ordered the Serjeants, Corporals and Drums of the City-Guard to beat up for Volunteers to compleat the Thousand Foot; and they nominated the Lord Provost to be Colonel and Commander of the said Thousand Foot, with Power to him to conduct and direct them, and the other Officers who shall be named to command under him, as the Council shall think proper, or as the Exigencies of Matters shall require.

And the Lord Provost shewed his chearful Concurrence in this Measure, by a Subscription far beyond any other that was made to this Regiment.

September 10 to 13. From this Day, to the 13th of September, there are daily Proceedings of the Council and Committee above named, who went on with all Diligence in raising the Men, taking in Subscriptions, providing Arms, Grain, and other Necessaries, and doing every thing that was judged proper for putting the Town in a Posture of Defence. It is unnecessary to trouble the Lords with reciting minutely every Particular which appears to this Purpose from the Records of the Council, and the Minutes of the Committee, which regularly met for carrying on the Business intrusted to them; and the Lord Provost appears, by their Minutes, to have been present at every Sederunt.

The Pannel is desirous to abridge the Trouble of the Court, in reading a long Story, as much as possible; and therefore shall but just mention a few of the many Instances of his Care and Concern in carrying on the general Measure now resolved on, for the Defence of the Town, about this Period.

That whenever any Complaints were made of the Slowness of the Workmen, that they were not going on with that Diligence they ought, the Lord Provost severely reprimanded them, and gave fresh Warrants to press Men and Carts, with strict Orders to lose no Time.

That *Bailie Robert Baillie*, who had the Inspection of the publick Works, with his Committee, were ordered to see that every thing was done that was necessary for the Defence and Preservation of the Town; and he had the Charge of impressing Workmen and Carts, and exercising all the Authority that was necessary for carrying on the publick Works with the utmost Dispatch.

That the Provost, on the 10th of September, wrote a Letter to Captain *John Dalrymple*, and also applied to Captain *James Murray*, to take upon them the Command of the Volunteers: But they both refused to accept of a Command of Men who had not been accustomed to military Discipline.

That the Provost moved in the Committee, to recommend to some of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they should learn the Exercise of throwing the Hand-Granadoes.

That, in order to preserve the publick Money from falling into the Hands of the Rebels, the Provost called a Council, and proposed, that what was owing of the King's Cess should be paid up to the Receiver-General, though it had not been paid by the Inhabitants to the Collector; and for that Purpose the Provost forthwith signed an Order on the Cash Account for 1000*l.* Sterling, payable to the Receiver-General, to Account of the Cess due by the City, which was delivered to the Receiver-General.

September 13. That the Proceedings of the Committee for levying the City's Regiment, and forwarding the necessary Steps to be taken for the Safety and Defence of the Place, were read over in Presence of, and considered by the Council, and unanimously approved of, and the Council recommended to the Committee to continue in their Diligence.

September 14. Notice having come to Town this Morning, that the Rebels had passed the *Forth* some Miles above *Stirling*, and were directing their March towards *Edinburgh*, and Colonel *Gairdner's* Dragoons were retiring before them, the Lord Justice-Clerk sent a Message to the Provost, desiring he would meet with him, and some Lords and Gentlemen of the Army, and others, whom he was to bring from the Country, in order to concert what was to be done in this Exigence. The Provost immediately went to Lord Justice-Clerk's House, and told his Lordship he was sensible how much he stood in need of such Advice; that he would always be ready to follow it, and would be sure to attend them whenever called for.

He went on still in doing every thing that could be thought of as necessary to provide for the Defence of the Place. He signed a Warrant this Day, along with Lord *Somerville* as Justice of Peace, to press Men and Carts for carrying Sand and other Materials to the Ramparts and Works about the Walls, which was accordingly executed; and also to bring in Hay, Corn, and Provisions into the Town, and *John Walker* and *William Mercer* were sent to *Leith* for that Purpose.

This Day also the Provost ordered twenty-four Men to attend Captain *Bryden* in mounting the Cannon upon the Walls;

And granted Warrant to bring into the Town all the Ladders, Arms and Ammunition, which were in the *Cannongate*, *Potter-Row*, and other Suburbs adjacent to the Town, that they might not be seized by the Rebels.

Sunday, September 15. We are now come to Sunday the 15th of September; and as the Proceedings of this Day, and the next, are greatly

misrepresented, as well as curtailed in the Pursuer's Information, it is necessary to be a little more particular in reciting them.

Upon Sunday Morning, when the Committee were met in the Goldsmiths-Hall, a Gentleman came with a Message from General *Guest*, to acquaint them, that when it was proposed, at a Meeting at his House, to order *Hamilton's* Regiment of Dragoons to join *Gairdner's*, and make a Stand against the Rebels, the General made a Difficulty, in regard he had no Body of Foot to sustain them. Upon which a Captain of the Volunteers undertook, that, at least, two hundred and fifty of these Gentlemen would be ready to march upon any Service the General would order them; he believed more would, but he could answer for two hundred and fifty, providing the Provost would allow Fifty of the Town-Guard to go along with them; and the Gentleman desired to know if the Provost would consent.

On first hearing of this Proposal, the Provost had some Difficulty to part with the Town-Guard, as being the Body of Men he could most depend upon, in case of any Occasion, to defend the Town; on which *Bailie Robert Baillie* said, he thought fifty of the Town-Guard could not be better employed than in supporting so many of the Volunteers, if they marched out; and instantly the Provost, upon Recollection, agreed, and answered, 'Mr. *Baillie*, you are in the right; in place of Fifty, they shall have the whole Town-Guard, and as many of the *Edinburgh* Regiment as are capable of doing Service.'

The Provost immediately went down in a Coach, along with the Gentleman who had brought the Message, and told the General the Resolution of the Committee as to sending out the Town-Guard and the *Edinburgh* Regiment; upon which the General sent Orders to *Hamilton's* Regiment to march through the Town and join Colonel *Gairdner's*.

The Provost came up to Town from the General's in a Coach, along with Provost *Drummond*, the first Captain of the Volunteers, and by the Way met two of their Officers, who came into the Coach, and told them, they were sure the Volunteers would not comply with the Measure proposed, and that they were now separated, and had gone home.

The Provost asked Mr. *Drummond* what would be the best Signal to bring the Volunteers together? He said they had only two, three Guns from the Castle, or ringing the Alarm-Bell. The first, says the Provost, is not in our Power, as the Castle is shut; and the other, in Time of divine Service, may alarm the Town. No help for it, says Mr. *Drummond*, the Bell must be rung.

The Bell was accordingly rung, which alarmed the People, and made them leave the Church. The Volunteers, convened in the *Lawn-Market*, and huzza'd *Hamilton's* Dragoons as they past along. Their Officers applied to the Provost, and asked if he had ordered them to go out and join the Dragoons? He told them, he had no Power to order them any where out of Town; but he had consented, that as many as were inclined should go out with the Town-Guard and *Edinburgh* Regiment, to sustain the Dragoons in opposing the Rebels. The Measure was generally not liked by the Volunteers, and was imputed to the Provost as if he had been the first Proposer, as one of their Officers told him with a good deal of Warmth.

After many Expostulations among themselves, at last Mr. *Drummond* marched up on the Head of his Company, and some others followed. They went the Length of the *West Port* and then returned.

Two of their Officers went forward to stop the Town-Guard and *Edinburgh* Regiment, who had marched on to sustain the Dragoons, and found them between the *Coltbridge* and *Brucehill*: But the Provost being informed of this, sent Orders that the City Regiment and Town-Guard should march forward, and take their Orders from the commanding Officer. General *Guest*, when he heard of the Return of the Volunteers, was vexed at the Disappointment, and said, if he had expected it, he would not have ordered *Hamilton's* Regiment to go out to join the other in Defence of the Town.

The Provost sent up Mr. *Stewart*, chief Constable, to the Castle, with a signed Order for a Number of Matches for the Use of the Cannon mounted on the Town-Walls, which were accordingly delivered, and brought down to the Goldsmiths-Hall.

The Provost convened the Trained-Bands under their proper Colours and Officers, and gave them Notice to hold themselves in Readiness upon a Minute's Warning, and three Companies of them were ordered to mount Guard.

He also ordered the Constables to search Houses, of which there was any Suspicion, for Arms and treasonable Papers.

This Afternoon Brigadier *Fowkes* came to Town, and the Provost was called in the Evening to Lord Justice-Clerk's, where Lord Advocate, General *Guest*, Brigadier *Fowkes*, and several other Gentlemen of the Army were present. A Proposal was made, that the Dragoons might be brought into Town, with a View to give them some Rest and Refreshment, and have their Horses fed on the Street: But after the Thing was debated among the Gentlemen of the Military, who considered that the Avenues of the Town might be taken Possession of by the Rebels, the Streets barricadoed, and the Houses lined, and that the Dragoons might very probably, by this Means, fall into the Hands of the Rebels, it was agreed to be a Thing not to be attempted.

From this the Provost went along with Major *Cochran*, Captain *Murray*, Provost *Drummond*, and others, to the House of Mrs. *Clark* Vintner, where a Disposition was made of the several Corps of armed Men into different Quarters of the Town, particular Guards assigned them, and Places for their Alarm-Post condescended on, where each of them should appear on the proper Signals; Copies of which were given to the commanding Officers of the different Corps.

This Afternoon the Provost met with Sir *Robert Dickson* upon the Street, who had come in with a considerable Number of Volunteers; he received him with great Civility, as both his personal Character and Errand deserved; immediately gave Orders that his Men should be lodged in the Kirk, and that a sufficient Quantity of Bread and Ale should be carried there for a Refreshment to them without Delay.

About this Time Messages were sent to the Castle and *Leith*, to procure Gunners for loading the Cannon. Mr. *Guest* could afford us none out of the Castle; *Bailie Scot* made search over all *Leith*, assisted by *David Dryburgh*, *Charles* and *Alexander* Sheriffs, and sent us up what could be found

found there; Application was also made to the *Uffs* Man of War, and the Answer returned, That the Captain could send none.

By Orders from the Lord Provost, the great Guns upon the Walls were begun to be charged on Sunday Evening, and the Gunners employed continued to charge them till Two o'Clock next Morning.

The Provost this Evening sent up an Officer of the Town-Guard to beg the General would order a Signal to be put up in the Castle, to discover the Road the Rebels should take to *Edinburgh*, that Measures might be taken to turn the whole Force as much as possible to that Side; and an Answer was returned, That his Request should be complied with.

All this Sunday Evening, from Seven to Twelve, the Provost was constantly employed, either in the *Goldsmiths-Hall*, or at the different Guards of the Town, conversing with the Military Men about Orders, or with the Captains of the Trained-Bands. At Twelve at Night he began the grand Round, which lasted till about Four o'Clock in the Morning.

Monday, September 16. Having gone home for an Hour or two, he was upon the Streets again at Six in the Morning, reviewing the Barricades that were making at the Ports, and superintending the other public Works about the Town.

At Nine o'Clock, He ordered Bread and Ale to be carried out to the Dragoons; and upon Mr. *Powles*'s applying to him for the Town-Guard and *Edinburgh* Regiment to be sent out to join the Dragoons, he immediately ordered them to parade in the *Parliament-Cloise*, and march out, which they did.

He next gave orders that Mutton, Beef, &c. should be bought, and boiled in all the Taverns in Town, for the Use of the Dragoons; and went through several of the Taverns with Mr. *Baillie* and Mr. *Hamilton*, and gave Directions thereabout.

Being informed by Colonel *Clayton*, that the Provisions first sent out were not sufficient, he expressed his Displeasure that his first Orders had not been fully obeyed, sent to the Bakers and Brewers, and caused press Carts to carry out Provisions.

Between Ten and Eleven o'Clock, When sitting in a Closet in the Coffee-House with Commissary *Listie*, Andrew *Alves* came in to them, and said, That in his Way to Town, he happened to ride near the Rebels; that the Duke of *Perth* knew him, and ordered him to come nearer; and upon hearing he was going to *Edinburgh*, said, I understand the Provost and Magistrates are making great Preparations against us, but we are resolved to pay them a Visit; if they will keep their Arms in their Possession, and allow us to come peaceably into Town, they shall be civilly dealt with; if not, they must pay their Account with Military Execution, or Words to that Purpose: And turning to a young Man he called the Prince, he asked him, Whether or not that was his Pleasure? Which the other seemed to assent to. The Provost said, Mr. *Alves*, this is a very extraordinary Message; but they will find we are not to be intimidated by Threats.

The Provost went immediately over to the *Goldsmiths-Hall*, and acquainted two Gentlemen of the Committee of what Mr. *Alves* had said, and consulted with them what was proper to be done. They were of Opinion it was most proper to neglect it, and take no Step that might publish to the Inhabitants the Threatening they had received.

The Provost, after reviewing some of the Works about the Town, on his Return to the Street, was informed, that Andrew *Alves* had adventured to repeat to others what had passed betwixt him and the Rebels; upon which he went straight to the Lord Advocate to ask his Advice, where he found Mr. *Alves*; and, by the Advocate's Advice, he signed a Warrant for committing him.

Monday, September 16th, Afternoon about Three o'Clock, The Provost being then in Mrs. *Wilson*'s, was called out from the Company by Mr. *Baillie* and Mr. *Perreft*, who acquainted him, that a Petition to the Magistrates was banding about among the Inhabitants, desiring they might be consulted upon what was proper to be done upon this juncture. At this the Provost was surprised, as well as vexed: However, as soon as he came out to go to the *Goldsmiths-Hall*, he was met by a great Crowd of Inhabitants, who delivered to him the Petition, which is produced in Process, praying, That the Magistrates, before they came to any Resolution, either of defending or giving up the Town, would call a Meeting of all the principal Inhabitants and Heritors, at present in the Place, to consult with them what is proper to be done in an Affair of so great Importance. Upon this the Provost immediately went to the *Goldsmiths-Hall*; they followed him, and endeavoured to crowd in: Upon which he was provoked, and asked, If they meant to enforce their Petition by Numbers; begged they would be gone, and leave it to the Magistrates, who were to consider what was most expedient to be done with respect to the Place; and immediately he caused the Drum to go about, and order the Inhabitants to retire from the Streets, who were all in an Uproar upon hearing that the Dragoons had retreated from the Rebels.

The Provost, in his Way to the Ports, met with the Lord Advocate and Solicitor, who asked him, If he did not think 100 Dragoons might be of Use to be brought into the Town; and he agreeing that they might, the Advocate asked him to sign a Letter in Conjunction with him and the Solicitor, to General *Guest*, to send in 100 Dragoons; which the Provost immediately did, and then went on to see the Gates barricadoed.

After the Gates were barricadoed, he ordered Mr. *Stewart* the Constable to mount the Walls, and look out for the Dragoons; and so soon as he should see them come near the Walls, to open the Gates and let them in: He had before provided a large Quantity of Hay for the Use of their Horses.

As he was returning up the *Westbow*, a Citizen of very considerable Substance, and undoubted Loyalty, came to him, and said, He applied to him in Name of himself, and many of the most considerable Citizens, to expostulate and beg, that the Defence of the Town might not be insisted on, which could only tend to expose the Lives of the Citizens. To which the Provost answered, That his Request could not be granted.

In returning to the *Goldsmiths-Hall*, the Provost gave Captain *Hamilton* Orders with respect to the City-Guard, 20 of them to remain at the *West-Port*, 20 to go to *Bristo Port*, 20 to the *Netherbow*, and 40 of them to remain in the Guard, to move to any Place where they should be most needed, which was allowed to be a very proper Disposition.

During all the Way in his Return, the Cries of the People were heard on every Side: What, would he have them all murdered, by defending the Town after the Dragoons had run away? And other Words to that Purpose.

As soon as he was returned to the Hall, where the Committee was met, he sent Bailie *Hamilton*, Robert *Baillie*, and John *Perreft*, for the Lord Justice-Clerk, Lord Advocate, and the Solicitor, to beg they would come and assist them with their Counsel, saying, He chafed to be determined only by their Advice. They returned, and reported that they had all gone out of Town.

The Provost expressed great Concern when he found himself destitute of the Advice he most relied upon at so critical a Juncture, and then desired that the Officers of the Army should be sent for, and the Officers of the Volunteers who were convened at their Posts by the ringing of the Alarm-Bell: Most of the Captains, and some other Officers of the Volunteers came; but no other Military Men were found in Town, except Captain *James Murray* and Major *Coburn*. The Lord Provost addressed himself to them, and said, That, for his Part, he was willing to counter any Danger for the Defence of the Town: He hoped the Inhabitants would do their Duty, and hoped the Enemy might be kept out until Assistance should come to their Relief; and asked Mr. *Murray* what was his Opinion? Who said, he pitied him, but was at a Loss what Advice to give: And being farther pressed by the Provost, he answered, That if the Volunteers, Trained-Bands, and other armed Men within the Town, were disposed to do their utmost, he believed they might make a good Defence; but if they were not disposed to fight, he would advise the sending the Government's Arms to the Castle.

The Provost said, He hoped those Gentlemen who had undertaken the Defence of the Town, would not now abandon it when the Danger drew near, but remember what Expence the Town had been at, what Assurance they had given to his Majesty, and what they had promised to perform, when the Danger was at a greater Distance. He then asked all the Captains and Officers of the Volunteers that were present, what he could expect from them? One said, he did not find any Disposition in his Men to fight: Another told, That there did not remain fifteen of the Company to which he belonged; but as he had promised to risk his Life in Defence of the Town, he would still do it; though he was sure not five of the fifteen would follow him: And others of them declined to make any Answer at all.

About this Time *Walter Graft* came into the *Goldsmiths-Hall*, and he said he was sent by the Lord Justice-Clerk and Lord Advocate, to desire the Provost would send an Order to General *Powles* to bring the Dragoons into Town. To which he answered, That he was surprised at the Message, after what had passed the Night before; that he would sign no Order, as he had no Power over the Dragoons; but if they pleased to send them in, they should be made very welcome, and we should join them in Defence of the Town.

Mr. *Graft* said, That the Lord Advocate and Justice-Clerk thought it proper that the Provost should sign the Order. To which he answered, That he did not chuse to make himself accountable for the Dragoons, after what he had heard in the Lord Justice-Clerk's last Night; but thought it more proper that they should send their Orders, if they had altered their Way of Thinking about that Matter. Mr. *Graft* desired to have the Provost's Answer in Writing, with which he readily complied.

About this Time the Fears of the Inhabitants had brought a great Crowd into the *Goldsmiths-Hall*, and about the Door of it, who all cried out against the Madness of defending the Town, when all the Officers Civil and Military had left it, which shewed they understood it could not be defended. The Crowd still increasing, a Member of the Council proposed they should go to the *New Kirk Isle*, as they were like to be smothered in that narrow Place: Upon which the Lord Provost left the Hall, and went out to the *Parliament-Cloise*, where great Numbers came up to him, remonstrating, in the strongest Terms, against attempting any Defence, which could have no other Effect, but to expose them to Military Execution.

The Provost did all he could to reanimate the People; but when he was talking to them, Mr. *Cunningham* of *Gairdner's* Dragoons came up to him on Horseback, with a Message from Lieutenant-Colonel *Whitney*, desiring he would order the Dragoons Baggage to be forthwith sent out to them, because they were going to *Haddington*; that they found they had been greatly deceived in the Number of the Rebels; for now they computed them to be near Eight Thousand. This Account, which was given by Mr. *Cunningham* in the Hearing of the Crowd, did greatly contribute to increase the Terror of the Inhabitants, who were heard crying every where, What a Madness it was to pretend to stand out against such a Number.

The Provost expostulated with them in the *New Kirk Isle*, That he hoped they would not now abandon the Defence of the Town; that he was ready to concur in it to the utmost of his Power, and expected the Danger would not be so great as some Men's Fears made it. But upon this such a Noise was raised, that nothing could be heard but a general Cry for giving up the Town, not above two or three of the whole Multitude present appearing to be of a different Opinion.

About this Time a Letter was thrown in, directed to the Lord Provost and Magistrates, which was opened by *Walter Orrock*; and when he told it was signed by *Charles P. R.* the Provost stooped him, and said, he would not witness the reading such a Letter: Upon which many calling out to read, he said he had been too long there, and with Difficulty got to the Door, and returned to the *Goldsmiths-Hall*, where the Magistrates also came, and a great Number of the Inhabitants, and immediately they sent to convene the Town's Assesors; but only one of the four was to be found: They asked his Opinion what was to be done with respect to the Letter, and whether it should be read? But he having declined to give any Opinion, and the Inhabitants expressing the utmost Uneasiness both within and without Doors, the Letter was read without any Authority from the Provost, and contained a Threatening of their highest Resentment, in case any Opposition was made to their Entry, or that any of the Cannon or Arms were allowed to be carried off.

After

After this nothing was to be heard but loud Cries against a fruitless Opposition, and against Delivery up of the Town's Arms to the Castle, which, it was said, would occasion Destruction to the City; and many in the Hall insisted that a Deputation should be sent out, to beg that Hostilities might not be commenced against the City until they had time to deliberate what Answer they should return; and, as it was believed the Enemy was at the Gates, the Deputation was immediately hurried away, viz. Bailies Gavin Hamilton, John Yett, David Inglis, and Convener Nerrie.

The Volunteers in the mean time did, without applying to the Lord Provost for Orders or Directions, of their own Accord, take a Resolution to give up their Arms to the Castle, which they forthwith executed, and thereby dismist themselves from the Service.

One of their principal Officers, whose Zeal or Bravery was never at any time called in question, upon his Return from the Castle, was met on the Street by a Gentleman, who told him, the Rebels were not near so numerous or formidable as they had imagined; and that it would be a Shame to surrender the Town to them. But the Officer answered, it might be so; but it could not now be helped; that Information had come too late.

And, some Hours before, another Gentleman of the same Corps had sent a Message to his Wife, begging her not to be under any Fear about him, for the Town was to be given up.

At this Time a Message came from the Castle, by Robert Griffith a Gunner, desiring that the Cannon on the Town-Walls might be nailed up; it was the Opinion of the Committee, that the Provost should give no Orders in these Matters, after what had past; but he told the Messenger, that Mr. Guesf was at Liberty to do what he thought best for the Service of the Government, and nothing hindered him to spike up the Cannon, if he thought fit: And he was also told, that the Town-Officers would shew him where the Cannon were, for that Purpose.

About the same time the Adjutant of the City Regiment wanted to know what should be done with the Arms under his Care; and was told, that it was not thought proper the Provost should give Orders thereunto; that the Council was afraid the City might suffer from the Cruelty of the Rebels, and even that they themselves might suffer from the Populace, if such Orders were given; but, at the same time, that the Soldiers of the new-levied Regiment, possess of those Arms, should be privately acquainted to return them to the Castle; and by this means the whole Arms of the City-Regiment were returned, except those of the Men upon Guard.

But it was not practicable to get the Arms of the Trained-Bands conveyed to the Castle in this Manner. These Arms were in possession of the substantial Burgesses and Householders of the Town, who considered them as their own Property, having been bought with their own Money when admitted Burgesses: And as most of them had not only their Wives and Children, but the greatest Part of their Substance within the Town, they would not consent to expose all that is dear to them to the Rage of an incensed Enemy, for the sake of keeping those Arms out of their Hands, especially as they were in themselves of very little Value, being generally old Guns without Bayonets, bought at Half-a-Crown or three Shillings a-piece, more for Shew than Use, as they were never otherwise employed than at a Birth-Day Parade.

But, of little Value as they were, the Provost was desirous, if possible, they should be saved out of the Hands of the Rebels; and as neither he nor the Council were able of themselves to compel the Inhabitants to part with them, he thought of the only Expedient that could be taken in such a Case, which was, to send a Message to the Castle to inform Mr. Guesf of the Situation of the Town, and the general Conformation of the Inhabitants, and to beg that he would send a Party down to take up their Arms, as the Council was not at liberty to give Orders, for fear of the Consequences with regard to the Town. This Message was delivered to General Guesf, but was not complied with.

From the Goldsmiths-Hall the Committee went to the Council-House, and were alarmed with the Cry, that the Rebels had broke into the Town. This was owing to the Fright of a Party of Dragoons, who guarded their Baggage at the Netherbow Port, and when the Port was opened to let out the Baggage, a great Crowd burst in, which the Dragoons imagined were the Rebels, and rode off as hard as they could, in great Terror, to the Castle.

Upon this Alarm the Commandant put the Provost in mind of the Threatning sent to the Town, that every Man who was found in Arms should be put to death; and asked the Provost what the Trained-Bands should do at the Weigh-House and West Port, when the Rebels had already burst in at the other End of the Town? The only Answer any Man alive could give, in such Circumstances, was, they should quit their Arms to avoid being massacred.

After this Alarm was over, Mr. Grosf arrived with Accounts that Sir John Cope had been seen off Dunbar, and, as the Wind was unfavourable for bringing them up the Frith, it was thought he would land that Night at Dunbar, and might soon come to their Relief. Upon which Bailie James Mansfield was immediately dispatched to call back the Deputies, and a Town Officer was also sent to run the shortest Way and stop them; but neither could overtake them.

It being now again resolved, upon this Prospect of Relief, to put the Town in a State of Defence, Mr. Grosf, and Mr. Lindsay Secretary at War, went up to the Castle along with Provost Coutts, and acquainted the General with the good News of Sir John Cope's Arrival, and asked if he would think it proper to order the Dragoons back for the Defence of the City, and whether he would deliver back the Arms that had been returned to the Castle. General Guesf's Answer was, That he did not think it for his Majesty's Service to order the Dragoons back to Edinburgh, it being more fit they should join Sir John Cope's small Army: That the Gentlemen of the Council might put the Burghers Arms into the best Hands; and if, thereafter, the Lord Provost should find a Disposition in the Inhabitants to defend the Town, he might let him know: And added, that he would send down a Message to the Serjeant that was nailing up the Cannon on the Walls, to stop him.

After the Gentlemen had returned from the Castle, it was proposed in Council, by a Captain of the Volunteers, that the Alarm-Bell should be rung: But it was objected by some of the Members, that nothing of that Kind ought to be done till the Deputies were returned, lest the Rebels, who were apprehended to be very near, should thereby be enraged, and make them suffer for it. One of the Reverend Ministers of the City, who had been most active and zealous in the Service of the Government, and some other well-affected Burgesses, agreed in this Opinion; and all of them were positive that nothing could be done for Defence of the City, unless the Dragoons were brought back: Upon which Mr. Grosf rose up, and said he would go and endeavour to bring them back; and Provost Drummond and he went off upon that Errand, but did not again return.

Mr. Lindsay, the Secretary at War, asked the Lord Provost, if he would send an Order to General Guesf to re-deliver the Arms which had been sent up to the Castle. Had the Provost been capable of any Degree of the bad Intention the Pursuer would now suppose, it was easy to comply with this Request, for one-tenth Part of those Arms would have been of more Value to the Rebels, than the whole Arms that were in the Hands of the Burghers: But, as his constant Intention was to bring no Arms or Ammunition from the Castle, but as there was necessary Occasion for them, lest they should fall into the Hands of the Rebels, so agreeably to his Intention, he answered Mr. Lindsay, 'That, before he gave such Orders, he behaved to see a better Disposition in the Inhabitants to defend the City.'

For, since the Alarm of the Rebels bursting into the Town, most of the Inhabitants, dreading the Execution of their Threats against such as should be found in Arms, had quitted their Arms and gone home.

The Gentlemen who had gone to the Rebel Camp returned, and brought their Answer, requiring the City to receive their Prince as Prince Regent, and that no Arms or Ammunition should be suffered to be carried off or concealed; and demanding an Answer against Two o'Clock in the Morning, their Camp being then at Gray's Mill, about two Miles distant from the City. After receiving this Answer, the Gentlemen of the Council, with some other Citizens, continued together deliberating what was to be done, till Two o'Clock in the Morning, many of them expecting Relief from the Dragoons, which Provost Drummond and Mr. Grosf had been sent some time before to bring back, if possible, to their Assistance.

When the Clock struck Two, and no Relief came, it was proposed to send a second Deputation, in order to gain a further Time, which was unanimously agreed to; and Bailie Robert Bailie, Provost Coutts, with two or three other Counsellors, were sent off to beg a Delay till nine or ten o'Clock, by reason the Burghers were all in Bed, and could not be convened for several Hours: At the same time they were authorized by the Provost to say, 'That he would rather die than comply with the Condition of receiving their Prince as Regent of Scotland.'

Messages were at the same time sent to the principal Inhabitants and Citizens, to come and meet with the Council, and concert what was proper to be done; but few of them had come, when the Deputies returned with an Answer much to the same Purpose with the former; and soon after Notice was brought, that a Part of the Rebel Army had rushed in at the Netherbow Port, and made themselves Masters of the City Guard, who had been so harrassed with the extraordinary Duty all the preceding Week, and by being out under Arms for two Days before along with the Dragoons, that they were hardly fit to do any Duty, far less able to oppose an Army of Rebels, who were numerous and hardy enough to defeat a regular disciplined Body of the King's Forces a few Days after.

From the above Narrative, which is in every Particular strictly agreeable to the Fact as it happened, it appears in what manner this City had the Misfortune to fall into the Possession of the Rebels, after all possible Care taken by the Provost, Magistrates and Council, to prevent it. Some of them indeed were of Opinion, as well as many other of the wisest and best-affected Citizens in the Town, that the Scheme of defending the City, against an Attack, was in itself impracticable. The old Walls are hardly sufficient to keep out smuggled Goods, but by no means able to endure any Siege or Attack: Besides, there were so many other obvious Ways the Town might be forced to surrender, by throwing in Fire, burning the Houses which adjoin to the Town in some Places where there is no Wall, cutting the Water-Pipes, which would starve the Town in a Day, &c. that a great many well-affected Burgesses thought the best thing could be done for the Service of the Government, was to dispose of any thing that could be of use to the Rebels, and leave the Gates of the City open.

But, though this was the Opinion of the Provost, as well as many of the Council and most substantial Citizens, yet, when the other Scheme was resolved, the Provost exerted all the Vigilance he was capable of to make it effectual, as appears from the Circumstances above related. He spent his whole Time in the publick Service, from Six o'Clock in the Morning to Twelve at Night, sometimes till Four next Morning, going about viewing the publick Works, giving Orders, advising Expedients, taking and desiring to have the best Advice: And, at last, when the Thing came to the Push, he was ashamed to see many, who had appeared keen for the Scheme in the Beginning, unwilling to carry it to the last Execution; and that, in general, the Inhabitants were so terrified by the frightful Notion they had got of the Rebels, that he could find no Concurrence to make an Opposition, and keep out the City, not even from those who had first taken Arms in its Defence. He expressed his Sentiments in as strong a Manner in time of Danger, as the Prosecutors can now declaim at Ease, of the Reproach it would be to the City to be surrendered without Defence, after all the Preparations that had been made, and the Assurances they had given his Majesty to that Purpose; and declared himself ready to mount the Walls with the smallest Number of Men that could support him: But the Terror they were in from the Cruelty of the Rebels, and the little Prospect they had of making an effectual Defence, without farther Assistance than they had within the Town, prevailed over his Expostulations, and rendered his Design abortive, which he was willing to have prosecuted at the Hazard of his Life.

At the same Time it is obvious, that the Prosecutors set this Event in a very false Light, when they suppose, 'That the King's Army was within a Day's March of the City when it was taken by the Rebels, and that it was possible to have kept out the Town till the Army had come up to its Relief.' For it is a certain undisputed Fact, that General Cope's Army was still on Ship-board when the Rebels took Possession of the City, and very uncertain when they would disembark; and that, after all the Haste they could possibly make to approach the City, they could not get within Six Miles of it sooner than the Friday Evening, near four Days after the City was taken: Even the Pursuers do not maintain that the City could, by any Defence, have been kept out the Half of that Time. In fact, it is certain that it could not have been kept out many Hours. And therefore, take the Case in any View, it is highly unjust to lay the Blame of the bad Consequences, which afterwards followed, upon an Event which appears, in the Nature of Things, to have been unavoidable, as Circumstances then stood, and are admitted on all hands.

It is not properly the Pannel's Business to make an Answer to the Pursuer's Declaration upon the Consequences of this Event, which, were they founded, could not affect him, who did the utmost in his Power to prevent them. But the Exaggerations are too obvious to take with the most credulous. It will never go down with any body, that the Victory obtained by the Rebels at *Prefton-Pans* was owing to the Tents or Furniture they got out of the City three Weeks after it was fought, or to the broken Guns that were dropt by the Burghers, when it is notorious that greater Numbers of the Rebels came armed to *Edinburgh* than were engaged in that Action. None of the Broad-swords, which were the Instruments of the Mischief done on that Day, were found in *Edinburgh*. Every one who considers the Matter coolly, will own that the Case must have been the same, had they met with Sir *John Cope's* Army the Day before they came to *Edinburgh*, as three Days after it. All depended on the Conduct and Behaviour of the two Armies, and this City behaved in course to fall to the Victor.

Were Conjectures of this Nature to be indulged, it would be more just to impute the taking of this City to General *Cope's* not having guarded the Passes on the *Forth*, or fought the Rebels when they were in the North in much smaller Numbers; by either of which their Progress would have been stopt from coming Southwards. But, to suppose that a Town, which, without any Siege, could be laid in Ashes by any Enemy from without in a few Hours, should be able to put a Stop to the Progress of a Rebellion, which was strong enough to stand a pitched Battle against the whole Forces in this Part of the united Kingdom, and defeat them, is a Stretch of Imagination too wild to be listened to even by the Vulgar, far less to be insisted on before any Court.

It was however the Misfortune of the Pannel, after all his Pains, Labour and Diligence, and the Hazards he was ready to undergo, to be attacked by Suspensions, as if he had failed in his Duty. To this several different Causes contributed, which frequently arise on such Occasions. In extraordinary Emergents of this Kind, Zeal in some, and Fear in others, never miss to set various Passions a-working: A third Source occurred, not so blameless as either of the other two. When the Accounts first came of a Rebellion stirring in the Northern Parts, the Approach of the annual Elections, and Steps thereto preparative, was what chiefly employed the Thoughts of the Inhabitants of this Town. The Danger then was distant, and it was hoped would approach no nearer: But it was a good Opportunity for such as looked with an envious Eye upon the present Magistracy, as having been too long in Possession of the good Opinion of the People, to undermine them, by working upon the Fears and Credulity of others. Surmises and Jealousies are easily spread when People are under Terror: And, by proposing contrary Schemes, they had a good Chance, either to bring the Magistrates into Disrepute with the People, if they opposed them; or to load them with the Blame, if, when they yielded, the Execution of them should, as in all Probability it would, in the Event, prove impracticable.

By such Attempts of the interested and designing, it can hardly fail that many of the honest and well-meaning will be led away, when their Fears and Jealousies are so strongly raised as to get the better of their Reason: And this was much increased by Reports artificially spread with the same View thro' the News-Papers in different Parts of the Kingdom, of Facts now notoriously known to be false, but which were easy to gain Belief at a Time when Men's Minds were in a Ferment, jealous of the Conduct of one another, and ready to catch at every remotest Suspicion.

Under these undeservedly unlucky Circumstances, the Pannel, conscious of his Innocence, set out for *London* to attend his Duty in Parliament; and, as soon as he came there, wrote to one of his Majesty's principal Secretaries of State to acquaint him of his Arrival, and that, as he understood many scandalous Reports had been spread to his Disadvantage, he was ready to wait on his Lordship, or any of his Majesty's Ministers, to give them Satisfaction with respect to his Conduct.

Two Days after, he was taken into Custody at his own House, and carried to a Messenger's House, where he remained for some Time: After that he underwent an Examination before the Cabinet Council, which lasted for several Hours, in which he gave full and particular Answers to every Question that was asked him, and strictly agreeable to the true State of the Fact as above set forth; but the malicious Reports of his Enemies had gained so much Ground, that he was after this sent to the Tower, and kept a close Prisoner for three Months. Thereafter, as the Credit of these Slanders, supported by no Evidence, began to abate, his Confinement was relaxed; but still continued 'till the 23d of January 1747, when he was admitted to Bail before one of his Majesty's Principal Secretaries of State, upon a Recognizance to the Extent of fifteen thousand Pounds Sterling, to appear before his Majesty's Court of Justiciary at *Edinburgh*, at the first Sitting of the said Court after the 20th Day of March then next.

During his long Confinement he made many Applications, expressing his Willingness to meet his Trial; and, as soon as he was liberated and came down to *Scotland*, he applied to the High Court of Justiciary at their first Meeting after the 20th of March; and now, at the Distance of above a Year and a Half from his first Confinement, he has been at last seised with a Libel at the Instance of his Majesty's Advocate; and, upon the 13th instant, Counsel on both Sides were heard before the Court

upon the Relevancy of the Libel, and the Court has been pleased to order Informations to be given in.

The Counsel for the Pannel, in Answer to this Libel, after setting forth the several Steps of the Pannel's Conduct, and his Care, Diligence and Activity in the Discharge of his Office, as above represented, did in the first Place, observe, That although a Prosecution of this Kind against a Magistrate, not for any criminal Fact alleged to be committed, but for supposed Neglects, Mistakes, or Errors in the Execution of his Office, is pretty new and extraordinary, and, it is believed, will hardly meet with any Precedent before a Court of Justice, yet the Pannel would not decline the Jurisdiction of the Court in any Trial that can be brought: he is sure his Conduct will stand the strictest Test of Inquiry; and therefore was willing cheerfully to submit the Case to the Judgment of the Court.

At the same Time it was observed, That, after all the Pains that had been taken to find Fault with the Pannel, and to lay upon him the Load of the Misfortunes which beset the City of *Edinburgh* during the late Rebellion; yet it is very remarkable, that now, when the Libel appears, drawn out with the greatest Art and Skill for that Purpose, it does not contain any one Fact that is in itself criminal: And even the Ommissions charged upon the Pannel, are such as are either merely trifling, or at least of a very ambiguous Nature, and such as his Conduct would have been equally liable to be misconstrued in, had he followed the opposite Course, or done the Reverse of what he is charged with in the Libel.

That, if such are supposed to be relevant Grounds of Accusation against a Magistrate, his Situation must be very singularly unhappy, especially when Times of Danger and Difficulty occur: The Office he cannot decline to accept of, he can as little decline to act; he cannot stop, but must determine himself one Way or other; and, after he has honestly determined, and acted to the best of his Judgment, if he is liable, upon the Event's turning out unsuccessful, to be tried as a Criminal, why he did not take a different Course, it is impossible for any Man, who has the Misfortune to be placed in such Circumstances, let him take what Course he will, to avoid Punishment: And this is the more applicable to the present Case that,

2do, This Libel does not charge the Pannel with any Disaffection to his Majesty, or our present happy Establishment, far less does it offer to prove any Fact that can infer it; nor is it alleged that any of the Articles charged in the Libel happened *ex proposito*, or *ex male animo*. The natural Presumption therefore lies for Innocence, when the Facts are such as can admit of that Construction. In this Case the Presumption is confirmed from the whole Tenor of the Pannel's Conduct in his past Life, as well as from his Situation in the World. As he is a Gentleman of a pretty considerable Property in this Country, and who deals in Trade to a very large Extent, it cannot be supposed he would wish to see Confusions arise in his Country, or the Laws to be put to Silence by lawless Force. That such Disorders must in every Event affect him deeply, by ruining his Debtors, and hurting his Interest in many different Respects; and therefore, unless he were supposed to be destitute of common Sense, there can lie no Probability that he would wilfully do any thing that should tend to increase such Disorders, highly mischievous to himself, as well as to his Country.

And, 3tio, It was in general observed, That, in the present Case, the Pannel had not the sole Direction of any one of the Articles referred to in the Libel: That, as Lord Provost of this City, he was only the Head of a numerous Body of Magistrates and Town-Council, and behaved to act by their Direction. That, by his Majesty's Sign-Manual, the Direction of the City-Regiment was also expressly given to the Lord Provost, Magistrates and Town-Council of *Edinburgh*; that accordingly the Town-Council did forthwith take the Direction into their Hands; and named a Committee, which was to meet twice a Day, to consider and order what was proper to be done for the Safety of the City and Support of the Government; and though the Provost was named Colonel of the Regiment, yet, by his Nomination, he was limited to conduct and direct them in such Manner as the Council should think proper.

That the Pannel did accordingly act in every Particular by the Direction and Concurrence of the Council, and the Committee by them named; that no Instance can be given where he opposed their Resolutions and Orders, or followed his own Will or Judgment in Opposition to theirs; and in such Circumstances it seems impossible to assign a Reason why a Charge of Guilt should be fixed upon the Pannel, when the Council, by whose Direction he acted, are admitted to be innocent, and to have all along behaved dutifully to his Majesty and his Government.

And, more particularly, with respect to the several Articles of the Libel, it was insisted, That, neither separately nor jointly, can they amount to the Charge of a Crime against the Pannel.

The first Article begins with 'setting forth, & That he did nothing of his own Accord towards providing for Defence of the City.' But it is evident this, if true, could be no Point of Dittay. Had the Pannel been of Opinion that it was not expedient for the Service of the Government to attempt a Defence of the City, which was the Opinion of many well-affected Councillors and Citizens; or if he had been of the contrary Opinion, but every thing he could suggest for its Defence should happen to be proposed by some other Member of the Council or Committee; in either of these Cases the Proposition here alleged might have been true, and yet the Pannel intirely blameless. At the same time, that nothing can be more contrary to Truth, evidently appears from Numbers of Instances in the above Narrative, where the Pannel, of his own Motion and Accord, suggested and executed many Expedients of great Importance, towards providing effectually for the Safety of the Town.

And as to the second Branch of this Article, 'That the Pannel stirred affected Doubts concerning the Legality of the Proposition for raising the City-Regiment,' which Doubts the Pursuer, in his Information, endeavours to remove, by observing, 'That the Act 1661, upon which they were founded, is repealed by the Act 7mo Anne, which provides, 'That nothing thereafter shall be High Treason in *Scotland*, but what is such by the Law of *England*.'

It is answered, That the Doubt upon this Point is not singly founded upon the Statute 1661, but upon the Common Law, by which the Power

of Arms is one of the King's undoubted Prerogatives, and the encroaching upon it has been declared highly criminal, by Statutes anterior to the year 1601, particularly by the Act 75th, Parl. 1563, which forbids any Person of whatsoever Quality, Estate, Condition or Degree, to raise Men in Arms without special Licence, in Writ had from the Crown, under the Pain of Death. This Act has never been repealed by any subsequent Law, either expressly or by Implication; and it makes no Exception of Magistrates of Burghs, but extends to all Subjects of whatever Condition or Degree, nor of raising Men upon Pretence of the King's Service. It is well known no such Exception was intended to be implied, either in this Statute, or the after Laws made in the Reign of Charles II; for the Disturbances which happened in those Times, and which these Laws were intended to prevent, were frequently occasioned by raising Men upon such Pretences.

But it is unnecessary for the Pannel to enlarge on this Argument. Were a Doubt, in any Case, to be constructed as a Crime, for which, it is believed, no Precedent can be alledged, the Pannel must be fully justified in this Case, by the Authority already mentioned, of the honourable Judges and his Majesty's Counsel, learned in the Law, who agreed in Opinion, that the levying this Regiment without his Majesty's express Warrant would be illegal.

And it is still as extraordinary, that it should be made a Point of Dittay in the second Article, That Objections were made to the Legality of the Association of the Volunteers: They were associated in Arms for the precise same Purposes for which the Regiment was to be raised, viz. for the Defence of the City and Support of the Government: And the Counsel for the Pannel must confess, they cannot observe any solid Distinction that should make the one legal when the other is illegal and blameable: And therefore it is somewhat surprizing it should be laid as a Crime against the Pannel, that he did not at first View discover such Distinction, especially as he acquiesced instantly in the Opinion he got upon that Point, and, without the Delay of a Moment, proceeded to authorize the Volunteers to go on in their Association.

This shews that the Pannel had no Reluctancy or Aversion to this Measure, as the Libel would suppose. He took the very first Opportunity to inform himself of the Legality of it, and cheerfully followed the Information he got. Had he demurred a little more, upon a Distinction by no means obvious, he could not have been liable to Blame, far less to Punishment. And it is unnecessary to enlarge upon the rest of this Article, which the Pursuer, in his Information, does not insist upon, as indeed it is apparently too trifling to enter into a criminal Libel.

As to the third Article, concerning the Repair of the City-Walls, it has already appeared, from the Record of the Council, that the Direction of these Repairs was intrusted to a Committee under Bailie Robert Baillie; that they were often enjoined, from Time to Time, to carry on the Works with the utmost Dispatch; that the Provost frequently visited the Works; and, whenever it appeared there was any Want of Workmen, he always granted new Warrants to impress them. The Ditch at Wallace's Tower, which Mr. Mac Laurin complains, that, after being carried on right for some time, was, by Mistake or bad Advice, cast on the wrong Side of the Dyke, was owing to a Direction given by Bailie Gavin Hamilton, who altered the Orders given by Mr. Baillie the Overseer, and, by Mistake, caused cast the Ditch upon the wrong Side of the Dyke: And the other Delay he complains, in not beginning the Communication he proposed betwixt the Wall of the Town and the high House without the Potter-Row Port, in due time, was owing to an Objection made to the Proposal, that such Communication might very probably afford an Opportunity to the Rebels to enter the Town; upon which Mr. Mac Laurin himself, at that time, agreed it was fit to drop it. And as to all the other Works, even by Mr. Mac Laurin's Account, which the Pursuer refers to in his Information, it appears they were carried on in due Time; for he admits they were almost finished on Monday Afternoon, when they were told of the Meeting of the Inhabitants in the New Church.

And as to the Complaint of the Neglect in providing Gunners, and giving Orders to load the Cannon, the Lords have already been informed of the Pannel's Diligence, in conveying Men to assist at mounting them on the Walls, and sending every where to provide Gunners, and ordering Matches in due Time to light them. They were loaded when the Rebels were at six Miles Distance from the Town, which was rather too early, as it is well known that Cannon do not serve so well after they have been long loaded.

But then, what Relevancy is there in all this, supposing the Facts true as laid in the Libel? Is it possible to plead that the Provost should be answerable for the Execution of Works, which, by the Council, appear to have been committed to another Committee under a proper Overseer? Or will it be laid as a Charge against him, that he did not think the Sailors proper Persons to be employed as Gunners, if other Gunners could be had elsewhere? Or that he did not give Orders to load the Cannon on Sunday Morning, when it is allowed they were loaded that Evening, and too soon for any Use that could possibly be made of them against the Rebels?

The salutary Proposition which the fourth Article charges the Provost with rejecting, will appear to every one, who coolly considers it, a most pernicious one. To make Distinctions among the Inhabitants, from Surmises their Enemies might throw out against them without any Ground, when their Minds are heated and divided into Factions, might contribute to set them by the Ears together, but never to unite or strengthen their Hands in the Defence of the City, or Service of the Government. The Pursuer's Information says, that the Answer given to this Proposal was, that the Town's Arms should be put into the Hands of the most substantial Burghers. This Answer, if given, was solid and judicious: Men of Substance and Property are the fittest to be intrusted with the Defence of the Laws, on which the Preservation of their Properties depends: And it is truly surprizing that the Libel, upon this Article, should prefer to this a Scheme of arming a Number of Tradesmen's Servants, who were to be allured to come into this Service by the Bait of a Guinea to be given to each of them; which is stated as another salutary Proposal offered to the Provost at this Time. Such Proposals

could only proceed from wrong-headed or sinister Views. Had the Provost intrusted the City-Arms to such low People, whose Principles could not be known, and denied them to the most substantial Burghers, whose Interest was principally concerned in Defence of the Town, he might justly have been charged with the Blame of the Consequences: And therefore it is hardly necessary to observe, that, were there any Colour of Relevancy in this Article, it could not affect the Pannel, as it is not pretended that the Proposers ever laid it before the Council, who were the proper Judges; and their not doing so is real Evidence that they were satisfied of the Unfitness of the Scheme, from the Objections that obviously occurred against it.

The fifth Article charges the Pannel with a cold Reception given to Sir Robert Dickson, and a Proposal made to him, that his Volunteers should enlist in the Edinburgh Regiment. The first is a very extraordinary Article in a criminal Libel, and the Pannel believes will be found not to be true. The other shews, the great Anxiety of the Pursuer to find fault with the Pannel, let him hold what Conduct he will. Had he neglected these Volunteers, and refused them Meat or Pay, he might justly have been found liable to Blame; but that cannot be said: He took care to provide them with Victuals as soon as they arrived; and the Handle taken to charge him is, that he also offered them Pay. It is not said that he insisted any should enlist that did not incline, or that he refused to accept the Services of such as were disposed to assist the Town without Pay: But, that Pay should at all be proposed to these Volunteers, or enlisting in the City Regiment, though it was raised for the very same Purpose they professed to come for, viz. the Defence of the City, and were to be dismissed as soon as that End was attained; this is the Charge: And it is submitted, whether there was the least Colour to make this an Article in a criminal Accusation.

The Fact as to Andrew Alves's Message has been already explained. The receiving it could be no Crime in the Pannel: He could not avoid it, unless he had shut his Ears before he knew what Mr. Alves was to tell him; and the Measure he took upon it was in consequence of the Advice of Gentlemen of the Council, who thought it the most prudent Way to take no Notice of any thing that might dispirit the Inhabitants at that Juncture. The Ground of the Accusation is, That he did not immediately commit Mr. Alves: And if he had immediately committed him, which was the likeliest Way to spread the Message through the Town, he might with better Reason have been accused, that he had done it of purpose to intimidate the Inhabitants: So this Article, like most others in this Libel, turns stronger when it is inverted. If such Accusations are allowed against a Magistrate, he is in a bad Situation: For act he must; and whether he take the one Course or the other, he is sure to be brought to the Bar as a Criminal.

The seventh and eighth Articles charge the Pannel with receiving a Petition from the Inhabitants, keeping a Meeting with them, and hearing a Letter read from the Pretender's Son. The receiving the Petition was unavoidable, unless he had shut himself up in a Closet, and then he might have been justly blamed for keeping out of the Way in Time of public Danger. As little could the calling of a Meeting of the Inhabitants, at such a Juncture, have been faulty or blameable: But it has been already observed, he called no Meeting; but the Inhabitants, under Terror of the approaching Danger, pressed in upon him wherever he went, and would have their Complaints and Remonstrances heard, and the Pretender's Son's Letter read, after the Pannel had opposed it, and left their Company to avoid hearing it.

The Part the Provost acted at this Meeting, and the Pains he took to animate the Inhabitants to concur in Defence of the City, has been already stated, and, as it is notoriously known, must justify him in the Eyes of all Mankind against the Aspersions now endeavoured to be thrown upon him: But then, taking the Articles as stated in the Libel, there is no sort of Relevancy in them; neither the holding a Meeting of the Inhabitants, nor the suffering a Letter to be read from the Rebels, nor the sending a Deputation to them, were they supposed the Acts of this Pannel, can be said to be criminal in such a Case. When Rebels are at the Gates, and have the Lives and Properties of the Inhabitants in their Power, the great Law of Necessity, which, in the Nature of Things, must make an Exception from every human Law, legitimates any Intercourse that is necessary to save the Inhabitants from the threatened Destruction.

It is unnecessary to enlarge upon this Argument; it is evident, not only from the Reason of the Thing, but the Histories of all Countries in which Rebellions have ever been raised: It was never before pretended to be a Crime in the Subjects of any Country to treat with Rebels when their Lives were in their Power. The Laws forbidding Intercourse with Rebels, can, from the Nature of the Thing, apply only to voluntary Intercourse, and not to such as is forced by invincible Necessity, when Subjects are deprived of the Protection of the Government, and not able to defend themselves against a superior lawless Force. Nay, in this very Rebellion, has it ever been considered as a Crime, in Gentlemen who were even in the immediate Service of his Majesty, to treat with Rebels, or enter into Paroles or Engagements with them, when their Lives were in their Power? Has it been found criminal in Governors of Forts, which were built and intended for bearing Sieges, as the Town of Edinburgh never was, to enter into Capitulations with Rebels when they found it necessary? Was the Mayor of Carlisle tried as a Criminal for entering into an express Capitulation with the Rebels, to surrender a City that is properly fortified, and might be presumed to make a good Defence, or for making an express Agreement to deliver up the Arms and Ammunition? Or was he tried for going, after the Surrender, as Mayor of the City, with the Sword and Mace before him, to attend the Proclamation of the Pretender? The Intercourse this Mayor had with the Rebels was evidently of a much deeper Nature than any that is pretended to have been had by the Provost of Edinburgh: But yet so extensive has been the Influence of the Misrepresentations of his Enemies, that he has for a Year and a Half suffered, and is now brought to Trial as a Criminal, while the other passes without Blame.

The other Circumstance charged in this Article, with respect to the Pannel's refusing to order the Dragoons to come into Town, has been fully

explained in stating the Fact, and it would be improper to trouble the Court with repeating it. He was desirous of the Assistance of the Dragoons, had signed an Application for them along with the Lord Advocate, had brought in Provisions to Town for sustaining their Horses: He told the very Messenger referred to in this Article, that the Dragoons would be made extremely welcome, and that all the Force he had would be ready to join with them in Defence of the Town: He ordered the Constables to mount the Walls, to observe their Approach, that the Gates might be forthwith opened to admit them. And, after all this, will it be charged as a Crime upon him, that he scrupled to sign an Order to Troops, over which he had no Power, singly by himself, which, after what had past, he could take in no other Light, but as intended to make him answerable for the Consequences that might attend this Measure; and when he had been told the Night before, by Gentlemen of undoubted Skill and Loyalty to his Majesty, that the Consequence would probably be to shut up the Dragoons, and oblige them to surrender Prisoners to the Rebels?

Great Reason has the Pannel to be thankful that he did not fall into the Snare the Pursuer here complains of him for avoiding, which might have turned out much heavier than all the Articles mulctured together in this Libel, and six times as many more. Had the Dragoons been brought in upon his Order, and taken Prisoners, as the Gentlemen of the Military foretold, there would have been another Kind of Colour to argue, than from any Thing that has been yet suggested, that the Pannel had given Occasion to the unlucky Defeat at *Priffin*, by shutting up the Dragoons, and depriving the other Troops of their Assistance, by which they might have been enabled to get the better of the Rebels.

Unhappy then must be the Situation of every Magistrate, if he is to be judged after this Measure. It is doubtful and difficult what Course ought to be taken. People of Skill are divided upon it. If the Magistrate take either one or the other Side, by this Way of proceeding his Fate must depend upon the Success: Nay, if he shall be yet more cautious, and decline to determine either, but leave it to others of more Skill and Judgment in these Matters, as the Pannel did in the present Case, ready to acquiesce and concur in whatever they should determine, yet it seems he cannot avoid to be held as a Criminal: He had before given his Consent to the bringing in those Dragoons, and was at all Times ready to admit them, if it was thought proper to bring them; and yet he must be accused, because he did not sign an Order, subjecting himself to the Consequences of a Measure which was judged, by People of the best Skill, to be dangerous and improper.

The ninth Article of this criminal Libel, charging the Pannel with neglecting to give Orders to the Volunteers, when they had been long standing under Arms, has been already explained in point of Fact: That, without applying for Orders, they thought fit to determine themselves to give up their Arms, and throw up the Service; which is a full Evidence of their Judgment, that the Defence of the City was an impracticable Measure; and an Evidence of so much the greater Weight, as neither their Zeal in the Undertaking, nor their Courage in going through with it, had it been found practicable, can at all be called in question.

But, next, as to the Relevancy, were the Fact supposed to be true, the Answer is too plain almost to be stated. The Volunteers, and not the Pannel, were to blame, in that they either took or executed such Resolution without Orders from the Council. If they had applied to the Pannel for Orders, as the Libel alledges, it was no Wonder, in the Situation Things then were, that they did not get an immediate Return. The Lords have observed in what Situation the Provost and Council were at that Time, surrounded by the Inhabitants, who were alarmed with terrible Accounts of the Rebels, and frightful Threatenings of which they dreaded the immediate Execution; the Provost endeavouring to animate and stir them up to the Defence of the Town, by all the Arguments he could use; the Inhabitants declining to hearken to any Defence; and new Accounts coming every Moment, which made it uncertain what Resolution to take. In such Circumstances it ought to have been no Surprize to the Volunteers, if they had been kept waiting Orders for a considerable Time; it was their Duty to have continued at their Alarm-Posts, till Orders were sent. And it cannot be laid as a Load upon the Provost or Council, that the Volunteers thought fit to take a contrary Course, and give up their Arms, without waiting the Resolutions of the Council.

The tenth Article consists of three Branches. The first is, The Refusal of Orders to spike up the Cannon. As to which the Fact has been already fully stated, and it is obvious there is no Relevancy in it, when it was equally easy for the General to cause nail them without any Orders from the Provost or Council. And it is not pretended that any Person he sent was opposed in the Execution of it, but, on the contrary, the Town-Officers were ordered to shew them where the Cannon were, and the Sergeant had actually begun to nail them, until he was stoped by a Message from the General, after he had got the Account of Sir John Cope's Arrival, as has been already observed.

The second is, 'The Orders alledged to have been given to Captain Dalziel to keep Guard on the 16th September, with One-third of the City-Guard, the usual Complement in peaceable Times.' But neither is there any Relevancy in this, when your Lordships consider the Circumstances at the Time, as confessed on both Sides. The Volunteers had given up their Arms to the Castle, so had the Men who had been levied in the City-Regiment. No Prospect of Defence of the Town, unless some Assistance should come from without. In such Circumstances, it is a very odd Complaint, why was not this whole Company of 126 Men kept on Foot to fight the Army of the Rebels, which consisted of some Thousands? It is plain the whole or a third was all the same in such a Situation: And therefore it is unnecessary to add, that the Guard had been so fatigued with the severe Duty they had undergone for some Days before, that the whole of them could not have been able to do Duty that Night, whatever Orders they had received.

The last Branch of this Article is, 'That the Pannel gave Orders to the Trained-Bands, who had been upon Guard at the several Gates of the City, to quit their Posts, and dispose of their Arms in such Places

where they must be exposed to fall into the Hands of the Rebels.' This Article is too ambiguously laid to be admitted in a criminal Libel: The Crime is to be inferred from the Places where the Arms were to be left, and yet those Places are not condescended on. This is directly inconsistent with the Nature of all criminal Procedure, which requires that the Libel be laid clear and unambiguous, so as the Pannel may know every Circumstance of the Fact he is called to answer, and be prepared either to exculpate himself, or elide it by a contrary Proof.

But, 2dly, It is not conceivable what the Libel can mean, by speaking of Places where Arms would be exposed to fall into the Hands of the Rebels when they should become Masters of the City. It is evident, in that Case, in whatever Place of the City Arms were laid, they must be alike liable to fall into their Hands; an Order, under Pain of military Execution, would in a few Hours bring in all the Arms that were in any Town they became Masters of, in whose-ever Possession they were: And therefore the Libel, as to this Article, is not so conceived as to receive any distinct Meaning, or to admit of a proper Answer.

The eleventh Article sets forth, 'That it was proposed and urged in Council, that the whole City-Arms should be lodged and secured with in the Castle of Edinburgh, in order to prevent their falling into the Hands of the Rebels; but the Pannel refused or declined to give any Order for that Purpose; neither in Fact were the City-Arms so lodged and secured, but were seized by the Rebels upon their entering the City the Day following.'

But this Proposal, said to have been made in Council with respect to the Arms, is intirely new; and it is somewhat strange it should be so, if truly made, as these Matters have been so much the Subject of Conversation for almost two Years past; nor can the Pannel recal any such Proposal to his Remembrance.

The true State of the Fact, with respect to the Burghers Arms, has been already laid before the Court: That the Provost did all that was in his Power to keep those Arms, though of very little Value, out of the Hands of the Rebels: That he sent a Message to the Generals in the Castle, to send a Party to take them out of the Hands of the Inhabitants, as the Council could not, for the Reasons already mentioned, compel them to deliver them up to the Castle: And it will also be proved, if any Proof is to be brought in this Case, that when the Provost was giving Directions to the Trained-Bands, he told them, that if the Rebels approached to the Place, he hoped they would do their Duty, and behave like Men in Defence of the City; and if the Rebels should prevail, he expected that, at any Rate, they would take care to secrete their Arms, that they might not fall into their Hands.

But, abstracting from these Facts, the Pannel is advised, that there is no Relevancy in this Article of the Libel: For, first, It is said, That the Proposal was made in the Town-Council, and it is not alledged, or pretended, that the Council approved of the Proposal, or authorized the Pannel to grant the Order; and, if they did not, it was the Council, and not the Pannel, who declined to concur in this Measure; especially as the Pannel had truly no Right to dispose of the Arms, or to send them off without the Liberties of the Town, without Authority of the Council. It is a very new Ground of Accusation against the Preses of a Meeting, that, when a Proposal was made to the Meeting, and either rejected, or not approved of by them, he was guilty of a Crime, because he did not over-rule the Resolutions of the Meeting, of which he was but one Member, and act beyond or contrary to the Directions they thought fit to give him in a Matter over which he had no Power to controul them: It is believed it will be difficult to find any Instance, where an Omission of this Nature has been made the Foundation of a criminal Charge.

But, in the next place, when the Circumstances of the Case are considered, which are notorious to all the World, and confirmed by the Production made by the Pursuer in this Case, every Mortal must see why the Council could not grant or authorize such Order as is here mentioned, had it at that Time been suggested or proposed. Repeated Threatenings had been sent from the Rebels to the Town, by Writings which the Pursuer has produced, and given out with the Libel; a like threatening verbal Message was sent by Mr. Alves, all tending to the same Import, That, if the Town should send off the Arms or Ammunition in their Possession, they should be treated in the severest Manner, and suffer all kind of military Execution. The Inhabitants had no Means to defend themselves from the Execution of these Threats: And was it to be expected, that, when the Rebels were at the Gates, and the Dagger in Effect at their Throats, they would expose themselves to it for the sake of preserving Arms of whatever Consequence, much less so insignificant as these Burgher-Arms are known to have been in this Case?

It is easy for People at Ease and in Security to talk of such Distresses without much Concern; but let them put themselves in the Case of those they are to judge of, and then say, whether it is agreeable to the Nature of Mankind, to expose themselves, and all that is near and dear to them in the World, to such Sufferings, upon any Consideration whatsoever; whether it is to be expected of them, and whether they ought to be punished for not having done it.

We are not now to judge of the Terror of the Rebels from what they afterwards did, but from the Impressions People were then under of the Distresses they might suffer from them: It is well known never Enemy was received with greater Dread, or painted out in stronger Colours of Cruelty and Barbarity: From the News-Papers, from the Pulpits, from all the best Accounts, nothing was to be expected from them but what was fierce, savage, and inhuman. These Things had their good Effects; and perhaps were sometimes a little exaggerated from well-meaning Motives: They tended to create in Men's Minds a great Abhorrence to the Rebels and their Cause; but then, at the same time, they raised an immense Terror, such as struck every City in the Nation, to which they approached, with the utmost Panick and Consternation.

The black Friday is not yet out of Remembrance, and the Impression the Approach of the Rebels then made, when they were removed from the greatest City in the Island, at the Distance

of more Days March than they were of Hours or Quarters from this Town, at the Period now in Question. Let it be supposed, that the Rebel Army had been marching down from *Highbate-Hill*, or had been at *West-Smithfield*, and had sent in such threatening Messages to the Lord Mayor; if he had no Army at Hand to defend the City, and had found no Disposition in the Inhabitants to defend it, would he have adventured to despise the Threatening, or to send up the Citizens Arms to the Tower, by which their Lives and Properties must be exposed to the lawless Fury and Barbarity of the Rebels? Or would he have been brought to the Bar as a Criminal, because he had been careful of the Blood of the Inhabitants, (an Expression that is laid against the Pannel in the present Case) and because he had not exposed their Substance to Plunder, and themselves and their Families to Massacre?

The Disproportion is indeed great betwixt the Instance put, and that which is the Subject of the present Question; but both must be governed by the same Rules. Every Man's Life and his All is equally dear to him; and it does not depend upon the Greatness or Smallness of a City, whether it is lawful for the Governors to expose it to the Hazard of being destroyed, but upon the Circumstances it is under at the Time, and the Prospect of Relief from the impending Danger, of which there was none in the present Case.

And, with great Submission, where is the Foundation of the Doctrine now pled for the Pursuer, in the Law, or in the Custom of any known Country in the World? When was it heard of, that, upon a Town or a Fort being obliged to surrender, whether to Enemies or to Rebels, the Garrison or the Inhabitants were bound to expose themselves to the utmost Reilment of the Enemy, for the sake of keeping their Arms out of their Hands? Has it at any Time been brought as a Charge against the Governor of a Place, that he gave up the Arms to the Enemy, when he could not keep out the Place? Were not Arms and Ammunition given up at *Carlisle*, and at every other Fort that has been delivered up to the Rebels, either in this or any other Rebellion? And is there any Instance where that has before been made an Article of Accufation?

It is no Answer, That, where there is no separate Castle or Citadel, or where that is given up at the same Time with the Town, the Arms must fall in consequence, as there is no Place in which they can be preserved: For the Pannel is not charged here for the Loss of the Arms, but for this, that they fell into the Hands of the Rebels. And it is well known it is in every Man's Power to break his Gun, and make it useless to the Enemy, whether he has a Castle to carry it to or not: And therefore, were there any Pretence for the Charge brought in this Case, it must equally affect the Commanders of *Carlisle*, and every Fort that has at any Time been given up to Rebels, why they did not at all Hazards destroy their Arms, that they might be of no Use to the Rebels. But, if such an Objection was never heard of till this Libel appeared, it is a Demonstration that the Libel in this Article is without Foundation.

And therefore it is the less necessary to observe, that, in the present Case, had it been the Duty of the Magistrates or Council, to order the Burghers Arms up to the Castle, let the Consequence be what it would to the Inhabitants, it is obvious it was not in their Power to make their Orders effectual. What Force had they to compel the Inhabitants to a Scheme so destructive to themselves? The Volunteers had already disarmed themselves, and so could be of no Use for that Purpose; the City Regiment had also given up their Arms to the Castle; the Trained-Bands were the Burghers themselves, who had their Wives, their Families, and most of them the Bulk of their Properties in Town, which they were quite averse to expose to Destruction by such a Measure: And the only Force the Magistrates had to compel them, was the Company of the Town-Guard, who, if they had been disposed to obey at such a Juncture, could very soon have been tied Neck and Heel by one hundredth Part of the Inhabitants.

And, 3dly, It is proper to consider, in this Case, the Uncertainty of the Situation to which the Magistrates and Council were reduced, during the last and most distressing Scene of this unlucky Affair; sometimes terrified with the immediate Approach of the Rebels, at other Times encouraged with some Prospect of Relief. Even towards the End of this Period, there were some Hopes of the Return of the Dragoons; Mr. *Drummond* and Mr. *Groset* had gone in quest of them: Nor was that Expectation quite over in the Meeting of the Council, until they heard the Rebels had entered the Town. Had the Dragoons returned to the City, and animated the People in its Defence, the Charge against the Pannel then would have been inverted, Why did he send up the Arms to the Castle? Why did he carry them out of the Way when they might be instantly wanted for Defence of the Town? And the near Approach of the Rebels made a Moment's Delay of great Consequence; and the Citation might have been adduced, which is misapplied in the present Case, *Quod puncto sæpe temporis maximarum rerum occasiones amittuntur.*

Such was the unlucky Situation of the Governors of this City at that Time, that it would appear, by what has since happened, it was impossible they could escape Accufation; the Event must make them criminal, however well-intentioned their Conduct might be: But their Answer is good, That no Law, no Custom, requires the Inhabitants of any Place to expose their Lives, the Honour of their Wives and Daughters, and all that they have dear to them in the World, to the Fury of an incensed Enemy, in order to keep Arms out of their Possession. The Law of Humanity forbids it. That, in this Case, had the Magistrates been so minded, it was not in their Power to compel the Inhabitants to comply with it: Besides, that the vacillant and uncertain State in which Matters then stood, made it very doubtful whether it was proper to have done it or not; and, in doubtful Cases, it is against common Justice to accuse or punish, because of the after Event.

These Answers would have been good to the Magistrates and Council, had they been brought to the Bar to answer for rejecting such Proposal as the Libel here supposes: They are all equally competent to the Provost, with this additional one, That he is only one Member of their Body, and cannot be accountable for omitting what the Council did not think proper to enjoin him, had they ever so much erred in their Judgment.

It would have sounded very oddly in the Ears of the World, if the Generals in the Castle had been brought under Prosecution, because they

sent to forbid the nailing of the Cannon, or because they did not send a Party to seize the Burghers Arms upon the Message already mentioned: It is believed the whole Nation would have been amazed at such a Prosecution. And yet, with great Submission, there is a Difference betwixt that and the present Case: The Generals run no Risque by sending Parties to execute any thing of that Nature within the Town, as little did their Parties, or the Garrison under their Charge: But the Danger to the Inhabitants, who were committed to the Care of the Magistrates, was but too apparent, as well as too imminent, to be despised by any Sett of Men, who were as destitute of Defence and Relief as they were at that Time.

And the Pannel will be forgiven to say, that, if the whole Series of his Conduct, from the Beginning to the End of these Transactions, shall be considered, there will appear as little Reason to suspect him of any bad Intention in this Case, as any other Subject within the Kingdom. The Court has already observed, that the Pannel, of his own Accord, ordered all the Ammunition that was in the Town's Magazine to be carried to the Castle some Days before the Rebels approached, and that he caused execute this Order so punctually, that it was necessary afterwards to send to the Castle for what was wanted for the Service of the Town. It has also appeared how averse he was to bring Arms down from the Castle, when the Rebels were on their Approach to the City, unless he had the highest Probability that they were to be used in a proper Manner; and that accordingly he refused the Offer made by the Secretary at War, on the Part of the General, to send back the Arms which had been returned by the Volunteers and City Regiments, for this Reason, That he did not see a good Disposition in the Inhabitants at the Time, to defend the City; and therefore was afraid the Arms, if sent, might possibly fall into the Rebels Hands. How unjust then would it be, after such Evidence of the Pannel's sincere and upright Disposition in this Matter, to suspect him of a bad Intention, because he did not enforce an Order upon his Fellow-Citizens, which, if obeyed, might have involved them in Misery and Ruin, and which it was not in his Power to compel them to obey, and which is stated by his Accusers as proposed to the Council, to which he was subject, and is not alledged to have been by them approved or authorized?

The last Article of this Libel is full as extraordinary as any of the rest, viz. 'That, by Occasion of the several Instances of Misbehaviour above recited, it came to be very notoriously known, that he was highly faulty and negligent in the Execution of his Office, and to be farther violently suspected and believed, amongst the faithful Subjects in that City, that he was secretly in the Interest of the Pretender, by reason of the Uniformity of his Behaviour, discovering a constant Unwillingness or Backwardness to provide for, or heartily prosecute the Measures that were in a Manner forced upon him, in order to the Defence of that City; at a Time when, if he had observed a contrary Conduct, there was at least a high Probability that the City might have been preserved from falling into the Hands of the Rebels.'

But it is hardly necessary to make any additional Answer to this Article, after what has been already observed. It is hoped it is apparent to the Court, that none of the Instances recited in this Libel, were they true, as most of them are not, could infer any Degree of Misbehaviour against the Pannel: That his Conduct, from the Beginning to the End of these Transactions, has been uniform in the faithful Execution of his Duty: And that, from first to last, he never shewed any Unwillingness or Backwardness to concur in any Measure that could tend to the Service of the Government, but contributed more to forward such Measures, of his own free Motive and Accord, than can be pretended to have been done by any who may be pleased to entertain Suspicions of him, or by all of them put together.

It cannot however escape Observation, that it is an unusual Article in a criminal Libel, that a Pannel is violently suspected by others to have been guilty. The Suspicion of others can never infer Guilt, nor Evidence of Guilt, against any Man whatever, though the sinister Views, which gave rise to those affected Suspicions, had not been so apparent as they are in the present Case.

And, with Submission, it is no good Answer that is made to this in the Pursuer's Information, That altho' they should have carried their Suspicion too far, in believing the Pannel to have been in the secret Interest of the Pretender; yet still their entertaining such Apprehension or Belief, is one Demonstration, supposing that they had carried their Conclusion too far, that his Conduct was not such as became a faithful, vigilant, and zealous Magistrate on that Occasion: For an Apprehension founded upon Suspicions, at first raised from indirect Views, and thereafter artfully propagated, and more easily spread thro' the Ferment of Men's Minds, during the Times of Distracted, can never be either Demonstration or Evidence of any thing, other than the bad Origin from which they at first proceeded. Nor is it fair to lay any Stress upon them at all, when it appears they have been carried the Length of false and injurious Conclusions; the same Disposition which has been violent enough to carry them that Length, is to be presumed at first to have given Rise to them. The Pannel's Conduct speaks for itself, and stands vouched by notorious Facts, which, independent of the Suspicions either of the Wicked or of the Credulous, demonstrate him to have acted a faithful Part in the Execution of his Office, vigilant and zealous for the Safety of the Town, and careful of the Welfare of its Inhabitants, of whom he had the Oversight in those unlucky Times.

And it is truly surprising it should be alledged, 'That if the Pannel had observed a contrary Conduct, there was high Probability that the City might have been preserved from falling into the Hands of the Rebels, or that it fell into their Hands in a very strange and suspicious Manner, on the Morning of the 17th September 1745,' when it is as plain as Sunshine, from the Facts already set forth, and which are notoriously known to be true, that, without the Interposition of a Miracle, it was impossible, as Circumstances then stood, that this Town could miss to fall into the Hands of the Rebels upon the 17th September 1745. It is notorious, that the Dragoons, and all the Military Force, had then left the Town; that the Volunteers, before that Time, had thought fit to give up their Arms to the Castle; that the *Edinburgh* Regiment, which was then hardly One-third full, and the Men only raised a few Days before, had also given up their Arms;

that

that the Burghers, or Trained-Bands, declined to go up and expose their Lives in keeping out the Walls, when the Military had wholly deserted them; and they had understood, by repeated Threatenings from the Rebels, that any Man that appeared in Arms would be put to death. The Court has already heard the Pains which was taken by the Pannel to animate all these different Setts of Men in the Defence of the City, and the Success: And when such was the Case, where was there any Probability that the Town could stand out against an Army of Half the Number of the Rebels? or where is there any thing strange or suspicious in the Rebels becoming Masters of the Town, when it was thus deserted? Was the Pannel to go up, with as many of the Company of the Town Guard as were able to stand, after the Fatigues they had undergone for two Days before, and make head against this Body of Rebels? Or, if he had attempted it, would the Inhabitants have permitted the Town to have been stormed and sacked, which behoved, in such a Case, to happen in less than an Hour? It seems evident, that, in such a Concurrence of Circumstances, nothing could save the Town from being taken, unless it had pleased Providence to strike the Rebels with such Dismay and Terror, as many were then un luckily struck with, whose Duty it was to have opposed them.

The Pursuer is pleased to ask, 'Why did the Pannel advise with the Inhabitants? Why did he give way to a general Meeting in the Church? Why did he not order them to keep within Doors? Why did he not advise with his Fellow-Magistrates and Councillors, or with the chief Officers of the Volunteers, and deliberate with them upon the supposed Change of Circumstances? And if, in such Council, it had been debated and resolved, by Plurality of Voices, to be impracticable or inexpedient to persist any longer in the Measure of defending the City, that Resolution might have justified or acquitted him; but that nothing of this Kind is alledged, and thereby he has taken the whole upon himself.'

But, with great Submission, it is a little surprising these Questions should be asked, after the Notoriety of the Facts already stated. It is certain Fact, nor is the contrary alledged in the Libel, that the Pannel acted in this whole Matter in Concurrence with his Fellow-Magistrates and Councillors. It cannot be said, that, from the Beginning to the End of this Affair, he ever opposed or over-ruled them in any one Article. The Officers of the Volunteers were also consulted with, and your Lordships have heard what Accounts they gave the Pannel of the Disposition of their Men with respect to the Defence of the Town; and that, in consequence of this Disposition, their Arms were all given up soon after. The Pannel ordered the Inhabitants to keep within Doors, and caused the Drum to go round for that Purpose: But what Force had he to compel them? Numbers of Instances are to be found in History, where considerable Garrisons have been forced by the Inhabitants to surrender a Town: And here it is made a Ground of Accusation against the Pannel, that he was not able to over-awe the Inhabitants of this populous City, when he had no other Assistance, either to defend the Town, or to keep them in awe, but such as had been taken a few Days before from among themselves, and who were all equally impressed with the same Terror of the Rebels, and Belief of the Impracticability of making an effectual Defence.

It is apparent the Pannel did all that any Man could do in the like Situation: He tried to animate the People, sent for the civil Officers of the Crown for Advice, and, when he found they had withdrawn, which, whatever Gloss the Pursuer may think fit to put upon it, is an Evidence of their Judgment that the Town could not be defended, he sent for the best Advice and Assistance he could get, and never parted with the Gentlemen of the Council, nor in any thing controuled their Advice, until the End of the Transactions now in question: And therefore, according even to the Doctrine laid down by the Pursuer, his Conduct falls to be justified; for it cannot be thought material, that there are no Minutes of the Town-Council or Committee remarked in the Record after the 13th or 14th of September. The two following Days were too much crowded with the many various and important Transactions above set forth, which succeeded one another every Moment, to take down Minutes regularly in Writing: But still it is sufficient for the Pannel to say, that it neither is nor can be pretended, that in any one Particular he controuled or over-ruled the Opinion of the Committee or the Council.

In order to give a greater Colour to the Charge against the Pannel in this Case, the Pursuer endeavours to represent the Office he was possessed of in this City, as superior and independent of the rest of the Magistrates and Town-Council: That he is the High-Sheriff, Colonel of the Trained-Bands, City Guard, &c. and, in a word, that the whole Government and Defence of the Town was solely devolved upon him. From which it is inferred, that he must be answerable for all Miscarriages, as if there had been no other Magistrate or Authority in the Town but what was lodged in himself.

But the Pannel is at a loss to discover upon what Authority the Pursuer builds this absolute Power he thinks fit to vest in the Lord Provost of this City; for it does not seem to have any Foundation, either in the ancient Laws, or in the late Regulations laid down by his present Majesty with respect to the Defence of the Town. By the Common Law, as well as the Statutes relative to these Matters, the whole Magistrates are considered to have an equal Concern in the Government of the Burgh. So says the Statute, *Ja. IV. Parl. 6. cap. 87.* and *Ja. VI. Parl. 18. cap. 17.* which 'forbids all Persons, of whatsoever Rank, to convocate or assemble themselves without due Intimation to the Provost or Bailies of the Burgh, and their License obtained thereto: and ordains the Inhabitants of the Boroughs to assist and concur with the Magistrates and Officers for settling the said Tumults and Turbulencies, and punishing the Authors thereof.' And, as far as the Pannel knows, the other Magistrates have a joint Right to concur with the Provost in every thing relating to the Government of the Borough.

It is of no Moment to the present Question, that the Provost is in use to sit on Trials as High-Sheriff; for it is not alledged that he acted any thing in that Capacity in the Matters now called in question before the Court.

It is true, that, by the Act of Parliament establishing the Company of the City-Guard, the Provost is appointed Captain of it; and he is also

the Commander of the City Trained-Bands, as being the first Magistrate in the Town: But still, in these Commands, he has no absolute Power, but is subject to the Directions of the Council.

And so it was also regulated by the Sign-Manual granted by his Majesty, in September 1745, authorizing to levy this Regiment for the Defence of the City. It is appointed to be under the Direction of the Lord Provost, Magistrates and Town-Council of Edinburgh; and the Magistrates and Council did accordingly take the Direction of it into their Hands; and though they paid the Compliment to the Provost, to name him Colonel of the Regiment, yet it was in their Power to turn him out, and name another, when they thought fit; and the Nomination bears, That he was to conduct and direct the Regiment, and the Officers who should be named to command under him, as the Council should think proper; and therefore, in this military Capacity, he acted under the Direction of the Town-Council, from whom his Authority proceeded. It is humbly submitted to the Court, how far it is at all congruous to single him out in a Trial of this Kind, when it neither is nor can be alledged, that at any time he ever varied from or opposed that Direction.

In the Information on the other Side it is observed, 'That Notice was taken by the Pannel's Counsel, that he was possessed of a very large Property, consisting of a Stock of Wines, at Leith, but that it did not appear whether they intended to mention it as an Argument to evince the Pannel's Sincerity in desiring to keep the Rebels at a Distance, or as an Excuse for his not opposing them with Vigour and Zeal, lest he might be hurt in that Part of his Property.' And upon this some Insinuations are thrown out that might have been spared.

But it was not easy to misapprehend the Meaning of the Pannel's Counsel, in the Mention they made of the large Property he was possessed of in this Country, which was no ways particularly referred to the Wines at Leith, which makes but a very small Part of it, but principally to his personal Estate, and Debts due to him, to a great Extent, by many Gentlemen in the Country, which could not fail to suffer considerably by such a Convulsion as must happen when a Rebellion arises in a Country. This was overly mentioned by the Pannel's Counsel, as a Circumstance that made it improbable, that any Gentleman of Common Sense, in this Situation, would deserve the Censure thrown out in the Libel, of secretly abetting such Disorders; but the Pannel's Counsel gave no Handle for drawing the other Inference here insinuated, which is so injurious to the Pannel's Conduct, and so disagreeable to his Character. His Conduct stands in no need of such Excuses; it will stand the Test: He has not shewn, by any thing that has ever past in this Affair, that he put an Over-value either upon his Life or his Property, when his Duty came in Competition. The Wines were of little Moment in respect of the other Risques he behoved to undergo upon such general Distress of his Country; and it is unjust to insinuate any Suspicion of such low Motive, when it is apparent he has given no Occasion for it from any Part of his Conduct, however strictly and rigorously examined.

The Pursuer is pleased to argue, 'That the Facts here charged, if done *dolo animo*, would have amounted to High-Treason; and therefore it is a great Lenity that the Pannel is only pursued for Misbehaviour; and Citations are brought from Sir Matthew Hale, to prove that the delivering up the King's Castles to his Enemies, through Treachery, Bribery, &c. is High-Treason; and from *Ærodius*, to prove that Negligence in publick Officers may be severely punished.'

But the Pannel has little Occasion to trouble the Court with enlarging upon these Authorities, because he cannot discover they have the least Connection with the present Case: he has no Occasion to dispute, that the delivering up the King's Forts to Enemies or Rebels is High-Treason; or that wilful Faults and Neglects in publick Officers may be punished: But it is, nevertheless, equally true, that when a Fort is taken by a superior Force, which could not be resisted, there is no Crime at all in the Case: Nay, in the very Page quoted in the Pursuer's Information from Sir Matthew Hale, Vol. I. p. 168, it is laid down as a Rule, That if a Subject should swear Fealty to the King's Enemies, if it is done for fear of his Life, and he returns as soon as he can to his Allegiance, he is not punishable. It is incumbent on the Pursuer to reconcile with this Authority that Part of the Charge which is so much insisted on in this Case, and to shew how the same Law that excuses a direct Adherence to the King's Enemies, when compelled by fear of Death, can punish the leaving Arms to fall into their Hands, when compelled by the same Terror; or can punish an Omission to give an Order to abstract them in such Circumstances, which is the Charge laid in this Libel.

The Pannel shall not dispute, that it is a Lenity to prosecute for a lower Crime, when a higher is incurred; but he must be forgiven to think That does by no means apply to his Case, and that the Hardships he has suffered are of a pretty singular Nature: That, after having lived so long in the World with an irreproachable Character, and served his Country in Parliament with an intire Reputation, remote from every sinister View, and thereby deserved the Esteem of his Constituents, as a Mark of which they conferred on him the Office of chief Magistrate of this City: That, because he had the Misfortune to see his Country involved in publick Confusions before the End of his Administration, and the City irresistibly overpowered by lawless Force, after all the Precautions he had taken to prevent it, the Malice of his Enemies should have so far prevailed against him, as to bring him under a Suspicion of Guilt, and subject him to the heavy Sufferings he has already undergone: And now, when after the strictest Scrutiny and Inquisition into his Conduct for above twenty Months past, the Charge appears fully drawn out, the Bulk of it consists of supposed Omissions, or Errors in point of Conduct, which, if the contrary Steps had been taken, might have been equally found fault with, as the Event turned out; and the two Articles upon which the chief Stress is laid, when the Circumstances of the Case are considered, do truly resolve into no more but that he was not able to keep out the Town when all Assistance had deserted him, nor to prevail with the Inhabitants to secrete their Arms, when they were under the immediate Terror of their Lives. These Things he hopes will not be imputed to him as a Crime, but that he will be relieved from all farther Hardships by your Lordships Justice.

in dismissing the Libel as irrelevant, and absolving him from this Prosecution.

In respect whereof, &c.

JAMES FERGUSON.

Upon the 31st July 1747, the Diet was adjourned till Monday the 3d August thereafter, and upon that Day the Diet was farther adjourned till Thursday the 6th of that Month.

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, sexto Die Mensis Augusti 1747. per nobilem & potentem Principem Archibaldum Ducem de Argyll Justiciarium Generalem, & honorabiles Viros Magistros Alexandrum Frazer de Strichen, Patricium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummorie, Commissionarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Intra.

ARCHIBALD STEWART of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel, indicted and accused as in the former Sederunt.

The Lords, after arguing upon the Libel and Informations, pronounced the following Interlocutor: 'The Lords Justice-General, and Commissioners of Justiciary, having considered the criminal Libel pursued at the Instance of William Grant of Prestongrange, Esq. his Majesty's Advocate, for his Majesty's Interest, against Archibald Stewart, of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel, with the foregoing Debate thereupon, they find it relevant to infer the Pains of Law, that the Pannel, at the Time and Place libelled, being then Lord Provost of the City of Edinburgh, wilfully neglected to pursue, or wilfully opposed or obstructed, when proposed by others, such Measures as were proper or necessary for the Defence of the City against the Rebels, in the Instances libelled, or so much of them as do amount to such wilful Neglect; and find it relevant, as aforesaid, *separatim*, That the Firelocks and Bayonets belonging to the City, or the Cannon mounted on the City-Walls, fell into the Hands of the Rebels through the wilful Neglect of the said Pannel; or that he refused or declined to take proper Measures, when required or demanded, which were in his Power, for securing or rendering useless to the Rebels the said Arms: And find relevant, as aforesaid, all such Acts charged upon the Pannel by the Libel, which shall appear to have been unnecessarily done by him, and which did manifestly tend to the preventing or weakening the Defence of the City, or the facilitating the Rebels getting Possession thereof, or their seizing the Arms therein. But allow the Pannel to prove all Facts and Circumstances alledged in his Defence for eliding or alleviating the Crimes charged upon him as above found relevant: And remit the Pannel, with the Libel as found relevant, to the Knowledge of an Assize.'

Signed,

ARGYLL, I. P. D.

Thereafter a Bill was presented to the said Lords for William Grant of Prestongrange, Esquire, his Majesty's Advocate, humbly shewing, That where he brought a criminal Libel, at his Instance, before their Lordships, against Archibald Stewart, Esq. late Lord Provost of Edinburgh, for the Crimes of Neglect of Duty and Misbehaviour in Office, as more fully enumerate and mentioned in the criminal Libel raised, and now depending at his Instance against him thereanent, that the first Diet for the Provost's Compareance being some time ago elapsed, and standing by Adjournment fixed from former Diets to this Day; and Walter Grosset, Collector of the Customs at Alloa, a material Witness in this Cause, and though given out in the List of Witnesses, along with others, to the said Archibald Stewart, being not then returned from London to Scotland, tho' daily expected, was not cited, and consequently no Execution given in against him to the Clerk of Court, whereby the Complainer would be prejudged for want of his Evidence, unless their Lordships provided a Remedy: That the Fact was, Mr. Grosset was out of the Kingdom, at least in England, and did not return to Scotland till the seventh of July last, when the Warrant in the criminal Letters for summoning Witnesses was useless, by the Elapse of the Day to which they were thereby directed to be cited, which was the third Day of the said Month of July; and as the said Archibald Stewart could qualify no Loss by allowing Mr. Grosset yet to be cited, and that, in the Prosecutor's Apprehension, it was no ways disagreeable, either to Law or Practice, to give a farther Warrant for citing the said Walter Grosset to any short Day they pleased to appoint: Therefore praying their Lordships for Letters of Diligence for summoning the said Mr. Walter Grosset, as a Witness in the said Cause, in common Form.

Which Bill being publicly read in Court, Mr. Alexander Lockhart, as Counsel for the Pannel, represented, That he had no Power from the Pannel himself to oppose this Bill, yet, as it was new and unprecedented, and might prove of dangerous Consequence in after Trials, if such a Practice was introduced in this Court, he therefore objected, that this Bill could not now pass, in regard that, by the constant and uniform Practice of this Court, all criminal Letters, with the Executions against the Party, Witnesses and Affizers, are lodged in the Hands of the Clerks of Court forty-eight Hours at least before the Trial, that the Pannel may have an Opportunity to see the same, and not only to object against the Formality thereof, but likewise to prepare himself to prove such Objections as he may have against the Witnesses that appear to be cited: That, if this Practice were allowed, it might be in the Power of a Prosecutor to protract a Process for ever; he might give a List of ten thousand Witnesses, and only return Executions against ten of these, and every now and then drop in a Bill, and tell the Lords such a Witness is a material Witness, and therefore must be cited; and, even in the midst of a Proof, supposing a relevant Objection sustained against a Witness, upon account of an Informality in the Execution, a Prosecutor has nothing to do, but to stop short, and tell the Lords this was a material Witness, and he must have a Diligence for citing him of new; and it was submitted to their Lordships, whether they would grant such an extraordinary Demand; and as little it was hoped they would comply with the present, which was altogether new and without Precedent, and might prove of such dangerous Consequence in general.

* An old Scots Law-term, signifying a Party's having stood Trial, till the Jurors did inclose, or return their Verdict.

The Lord Advocate answered, That though the Diligence now sought was new, yet it was no ways unreasonable or unjust; if the Desire of it was granted, he was willing the Pannel be indulged with a convenient Time for preparing himself to prove, or bring any Objections he might have against this Witness; that of two Remedies the easiest was to be chosen: For, as Mr. Grosset was a very material Witness, either he must be cited in this Way, or, if the Lords should not judge that proper, the Prosecutors would desert this Diet, and raise a new Prosecution, which would protract the Time; and therefore, as the Pannel could be no ways prejudged by this Demand, he hoped their Lordships would pass the Bill.

The Lords Justice-General and Commissioners of Justiciary having heard this Bill, as also Parties and their Procurators *hinc inde* for and against granting the Desire thereof, as above, they refuse the Bill.

Signed,

ARGYLL, I. P. D.

His Majesty's Advocate, in respect the Lords have, of this Date, judged it not competent to give Warrant of new for citing Walter Grosset, Collector of the Customs at Alloa, though he had been in the List given to the Pannel, Mr. Stewart, but omitted to be cited for the Reasons mentioned in the Bill given in for a new Diligence for that Effect, does not insist against the Pannel Archibald Stewart, *pro loco & tempore*, reserving Power afterwards to insist against him as accords.

Signed,

WILLIAM GRANT.

'The Lords Justice-General and Commissioners of Justiciary, in respect his Majesty's Advocate does not insist against the said Archibald Stewart, they desert the Diet against him, and dismiss him from the Bar, reserving to his Majesty's Advocate to insist against him afterwards, as he shall see Cause.'

Signed,

ARGYLL, I. P. D.

Thereafter Mr. Gilbert Elliot, Advocate, protested, that the said Archibald Stewart had fulfilled his Bond of Recognizance, by comparing from Time to Time at the several Diets of Court, and not departing this Court without Leave thereof, the Diet being now deserted, and he dismissed from the Bar, that therefore the said Bond was voided; and thereupon took Instruments in the Hands of the Clerk of Court.

Proceedings in the Second Trial of Archibald Stewart, Esq.

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, vigesimo sexto Die Mensis Octobris 1747. per honorabiles Viros Magistros Alexandrum Frazer de Strichen, Patricium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummorie, Commissionarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Lord Strichen Præsis.

Intra.

ARCHIBALD STEWART of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel, indicted and accused at the Instance of William Grant of Prestongrange, Esq. his Majesty's Advocate, for his Majesty's Interest, for the Crimes of Neglect of Duty, and Misbehaviour in Offices and Places of publick Trust, and the Violation of the Trust and Duty of such Offices, in Manner at length mentioned in the criminal Letters raised against him thereanent.

N. B. The Libel here mentioned, is the same with the former Libel, p. 11. of the first Trial.

The Libel being openly read, Mr. Archibald Stewart, Pannel, craved, That before he should be obliged to plead Guilty or Not Guilty to the Libel, he might be heard by his Counsel, whether or not he was obliged to answer to this second Libel at all?

Mr. Lockhart for the Pannel then insisted, That now, after a former Libel had been raised, the Cause debated, Informations given in, the Relevancy determined, and an Exculpatory Proof allowed to the Pannel, there could not, according to the Forms of the Court, any new Libel be raised: That any Processes of this kind, that have been deserted, and of new prosecuted, have been always considered as a Grievance upon the Subject: And by an Act of Parliament, James VI. Parl. 6. cap. 78. after repeating the many Grievances occasioned to the Subjects in the Execution of criminal Libels, and deserting of Diets when such Libels are executed, the Act directs, 'That, for the future, all Prosecutors shall find Caution to report their Letters duly execute, and insist in the Pursuit thereof, until the final End and Decision of the same, under the Penalty in the Act mentioned.' That however, in former Cases, the Crown-Lawyers have deserted Diets before pronouncing any Relevancy; yet there could not be an Instance shewn, where, after a Relevancy was determined, the Diet had been deserted; and if that were the Case, it might be in the Power of any King's Advocate, from a private Grudge, to raise a Process against a Subject, desert the Diet, raise a new Process, and so on *ad infinitum*; which would be equal to a Forfeiture upon the Party accused: That the Pannel did not of himself intend to make this Objection, but was advised to do so by his Lawyers; he being always unwilling to form any Objection that might in the least conduce to put off his Trial. At the same Time it was observed by his Lawyers, that it might prove of dangerous Consequence to the Lieges in general, were such a Precedent allowed of; and thereof, at the same Time that the Judgment of the Court was demanded upon this Question, represented, That he was willing to wave the Objection, provided the Pannel was reimbursed of his Expences in the former Trial, to shew their Lordships that the Pannel wanted nothing more than to have his Cause tried, and himself vindicate, by a full Trial.

The Lord Advocate answered, That the Counsel for the Pannel had mentioned no Law whereupon to found their Objection; that the Practice of the Court has been, Time out of Mind, to desert Diets, and allow of new Prosecutions; that there was no Difference of deserting a Diet before or after the Relevancy was determined. If indeed the Pannel had tholed an Assize, then he might have had Ground to object against a Trial, and to complain that it was oppressive. That the deserting the Diet formerly, was owing to the Pannel himself, who took Hold of a trivial Objection, against citing a Witness when the first Diet of Compareance was elapsed. And both this Point, and the Costs acclaimed by the Pannel,

were submitted to their Lordships. At the same time, he declined entering into any Contract with the Pannel upon that Head, but depended wholly upon their Lordships Determination.

The Lords Commissioners of Justiciary, having considered the foregoing Debate, find the Pannel, Archibald Stewart, most still answer, and plead Guilty or Not Guilty to the present Libel, notwithstanding of the Objection moved for him thereagainst, arising from what is alleged of the deserting the Diet in the former Libel, after pronouncing Interlocutor on the Relevancy thereof. Signed,

ALEX. FRASER, J. P. D.

Thereafter Mr. Stewart and the Lord Advocate both represented, That as the Defences, and Answers thereto, were fully pled, and contained in the Informations upon the former Libel, and were the same they had now to offer to the present, they agree to refer themselves to the said Informations, without giving the Court of themselves any further Trouble.

Then the Court pronounced the same Interlocutor on the Relevancy, as that pronounced the 6th August last on the first Libel; and thereafter continued the Diet till next Day at Eight o'Clock in the Morning; and ordained Parties, Witnesses, and Attorneys, then to attend, each under the Pain of Law.

Curia Jusciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, vigesimo septimo die mensis Octobris, 1747, per honorabiles Viros Magistros Alexandrum Fraser de Strichen, Patricium Grant de Elchies, Carolum Areskine de Tinwald, et Hugonem Dalrymple de Drummorie, Commisionarios Jusciarii dicti, S. D. N. Regis.

Curia legitime affirmata.

Lord Strichen Præses.

ARCHIBALD Stewart of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel, indicted and accused as in the former Sederunt.

Follows a List of the Persons Names and Designations who were cited to pass upon the Pannel's Affine.

Sir Charles Gilmour, of Craigmillar.
Sir Alexander Nisbet, of Dean.
William Baird, of Newbyth.
Sir John Inglis, of Cramond.
Sir Robert Myreton, of Gogar.
William Keir, Portioner of Drumshough.
John Watson, of Muirhouse.
John Nisbet, Portioner of Water of Leith.
John Cochran, of Alderston.
James Dewar, of Vogrie.
John Preston, of Gorted.
George Warrander, of Bruntisfield.
John Strickland, of Miggatland.
Archibald Brown, of Blackford.
James Falconer, of Monkton.
Thomas Wood, of Wariston.
James Davidson, of Haltrie.
Patrick Crichton, of Woodhouse.
Robert Fisher, of Newhall.
Thomas Trotter, Merchant in Edinburgh.
Thomas Dundas, Merchant, and late Bailie there.
John Paton, Bookseller there.
William Hogg, Merchant there.
William Ormiston, Coppersmith there.
James Parquhar, Merchant there.
Alexander Grant, Merchant there.
John Brand, Merchant there.
Hugh Clerk, junior, Merchant there.
Alexander Peter, Wright there.
David Clerk, Wigmaker there.
John Osborn, Merchant, and late Provost of Edinburgh.
William Wright, Baxter there.
Alexander Campbell, Brewer there.
William Sands, Bookseller there.
John Hume, Coachmaker there.
Neil Macvicar, Merchant there.
William Tod, senior, Merchant there.
James Misseton, Jeweller there.
Archibald Angus, Merchant in Edinburgh.
Robert Fleming, Printer there.
James Harist, Wright there.
James Stirling, Merchant there.
Henry Antonius, Wright there.
James Hunter, Wright there.
Edward Lothian, Goldsmith there.

ARGYLL.

AND. FLETCHER.

P. GRANT.

CH. ARSEKINE.

The Lords Commissioners of Justiciary fine and amerciate Sir John Inglis of Cramond, William Keir Portioner of Drumshough, John Watson of Muirhouse, George Warrander of Bruntisfield, James Davidson of Haltrie, Thomas Dundas, Merchant and late Bailie of Edinburgh, William Hogg, Merchant in Edinburgh, Alexander Grant, Merchant there, and William Tod, senior, Merchant there, and each of them, in the Sum of One Hundred Merks Scots, for not appearing this Day and Place, to pass upon the Affine of the said Archibald Stewart, Pannel, as they who were lawfully cited for that Effect, and three several Times called from the Bar, and at the Door of the Court House, by a Mace of Court, as Use is.

Signed, ALEX. FRASER, J. P. D.

Mr. Archibald Stewart, Pannel, judicially passed from any Objection competent to him on Account of there not being a Majority of landed Men named to pass upon his Jury. Signed, ARCH. STEWART.

The Lords then named the following fifteen Persons to pass upon Mr. Stewart's Affine, viz.

Sir Alexander Nisbet, of Dean.

John Nisbet, Portioner of Water of Leith.

James Dewar, of Vogrie.

John Strickland, of Miggatland.

James Falconer, of Monkton.

Thomas Wood, of Wariston.

Patrick Crichton, of Woodhouse.

Thomas Trotter, Merchant in Edinburgh.

Hugh Clerk, junior, Merchant in Edinburgh.

William Wright, Baxter there.

Alexander Campbell, Brewer there.

Robert Fleming, Printer there.

James Stirling, Merchant there.

James Hunter, Wright there.

Edward Lothian, Jeweller there.

And no Objections being made to any of them, they were all lawfully sworn.

Follows a List of the Writings referred to in the Libel.

1. Letter from the Pretender's Son, bearing Date from his Camp 16th September, 1745, addressed, To the Lord Provost, Magistrates, and Council of Edinburgh.

2. Answer from the Pretender's Son to the first Deputation sent by the Magistrates and Council to his Camp.

3. Answer from ditto, to the second Deputation from ditto.

4. Representation by the Ministers of Edinburgh, to the Lord Provost, Magistrates, and Council thereof, of Date 6th September, 1745, in favour of the Design of putting the City in a proper Posture of Defence.

5. Petition and Address to the Lord Provost and Magistrates of Edinburgh, of certain Burgesses and Inhabitants of the City, offering to serve as Volunteers in Defence of the City against the Rebels, with two Opinions of his Majesty's Advocate and Solicitor thereto annexed, of Date 7th September, 1745.

6. Application from the Lord Provost of Edinburgh, and his Majesty's Advocate and Solicitor to General Gueff, on the 16th September, 1745, for a Party of Dragoons to assist in Defence of the City.

7. Representation of the Committee of Volunteers, to Archibald Stewart Lord Provost, without a Date, and unsigned, but found in the Custody of Archibald Stewart when he was apprehended.

8. Representation to the Lord Provost, Magistrates, and Council of Edinburgh, of certain Inhabitants of the City thereto subscribing, which bears no Date, but will be proved to have been presented to the Provost on the 16th September, 1745, and was found in his Pocket when he was apprehended.

9. Journal of what passed relating to the Defence of Edinburgh, from Monday September 2, till Monday September 16, in the Hand-writing of the now deceased Mr. Colin Maclaurin, Professor of Mathematicks in the College of Edinburgh, and found amongst his Papers after his Death.

10. Examination of Archibald Stewart, Esq. the 7th December 1745, before a Committee of the Lords of his Majesty's Most Honourable Privy Council.

His Majesty's Advocate, and Mr. Alexander Lockhart as Counsel for the Pannel, did admit and agree, that the several Matters and Facts contained in the Records of the Town-Council, and Minutes of the Committee, both produced in Process, do contain the Facts therein stated as they truly happened; and therefore agreed to hold the said Records and Minutes as probative of the Facts therein contained.

N. B. The Matters and Facts referred to, and here admitted, are ingrossed in the two Informations.

Mr. Lockhart did further admit, that the Articles No. 1, 2, 3, 5, & 6, in the List of Writings annexed to the Libel, as produced for proving the said Libel, are the Writings referred to in the Libel itself upon the several Articles, and are genuine; but did not thereby mean to admit any Facts stated in the Libel, or Information for the Prosecutor, with relation to these Writings.

N. B. These Writings so admitted, are all ingrossed, and taken Notice of in the Informations.

Follows a List of the Witnesses Names and Designations cited to bear Evidence against the Pannel.

N. B. All those who were examined are marked thus *

*George Drummond, Esq. present Lord Provost of Edinburgh.
*Archibald Macaulay, Esq. late Lord Provost there.
*John Wilson, Merchant, late one of the Bailies there.
*Gavin Hamilton, Merchant, late one of the Bailies there.
*James Stewart, Merchant, late one of the Bailies there.
*Alexander Blackwood, Merchant, late one of the Bailies there.
*James Nimmo, Esq. late one of the Bailies of Edinburgh.
*Hugh Hatborn, late Dean of Guild there.
*Robert Baillie, Merchant, late one of the Bailies there.
*James Grant, Merchant, and present Town-Treasurer there.
*Sir Robert Dickson, Bart.
*Sir George Preston, of Valleyfield.
*James Millar, late Servant to the deceased Alexander Bruce, of Kennah.
*The Honourable Mr. James Leslie, Advocate, one of the Commissioners of Edinburgh.
*Archibald Stevenson, Writer in Edinburgh.
*Andrew Bonar, Merchant there.
*Andrew Currie, late Deacon of the Weavers there.
*Nathan Porteous, late Deacon of the Skinners there.
*Patrick Lindsay, Depute-Secretary to the Forces in North-Britain.
*Ensign William Robertson, of Edinburgh Castle.
*Robert Griffith, one of the Gunners of the Castle of Edinburgh.
*Joseph Mead, one of the Sergeants of the Castle of Edinburgh.
*John Hislop, Storekeeper of the City of Edinburgh.
*Alexander Dryburgh, Servant to the said John Hislop.
*John Dalgleish, Watchmaker in Edinburgh.
*George Cunningham, Surgeon there.
*Baillie Bryden, Lieutenant of the Royal Regiment of Artillery.
*Mr. Lewis Douglas, Advocate.
*Mr. John Tait, Doctor of Medicine in Dalkeith.
*Richard Lindsay, late Bailie of Musselburgh.
*Andrew Alves, Writer to the Signet.
*Alexander Scott, Merchant in Edinburgh.
*Thomas Dalrymple, one of the Captains of the City-Guard of Edinburgh.
*Alexander Coffar, one of the Soldiers of the City-Guard there.
*James Tait, Goldsmith in Edinburgh.

*James Gillespy, Servant to the said James Tait.
 *Mr. William Wisbart, Principal of the University of Edinburgh.
 *Mr. George Logan,
 *Mr. John Glen,
 *Mr. Alexander Webster, } all Ministers of the Gospel at Edinburgh.
 *Mr. William Robertson, Minister of the Gospel at Glasgow.
 *William Forbes, one of the principal Clerks of the City of Edinburgh.
 *William Henderson, Writer there.
 *James Murray, Esq; Receiver-General of the Customs of Scotland.
 *James Paterson, Tide-Surveyor of the Customs at the Port of Leith.
 *Mr. Robert Craigie, of Glendoick, Advocate.
 *Mr. Robert Dundas, younger, of Arncliffe, Advocate.
 *Walter Grosset, late Collector of the Customs at Alloa, now one of the General Inspectors of the Customs of Scotland.
 *Alexander Macmillan, Writer to the Signet.
 *Anne Stewart, Relict of Mr. Colin MacLaurin, Professor of Mathematics in the College of Edinburgh.
 *George Dunbar, Merchant, late one of the Bailies of Edinburgh.
 *Mr. Joseph Williamson, Advocate, one of the principal Town-Clerks of Edinburgh.
 *Robert Tennent, Merchant in Edinburgh.
 *James Rattray, Servant to Robert Fleming, Printer in Edinburgh.
 *John Paxton, Clerk to Archibald Stewart, Esq; late Lord Provost of Edinburgh.
 *Robert Johnston, one of the Soldiers of the City-guard there.
 *David Lindsay, Writer in Edinburgh.
 *John Coutts, Esq; late Lord Provost of Edinburgh.
 *Mr. Charles Erskine, of Edinhead, Advocate.
 *Dougal Ged, Goldsmith in Edinburgh.
 *William Polson, Vintner there.
 *Charles Fraser, Merchant there.
 *Donald Mackay, Cadie there.
 *Walter Orrick, late Deacon of the Shoemakers there.
 *James Norris, Painter there.
 *John Yetts, Merchant, and sometime one of the Bailies there.
 *John Steven, Merchant there.
 *David Inglis, Merchant, and sometime one of the Bailies there.
 *Edward Inglis, Druggist there.
 *Robert Boyd, Merchant there.
 *Alexander Crawford, Baxter there.
 *Archibald Eagle, Seed-merchant there.
 *Edward Caithness, Merchant there.
 *Francis Jaffray, Wig-maker there.
 *Mark Sandilands, Merchant, late one of the Bailies there.
 *Alexander Hepburn, Merchant there.
 *Robert Brown, Taylor there.
 *William Wightman, Shoremaster at Leith.
 *Charles Leslie, late Collector of the News-paper, intitled, *The Edinburgh Evening Courant*. [N. B. This Witness was not cited.]
 *William Smith, Merchant in Edinburgh.

Then the Lord Advocate adduced the following Witnesses for proving the Libel against the Pannel.

*I. George Drummond, Esq; present Lord Provost of Edinburgh, solemnly sworn, purged of Malice and partial Counsel, examined and interrogate, depones, That, upon Sunday the 8th of September 1745, he was sent by the then Lord Advocate to Provost Stewart the Pannel, to acquaint him, That his Majesty's Sign-manual was come down for raising the Edinburgh Regiment of a thousand Men; and, upon that Occasion, he spoke to the Pannel about the Burghers associating themselves as Volunteers: but the Pannel doubted of the Legality of such an Association, and desired to have the Lord Advocate and Solicitor's Opinion thereupon; which was afterwards procured: But who procured it, or brought it to the Pannel, the Deponent knows not; but remembers, that he had a Conversation with the Pannel upon the Subject of that Opinion, after it came to his Hand: And at that Time the Pannel excepted to it, in regard the Opinion did not expressly mention, that it was not treasonable; upon which an Addition to the former Opinion was obtained from the Advocate and Solicitor, bearing that the Association was not treasonable: And which Opinion and Addition being shewn to the Deponent, depones, That they are the same which he has above deponed upon. Depones, That after it was resolved to accept of the Volunteers, the Volunteers agreed among themselves to have a Paragraph insert in the News-papers; and which Paragraph was accordingly by them drawn up, and bore, That, upon the Receipt of his Majesty's Sign-manual, authorising the Provost and Magistrates to raise a thousand Men, and the inlisting the Volunteers, upon the King's Lawyers giving it as their Opinion, that this last might be warrantably done, the Provost cheerfully set about it: And the Deponent was sent from that Meeting, to shew this Paper to the Lord Provost; and he ordered the Deponent to strike out the Words, *cheerfully set about it*, and, in place thereof, insert, *acquiesced in it*: And it was accordingly so put in the News-papers. Depones, That, the Night preceding the Meeting in the New Church Isle, being the 9th September, the Pannel came to a Tavern where the Deponent and several other Volunteers were; and, after they had told him what they had been doing that Day, and what Success they had in carrying forward the Subscription, in order to associate the Volunteers together, it was told the Pannel, that they had judged it proper to put on a Badge, or wear a Cockade, as a Mark of Distinction of their Loyalty to his Majesty's Government: But this Proposal the Pannel heard with a Sneeze; and told them, he wished they might not expose themselves to the Ridicule of others: To which one of the Volunteers, who was the Deponent, made Answer, *When we put on that Badge, we'll take Care no Man shall dare to insult us, be his Character what it will*. Depones, That upon September 10, at a Meeting of the Volunteers in the New Church Isle, the Pannel came there, and a pretty large List was given him by the Volunteers, out of whom they desired to have their Officers named; and that, next Day, the Pannel

delivered back the List, he having named six Captains out of it; and desired the Volunteers to name their own Subalterns: That, at the Meeting in the New Church Isle, the Pannel, by several Expressions, signified his Approbation and Satisfaction with the Zeal which the Volunteers then shewed; but, at the same Time, and upon other Occasions also, during that Week, several Things past, which denoted a Coldness in the Pannel as to the Measures which were then carrying forward. And, being interrogate by the Pannel, depones, He does not remember where it was, or who were in Company with the Pannel and him when that Conversation past betwixt them, concerning the Crown-Lawyers signed Opinion; but thinks it was on the Morning of Sunday the 8th. As to the third Article, depones, That the Deponent had several Conversations with the other Volunteers concerning the City-walls: which was occasioned by Mr. MacLaurin's Remonstrances to them, that the Work was not carried on fast enough, he being employed by the Town-Council in directing the putting these Walls in a Posture of Defence: That the Deponent went several Times, and viewed the Works as they were carrying on; and, in his Opinion, they were carried on in a slovenly and careless Manner, there being few Hands employed: And he remembers, that Mr. Joseph Williamson Advocate, was sent by the Volunteers to the Provost and Magistrates, as he thinks, with a Remonstrance, and to desire that some Things might be forwarded, as contained in a Note relative to these Works; whereof Mr. Williamson reported that severals were granted, and at the same Time told the Provost's Treatment of him was a little rough. Depones, That, upon Sunday Night, the 15th September, the Pannel, Capt. James Murray, General Receiver of the Customs, and the Deponent, being together in Mrs. Clarke's, Vintner, Mr. MacLaurin came to get Orders from the Provost to load the Cannon, in order to try them: That Mr. MacLaurin waited some Time, the Pannel being then in a good deal of Hurry; but when he was going out, he told Mr. MacLaurin, That Mr. Drummond the Deponent would give him the proper Orders. As to Article fourth, depones, That it was several Times talked of to the Pannel in the Deponent's Hearing, to lay aside the Trained-Bands; and for these two Reasons; first, That several of the Trained-Bands were believed to be disaffected; and, next, It was not convenient for the Volunteers to do double Duty, both in the Trained-Bands, and in their own Companies: That the Pannel disapproved of this Proposal, because the Trained-Bands were the old Companies of the Town; and besides, he thought it was imprudent to put a Mark of Distinction betwixt the different Inhabitants: That the Deponent remembers, that the Trained-Bands of the City were laid aside in the Year 1715, upon the Occasion of the then Rebellion; and the Care of the City given to a Body of Volunteers, who had associate themselves much in the same Manner as those did upon Occasion of the last Rebellion. Depones, That he remembers a Proposal made among the Volunteers, for employing a Number of able-bodied Lads, upon the Reward of a Guinea to be given to each of them, in order to fill up the Edinburgh Regiment; but knows not whether this Proposal was made to the Provost or not. And, being interrogate for the Pannel, depones, That he knows not whether that Proposal for laying aside the Trained-Bands, was ever laid before the Council. As to Article fifth, depones, That he remembers, that, upon Sunday the 15th September, there was come to the Town of Edinburgh, of Volunteers, 42 from Dalkeith, 100 from Musselburgh, 180 Seceders, and 70 Excise-Officers; which, conjoined with above 400 Volunteers in the Town of Edinburgh, 200 of the Edinburgh Regiment, and 126 of the Town-Guard, made in all 1118 Men in the Town of Edinburgh, besides the Trained-Bands. As to the seventh Article, depones, That, upon Monday the 16th of September, he heard from Lord Home, there was a Petition, such as is mentioned in the said Article, going forward; but he did not see it that Day: That, about Four o'Clock of that Afternoon, the Fire-bell rung, which was the Signal for the Volunteers to repair to their respective Posts; and which the Deponent accordingly did, by repairing to his Post in the Lawn-market. As to Article eighth, depones, That, previous to the ringing of the Fire-bell above-mentioned, the Deponent came into a Meeting of the Magistrates and Council in Goldsmiths-Hall, where Mr. Grosset was, who had come there to make offer of a Body of Dragoons being sent into the Town, in case they were required: That, upon his coming in, he found the Council deliberating what was proper to be done upon that Occasion: That the Pannel called to the Deponent, to give his Opinion concerning the giving up or defending the Town; the Deponent made answer, That there was no Occasion to ask his Opinion upon that Point, as he had given it formerly, and by his Actions testified his Inclination to defend the Town. That thereafter Provost Coutts came into the Meeting, and falling into Conversation with the Deponent, he frequently pressed the Deponent to speak: At last the Deponent carried him to a Corner, and said to him, 'Why should I speak, considering the Lord Home told me, That he heard you say, on Saturday last, as you was coming up the New Bank Close, and when he was looking out of the Lord Justice-Clerk's Dining-Room Window, That all the Bustle and Work they were now making about defending the Town of Edinburgh, was idle, and Nonsense; for that the Provost had in his Pocket, three Days ago, the Terms settled in Writing upon which the Town was to be given up?' And Provost Coutts seemed concerned, and did not flatly deny it, but avoided owning it. Depones, That a little Time after he left this Meeting, he heard the Fire-bell ring; which made him go to his Post in the Lawn-market, as above deponed upon; and, after remaining with the Volunteers for about three Quarters of an Hour under Arms, and getting no Orders, the Officers amongst themselves thought proper to advise what was to be done; and at last came to this Resolution, as they saw they could be of no Use to the Town, to return their Arms to the Government, from whom they had them; which was accordingly execute by the Volunteers, the Country Militia, the Seceders, and Excisemen; who all marched up to the Castle, and delivered up their Arms, except two Companies of Volunteers, who remained upon Guard at the Northbow Port, and when they returned from the Castle, it was about half an Hour after Sunset. Depones, That, after coming from the Castle,

* Partial Counsel, by the Law of Scotland, is, the instigating the Prosecution, or offering the Party to depone in his Favours; or being present with Lawyers at the Consultation, where it might be shewn what was necessary to be proved.—And every Witness, by that Law, is obliged upon Oath to swear, that he did neither of these Particulars, which is called *purged of partial Counsel*.

he went to some Place in the Town, where he expected to get Horſes brought him; and, while he was there, Word came to him, That Mr. Groſe was come from the Country, with an Account, that Sir John Cope was landed at Dunbar; and that he was gone to inform the Magiſtrates of it: And upon this the Defendant went to the Council-Chamber, where he met with the Provost, and Council, and Mr. Groſe. That Mr. Groſe, upon his coming in, put into the Deponent's Hand Lord Advocate's Letter, with one directed to the Provost, as the Deponent thinks, and another from Mr. Fall in Dunbar, directed to Lord Advocate, telling of Sir John Cope's Arrival off Dunbar. That, upon this, the Deponent told the Pannel, that he hoped he would now think of defending the Town, and ring the Fire-bell, to bring the People to their different Poſts: To which the Pannel made Answer, That we muſt be tender of the Blood of our Inhabitants; that they had ſent out ſome of their Magiſtrates to treat; and, ſhould the Rebels hear the Noiſe of the Fire-bell, they might hang them up. Then the Deponent propoſed, that a Drum ſhould be beat through the Town; but the Provost made Answer, That the Volunteers, and others, had delivered up their Arms, and the Military had left them; and they could not defend the Town by themſelves. The Deponent likewiſe told him, it was proper, ſince the Town could not be defended, that the Cannon which were mounted upon the Walls, and the Arms which the Inhabitants had, might be ſo ſecured, as that they ſhould not fall into the Hands of the Rebels. Upon this the Pannel handed over to the Deponent the Letter given in with the Libel, Number 1. and, upon reading it, the Deponent told the Pannel, That he did not know, but if they gave up the Town to the Rebels To-morrow, that the next Day the King's Troops might think they had a Right to uſe it as a Town taken from the Rebels. As to the eleventh Article, depones, beſides what is already ſaid, That the Number of Firelocks and Bayonets which were in the Town-magazine in the Years 1726 and 1727, when the Deponent was Provost, were about 1200; and that the Deponent believes the Trained-Bands uſed to be ſupplied out of that Magazine. And the Representation given out with the Libel, Number Seven, being ſhewn to the Deponent; and he being interrogate, whether he knows any thing of the ſaid Representation? depones, He remembers it to have been drawn up at one of the Meetings of the Volunteers where he was preſent; that it was read over to them, and afterwards ſent to the Pannel by Mr. Wilkinton, one of their Number. And, being read to the Deponent, depones, That it is the Remonſtrance before-mentioned in his Oath. And being interrogate by the Pannel, whether or not the Deponent knows that Orders were given for all theſe Particulars by the Provost? depones, That the Representation contains four Articles, viz. the firſt, concerning the Guards of the Town, of which the Deponent never heard afterwards any Complaint; the ſecond, concerning Ladders; and the third, concerning the inbringing of Meal; both which he believes were complied with, and immediately done; the fourth concerned the Wrights and Maſons being ſet to work; as to which, the Deponent knows, that Bailie Robert Baillie had the Town-Council's Orders, and their full Power veſted in him, to ſee to the Execution of theſe things relating to the City Walls: And the Deponent does not doubt but theſe Orders were given, though in fact very few more Workmen were employed, and ſet to Work. *Causa ſcientie patet.* And this is Truth, as he ſhall answer to God.

II. Mr James Leſlie Advocate, and one of the Commiſſaries of Edinburgh, depones, That, upon Monday the 16th of September 1745, about Ten o'Clock Forenoon, the Deponent having ſome Buſineſs with Mr. Gordon Merchant, and not meeting with him, and ſeeing the Pannel, he deſired the Pannel to go into Loch's Coffee-houſe, and have it ended with him; and as they were going in, Andrew Alves, Writer to the Signet, followed them, and went in with them; who told them, That he had been out at Linlithgow the Day before, where he ſaw the Rebel or Highland Army, and ſeveral of his Acquaintances, particularly the Perſon then called Duke of Perth; who asked him, What they were doing in the Town of Edinburgh? that they had need to be careful; for, if they ſtood to their Defence, he would not answer for the Conſequences: And, that Mr. Alves was afterwards carried up to the Pretender's Son, who told him much to the ſame Purpoſe: That, upon this, the Deponent ſaid, This was a very odd Meſſage; but does not remember, that the Pannel ſaid any thing.

III. Mr. Robert Craigie of Glendock, Advocate, depones, That, in the laſt Week of Auguſt 1745, he was preſent at a Meeting of ſeveral of the Friends of the Government, and Inhabitants of Edinburgh, in the Lord Juſtice-Clerk's Houſe, where was preſent alſo Provost Stewart, now Pannell; where the Propoſal for levying a Regiment of a thouſand Men for Defence of the City of Edinburgh was talked of: That the Perſons preſent ſeverally gave their Opinions; as did likewiſe the Pannel; at leaſt ſpoke of the Subject; but the Deponent did not take notice of any thing remarkable in what the Pannel ſaid: That the Deponent underſtood the Purpoſe of that Meeting was, in order to adviſe the Magiſtrates of Edinburgh concerning the Lawfulneſs of that Measure: That the Meeting generally agreed, that it was proper to apply for his Maſteſty's Warrant for that Purpoſe; and the Deponent, being then his Maſteſty's Advocate, undertook to write for it, which he did that very Night; and received his Maſteſty's Sign-manual, by Expreſs, on Sunday the 8th September. Depones, That there were preſent at that Meeting, ſo far as the Deponent remembers, the Lord Juſtice-Clerk, Lord Tinwald, Provost Macaulay, William Alexander, Merchant, and ſeveral others. Depones, That Provost Macaulay and Mr Alexander followed the Deponent from that Meeting, who aſſured him, that no Scruple needed to be made for fear of Want of Money to ſupport that Regiment; for that they would undertake to find Subſcriptions enough to ſupport it: and the Deponent accordingly wrote to one of his Maſteſty's Secretaries of State. Depones, That, upon Friday the 6th September 1745, a Gentleman who had been a Magiſtrate of Edinburgh, brought to the Deponent a Petition, propoſed to be ſigned by ſeveral of the Burgeſſes, to be preſented to the Provost and Magiſtrates, and deſired the Deponent's Opinion, whether the Petition contained any thing illegal or improper? and that the Deponent gave his Opinion that it did not: That next Day, the 7th September, one of the Magiſtrates came to the Deponent's Houſe, and told him, that the Provost, and ſome of the Magiſtrates, wanted to wait of him for his Opinion, and deſired to know his Time: That he ſaid, the Magiſtrates might come when they pleaſed; that accordingly, very ſoon after, the Provost, and

three or four of the Magiſtrates, came, and ſat before the Deponent the Petition now produced in Court; and which was a Copy of the ſame Petition he had ſeen the Day before: That Provost Stewart, the Pannel, ſuggeſted, that it was unlawful, and, as he was informed, reaſonably to comply with the Petition: That the Deponent ſaid, That whatever might be the caſe in ſome Circumſtances, yet at preſent, when there was a Rebellion in the Country, it was not only lawful, but the Duty of every Subject to take Arms in ſupport of the Government. That the Magiſtrates deſired the Deponent, and Mr. Robert Dundas, then his Maſteſty's Solicitor, their Opinion in Writing: That the Deponent thereupon ſent to Mr. Dundas, who immediately came; and, after talking with him, did, in his Preſence, dictate to his Clerk their Opinion, which he took down in Writing, That it was lawful, in the then preſent Juſtice, for the Magiſtrates to authoriſe the Petitioners, and others, to take up Arms in Defence of the City, and of the Government; and that the Deponent and Mr. Dundas ſigned the Opinion, and ſent it with the Petition to the Magiſtrates. That, ſoon after, one of the Magiſtrates brought back the Opinion to the Deponent's Houſe: and told him, that the Opinion did not ſatisfy the Provost, meaning the Pannel; and that he deſired to proceed upon the Petition, unleſs the Deponent and the Solicitor would give their Opinion, That the taking up Arms was not reaſonable: That the Deponent teſtified ſome Surpriſe at the Scruple; however, in order to ſatisfy it, the Deponent and Mr. Dundas ſigned a ſecond Opinion, That it was not reaſonable for the Magiſtrates to grant the Deſire of the Petition. Depones, That, on Monday the 16th September 1745, Mr. Dundas came to the Deponent's Room, about Mid-day, and brought along with him Andrew Alves, Writer to the Signet, and told the Deponent, he found him delivering a Meſſage from the Pretender to the People in the Street; and that he had brought him to the Deponent to be examined. The Deponent does not remember whether Mr. Dundas brought any Guard along with him. That the Deponent accordingly examined Mr. Alves; who told the Deponent, that he had fallen in with the Highland Army on this Side of Linlithgow that Morning, and that he had been ſome time with them: That the Perſon called the Duke of Perth ſpoke to Mr. Alves, and deſired him to deliver a Meſſage to the Provost of Edinburgh, importing, That he expected to be received into the City without any Oppoſition or Reſiſtance; in which caſe the City might expect his Protection; but, if he met with any Oppoſition, the City might expect Treatment that neither he nor they would wiſh: That the Perſon whom they called the Prince, was near by when this Meſſage was delivered by the Duke of Perth, and aſſented to the Meſſage: That Mr. Alves came into Edinburgh, and, having met with the Provost, the Pannel, he delivered this Meſſage to the Provost; and that he had repeated the ſame thing to ſeveral People he met with on the Streets. That the Deponent remonſtrated to Mr. Alves, that it was reaſonable in him to carry ſuch a Meſſage from the Rebels; and the Deponent, as he thought it might be attended with bad Conſequences, to raiſe Sedition and Diſſention in the Town, by ſpreading this Meſſage, he reſolved to commit Mr. Alves to Priſon; and accordingly cauſed his Clerk to make out a Warrant for that Purpoſe. That, in the mean time, the Lord Juſtice-Clerk had come to the Deponent's Houſe, and was in the Room with General Guſt: That the Deponent having come in to them, told them what had happened, and his Reſolution to commit Mr. Alves: That they approved; only, Lord Juſtice-Clerk ſuggeſted, That it would be proper to ſend to the Provost; and, if the Fact of delivering the Meſſage to the Provost, was ſuch as Mr. Alves repreſented, that it would be proper that the Commitment ſhould be by the Provost: That accordingly the Deponent ſent his Clerk with a Meſſage to the Provost, in the Name of the Lord Juſtice-Clerk, Mr. Guſt, and his own, ſignifying he would come to them: That the Provost came very ſoon after; and the Deponent underſtood it was in compliance with the Meſſage. That, upon the Provost's coming in, my Lord Juſtice-Clerk told him what Mr. Alves had ſaid with reſpect to his delivering the Meſſage to him. And the Provost acknowledged the Meſſage had been ſo delivered; that the Provost had repeated it to one of the Magiſtrates, the Deponent thinks he ſaid it was to Dean of Guild Hathorn; and that he asked his Opinion, whether it was proper to mention it to any of the reſt of the Council? That the Dean of Guild ſaid, it was by no means proper. That the Lord Juſtice-Clerk asked him, why he did not take Notice of Mr. Alves? why he did not commit him? that it was a reaſonable Practice. That the Provost made ſome Excuse; that he did not know, or did not think it was Treason. That he was told by the Lord Juſtice-Clerk, that he ought ſtill to commit him; and in this Opinion the Deponent concurred with him. That the Provost deſired Directions in what Manner: That thereupon the Deponent gave him the Warrant that he had made out. That thereupon the Provost went away; and, ſoon after, one from the Provost brought to the Deponent a Warrant of Commitment; but the Deponent deſired the Meſſenger to get proper Officers to execute the Warrant; and ſoon after Mr. Alves was carried off Priſoner from the Deponent's Houſe; and the Deponent believes he was committed to Priſon. Depones, That, upon the ſaid Monday, the 16th September, while General Guſt was in the Deponent's Houſe, it was ſuggeſted to the Deponent, that ſome Confuſion ſeemed to ariſe upon the Streets: That it occurred to the Deponent, and to General Guſt, and others, who were coming and going to the Deponent's Houſe, that it might be of uſe to ſuppreſs diſorderly People, and to encourage thoſe who were in Arms for the Government in the City, that a hundred Dragoons ſhould be brought into the Town; and that this might, at the ſame time, be of Loſs to the Service of the Dragoons, if ſo many were choſen out of Colonel Gardiner's Regiment, whoſe Horſes were rendered unſerviceable by their great Fatigues. That the Reſolution was accordingly taken; and Sir John Inglis, with the Aſſiſtance of ſome other Juſtices of Peace, provided a Quantity of Hay for the Subſiſtence of the Dragoons. That Colonel Clayton, who, as the Deponent underſtood, acted as Aid de Camp to Brigadier Fowkes, came ſeveral times that Forenoon to General Guſt for Orders; and that, at one of theſe Times, General Guſt gave Orders to ſend in the hundred Dragoons, by a verbal Meſſage to the Brigadier. That General Guſt went to the Caſtle before Two o'Clock. That, before Three, Colonel Clayton came to the Deponent's Houſe, and told the Deponent, that Brigadier Fowkes declined to obey the verbal Meſſage touching the ſending in the Dragoons; and

that he desired a written Order from Mr. *Guesf*: That, upon this, Mr. *Dundas* the Solicitor, and the Deponent, went along with Colonel *Clayton* to the Castle, and stated the Case to Mr. *Guesf*: That Mr. *Guesf* agreed to give the written Order, but desired as a Condition, that the Provost of *Edinburgh*, Mr. *Dundas*, and the Deponent, should give to him their Opinion in Writing, that it was for the Service of the Government that the Dragoons should be sent into the Town: That, as the Provost was not present, the Expedient proposed and agreed to, was, that the General should sign the Order for the Dragoons, and should put it in the Hands of Mr. *Lindsay*, the Secretary at War, who wrote the Order; that the Deponent should procure the Provost's Subscription to the Opinion, and his own and Mr. *Dundas*'s; and, upon delivering this Opinion to Mr. *Lindsay*, Mr. *Lindsay* should deliver the Order to Colonel *Clayton*. That the General accordingly signed the Order, and delivered it to Mr. *Lindsay*; and the Opinion desired was wrote out by Mr. *Lindsay*. That Colonel *Clayton*, Mr. *Dundas*, Mr. *Lindsay*, and the Deponent, came down from the Castle, and called for the Provost at his House, and missed him; but met him in the *Lawn-market*, opposite to the Entry to *Fisher's Land*: That the Deponent told the Provost what had passed; and that it was proper he should sign the Opinion, in order to procure the Dragoons. That the Provost appeared in some Confusion, and said he was hastening to the *West-port* to shut it; that the *Highlanders* would be there before him. That the Deponent suggested, that the Measure might be of use against the *Highlanders*; and that it would be no losing of Time. The Provost agreed to step up to the Deponent's House; and the Provost, in the Deponent's Consulting-room, signed the Opinion, and after him it was signed by the Deponent and Mr. *Dundas*; and the Deponent having delivered the signed Opinion to Mr. *Lindsay*, Mr. *Lindsay* delivered the Order by Mr. *Guesf* to Colonel *Clayton*, in order to be carried to Brigadier *Fowkes*. Depones, That Colonel *Clayton*, upon his coming to the Deponent's House, did inform the Deponent that the Rebels were on their March, and were come the Length of *Kirkliston Water*. And when the Deponent was in the Castle, he observed the Dragoons marching Eastward by the long Dykes; and this determined the Deponent to follow them down to *Leith*, where he supposed they were marching to solicit the Execution of Mr. *Guesf*'s Order. That he believes this might have been about Four o'Clock at Night. That he met Mr. *Walter Grosf*, then Collector at *Allea*, between the *Water-gate* and the *Abbey-hill*: That Mr. *Grosf* told the Deponent he was coming with a Message from the Lord Justice-Clerk to the Provost, offering him the Assistance of the two Regiments of Dragoons, or such a Number of them as the Provost should desire, in Defence of the Town: That the Deponent told Mr. *Grosf*, that the Provost had agreed to demand, and obtained an Order to bring in a hundred Dragoons; but he might proceed with his Message. That Mr. *Grosf* did not say, nor did the Deponent understand, that he had any written Message from the Lord Justice-Clerk. That the Deponent found the Dragoons had not gone to *Leith*, but were in their Road to *Fisher-row*: And he understood from Colonel *Clayton*, that Mr. *Fowkes* did not incline to divide his Dragoons. However, before the Deponent had come up with Mr. *Fowkes*, Mr. *Stark*, Commander of the Custom-house Sloop, delivered a Letter to the Deponent from the Provost of *Dunbar*, acquainting him, that the Fleet, on board of which Sir *John Cope's* Troops were, was seen within the *May* about Two o'Clock; and that they would be at *Leith* with the next Tide, which would happen in the Night-time. That as the Deponent read his Letter aloud, it was soon known through the whole two Regiments, and to Mr. *Fowkes*. That Mr. *Fowkes* thereupon alighted, and went into Mr. *Forbes's* House; and, as the Deponent understood, he there wrote Letters to Sir *John Cope*, acquainting him of the Situation of Matters: and the Deponent found Mr. *Fowkes* not at all disposed to divide his Regiments, or to comply with Mr. *Guesf*'s Order. While the Deponent was in Mr. *Forbes's* House, and Mr. *Fowkes* was writing his Letters aforesaid, Mr. *Grosf* returned from *Edinburgh*, and delivered to the Deponent a Letter from the Pannel, addressed to the Deponent and Lord Justice-Clerk, which he now produces, and is marked by him and the Lord Examiner; wherein he desires a new Opinion from the Deponent and the Lord Justice-Clerk, before he would receive any Dragoons. That this was a Disappointment to the Deponent, and made him not think it proper to press the sending the Dragoons, as it persuaded him that Matters were changed from the Time he had left *Edinburgh*. However, Mr. *Grosf* was sent back to *Edinburgh*, with the Accounts of Sir *John Cope's* Arrival; and the Deponent delivered him his Letter, with a Certificate that the Letter and Account were genuine. And depones, That he heard Mr. *Fowkes* mention what he had wrote to Sir *John Cope*; and that he had advised him rather to land his Troops at *Presfoun-pans* or *North-Berwick* than at *Leith*, as he would be nearer the Assistance of the Dragoons, who were to be quartered that Night at *Presfoun-pans*, or thereabouts; and being interrogate for the Pannel, What he thinks was intended by the Councils mentioned in the Provost's Letter above deponed upon? depones, That he apprehends the Councils therein mentioned is what past at a Meeting in the Lord Justice-Clerk's, in *Edinburgh*, on Sunday Evening the 15th, when General *Guesf*, Brigadier *Fowkes*, Lord Justice-Clerk, the Pannel, the Deponent, and several others were present: that the Deponent understood, that it was then agreed upon, that the Dragoons should incamp that Night on this Side the *Coh Bridge*; that some time after a Question was stated, Whether the Town of *Edinburgh* might not be a proper Quarter for the Dragoons, to wait there the landing of Sir *John Cope*? and, whether they could not at Pleasure join him, whatever Situation the Rebels might be in? That the Deponent remembers that Captain *Murray*, the Receiver of the Customs, answered, That he thought it would not be a proper Quarter; for that if the Rebels were possessed of the Suburbs, and should set fire to the *Potter-Row* and *Bristow* Ports, the Dragoons could not possibly march out. That this was all the Deliberation that the Deponent and the Provost together were Witnesses to concerning the Dragoons coming into *Edinburgh*; and, to the best of his Memory, these were the very Expressions. Whether there was any other Concert upon that Subject the said Sunday Evening, the Deponent cannot say; as the Deponent went to another Room to examine Prisoners, after the Resolution was taken touching the Incampment that Night; and when the Deponent returned to the Company, he heard Captain *Murray's* Opinion last deponed upon; and very soon there-

after the Company parted. And depones, That the Petition by the Burghesses to the Magistrates and Council, and the two Opinions thereon, now produced in Court, and signed by Mr. *Dundas* and the Deponent, are the Petition and Opinions referred to in the above Deposition.

N. B. The Letter referred to in this Oath, and produced by Mr. *Craigie*, is fully ingrossed in the Information for the Prosecutor, p. 53. except a Postscript, in these Words: I am determined by your Orders.

IV. Mr. *Robert Dundas* younger of *Arniston*, Advocate, depones, That the Deponent went for a few Days out of Town about the End of *August* 1745. That, on his Return, he understood, that there had been a Meeting concerning the raising a Regiment for the Defence of the City, and likewise concerning a Proposal by some of the Burghers and Inhabitants, to serve as Volunteers in that Service: That some of those concerned in the Proposal came to the Deponent's House, to ask his Opinion concerning the Lawfulness of it; and told him, that some Difficulties were made about it, particularly by some Lawyers. That the Deponent said, He had no Difficulty of its being lawful. In consequence whereof a Message was thereafter sent by the Town-Council to get the Opinion of Mr. *Craigie*, then Lord Advocate, and the Deponent's; which they accordingly gave in Writing, and subscribed. But, as the Deponent was going away out of Town, some Hours after that, he met *Robert Bailie*, then one of the Bailies of *Edinburgh*, and another Member of the Town-Council, whose Name the Deponent cannot recollect; who told him, That the Provost was not satisfied with the Opinion; that he excepted to the Manner in which it was expressed; because, though they had said it was lawful, they had not said it was not Treason: And that thereupon Mr. *Craigie* had already subjoined an additional Opinion; but that still Provost *Stewart* was not pleased, unless he got the Deponent's Subscription. And the Deponent accordingly signed that additional Opinion also: And that the Opinion, and additional Opinion, in the Clerk's Hands, shewn to him, are the same that were signed by him. Depones, That upon *Monday* the 16th *September* 1745, the Deponent came down to the Street from Mr. *Craigie's* House about Eleven o'Clock in the Forenoon: That he met Sir *John Inglis* of *Cramond* at the End of the *Luckenbooths*; who told him that *Andrew Alves* Writer to the Signet was at the Cross, telling to every body, That he had brought a Message from the Rebels at *Lintithgow*, That, if the Town of *Edinburgh* was peaceably given up, there should no Mischief be done to the Inhabitants; but, if any Resistance was made, the Consequence might be fatal to them. That the Deponent went immediately in search of Mr. *Alves*; and, having found him, asked, What Tale he was thus spreading about; and how he came to carry a Message from Rebels? That *Alves* repeated the Message, as above; and excused himself for bringing it, saying, That he accidentally had been taken Prisoner by the Rebels. That the Deponent immediately carried Mr. *Alves* to Mr. *Craigie's* House, and there left him; and, returning some Time after, he found together the Lord Justice-Clerk, Mr. *Craigie*, and the Pannel, Mr. *Alves* being then in another Room: That he was then told, *Alves* had delivered the Message to the Pannel about an Hour before; and, as the Deponent thinks, the Lord Justice-Clerk said, that he and Mr. *Craigie* had sent for the Pannel as the properest Person to sign the Warrant for committing *Alves*: That, in a very little, the Pannel left the Room; and, soon thereafter, a Party of Volunteers came with the Pannel's Warrant, and carried off Mr. *Alves* to Prison. Depones, That, about Four o'Clock of *Monday* the said 16th *September*, Major *Clayton* brought the Account to Mr. *Craigie's*, where the Deponent then was, that the Rebel-Army was advancing; and that it was thought proper for the Dragoons to retire to the plain Ground between *Leith* and *Edinburgh*. That thereupon Mr. *Craigie* and the Deponent went to Lieut. Gen. *Guesf* in the Castle; who agreed to order a hundred Dragoons into the Town of *Edinburgh*, if the Demand was made in Writing: That Mr. *Craigie* and the Deponent, returning from the Castle, met with the Pannel at the *Bowhead Well*; whereupon the Deponent told the Pannel, That they were well met, for they were going just to send for him, to communicate to him something of Importance: That the Pannel answered, That it was not now Time for Consultation, but for Execution, when the Enemy was at their very Gates: To which the Deponent replied, That it was not for Consultation, but Execution, that he was wanted; and then the Pannel went up to Mr. *Craigie's* House: And upon his being told that he might have a hundred Dragoons into the Town, if he thought proper; he answered, That it was certainly right, and that he was very desirous of it. Upon which a Letter was wrote and sent to Lt. Gen. *Guesf*, signed by Mr. *Craigie*, the Deponent, and the Pannel, requesting the aforesaid Number of Dragoons to be sent into the Town.

V. Mr. *George Logan*, one of the Ministers of *Edinburgh*, depones, That, in the Afternoon of *Monday* the 16th *September*, the Deponent, and some others of his Brethren Ministers, being told in the Coffee-house, that there was a Meeting of a great many of the Inhabitants in the New Church Isle; and that it was the Opinion of the Meeting, that the Town could not be defended against the Rebels; the Deponent therefore went to the said Meeting: That he found there the Pannel acting as Præses of the Meeting: That the Meeting was very numerous: That he could not say, that they were composed of such as he thought the best affected to his Majesty's Government: That many of them he did not know; but of those he knew, several were such as he always thought disaffected: That the Deponent does not remember to have seen any of the Volunteers there, except Mr. *Glen* the Minister; but where they were, he knows not: That as the Deponent, or at least his Wife, had a considerable Interest in the Town, which he was very willing to risk for the Service of the Government; he proposed to the Pannel, then Præses of the Meeting, that the Dragoons should be brought into Town, for the Defence of it: But the Pannel answered, The Dragoons were gone too far to be brought back again.

VI. Dr. *William Wishart*, Principal of the College of *Edinburgh*, depones, That in the Month of *September* 1745, the Deponent was present at a Meeting of several of the Ministers of *Edinburgh*, when it was concerted, that a Paper should be drawn, and signed by them, approving of the Design of raising the *Edinburgh* Regiment for the Defence of the Town, and engaging to contribute towards defraying the Expence. That the Paper was accordingly drawn, and signed by the Deponent, and several other Ministers in the Deponent's Presence,

of the Date it bears, the 6th Day of the said Month of September; and that the Writing signed by the Ministers in the Clerk's Hands, being No. 4. of the List of Writings subjoined to the Libel, is the same Paper that was signed by the Deponent. [Vide Lord Advocate's Information, p. 635.] Depones, That in the Afternoon of the 16th September, about Four Afternoon, the Deponent went to Goldsmiths-Hall, where he found the Pannel, then Lord Provost, several of the Magistrates and Councillors, and some others of the Inhabitants of the Town. That some of the Meeting, but, as the Deponent thinks, none of the Council, said, That several of the Inhabitants were in Terror, both for their Houses and Persons, should any Defence be made of the Town against the Rebels; and therefore were for delivering it up. That no Answer was made to this Suggestion: But, at that Time, *Walter Grosset*, Collector of the Customs at *Alloa*, came into the Meeting, with a Message to the Pannel from the Lord Advocate and Lord Justice-Clerk, that there were a hundred Dragoons in Town, and the rest might be brought in, if his Lordship desired it. That the Pannel answered, That that was putting the Thorn in his Foot, but that he would return it; and appealed to Provost *Drummond*, then present, whether, at a Meeting that had been held the last or the other Night, he had not heard it said, that, if he brought any of the King's Troops into *Edinburgh*, it was bringing them into a Poind-fold to be caught by the Rebels? and upon that account he would give no Orders. That *Grosset* answered, That those who sent him were ready to give the Orders, if his Lordship desired it. That thereupon he gave *Mr. Grosset* a verbal Answer to return to the Lords Advocate and Justice-Clerk, which *Mr. Grosset* seemed to understand as a Refusal, and repeated it as such: That the Pannel said he had mistaken him, and that he would give it him in Writing; and called for one *Henderson* to write the Answer, which the Pannel began to dictate: But the Deponent thinks the Meeting broke up before it was finished. That the Occasion of the Meeting's breaking up, was, that more People came in pressing to give up the Defence of the Town. Upon which the Pannel said, We cannot stay here; let us ring the Bell, and go into the New Church Isle. Upon which the Fire-bell was rung. And the Deponent, having gone first home, returned immediately to the New Church Isle, where he found the Pannel seated in the Moderator's Chair, and a pretty numerous Meeting, most Part of them not known to the Deponent, not even by Sight: Such as he did know, several of them were such who frequented Nonjuring Meeting-houses; but others who attended the Established Church. Depones, The first thing the Deponent observed at that Meeting was, the preceding Witness, *Mr. Logan*, standing upon a Form, and saying, That the sending out to treat with the Rebels, was inviting them to Town; and that he heard his Majesty's Troops were nigh at hand to assist the Defence of the Town: But that this was generally houted in the Meeting, and a Cry raised, *They were gone, they were fled, they were gone to Haddington*. Depones, That the Deponent then spoke to the Pannel, and put him in mind of the Proposition that had been about half an Hour before made to him by *Mr. Grosset*, as from Lord Advocate and Lord Justice-Clerk, and desired to know what Answer had been made. That the Meeting raised the former Cry, *They were gone, they were fled*. But the Pannel very civilly interposed, and said, The Deponent's Question deserved an Answer; and then repeated in Substance what he had before said in Goldsmiths-Hall to Provost *Drummond*. To which the Deponent replied, That, by the Message he had got, it would seem that the Troops could not yet be so far off as was alledged at that Meeting. Depones, That thereafter the Deponent, directing his Discourse to the Præses, said, That he hoped no Gentleman in that Meeting would dare to propose the delivering up the Town to the Rebels, or Words to that Purpose. The Pannel answered, Yes, it is proposed. Another Gentleman replied, No, Sir, it is not proposed to deliver up the Town to the Rebels, but to send out to treat with them; and then they will go by the Town. Upon which the Deponent said to the Præses, That, before making a Proposal of that Kind, or, which the Deponent thinks was his Words, before putting a Question of that Kind to any Meeting, he should have first purged the Town of the known Enemies to the Government that were in it. Against which a Hout was raised in the Meeting; and one of them said to the Deponent, Then you should be amongst the first that should be put out of it; which raised a great Laugh. That, at the same Meeting, *Bailie Hamilton* said to the Pannel, That if it was proposed to deliver up the Town to the Rebels, his Lordship should first send Orders to the Volunteers to deliver up the Government's Arms, that they might not be furnished by the Rebels: But the Deponent heard no Answer made to it. Depones, That *Sir George Preston* of *Valleyfield*, who had the Command of a Company of Volunteers then planted at the *Netherbow*, came into the Meeting, and desired to know from the Pannel, What he was to do with his Company? or what Orders he was to give him? That the Pannel answered, I cannot answer that yet; by and bye. That *Sir George* said, That, if they were proposing to deliver up the Town to the Rebels, it was Time for him to know what he was to do, for he could not stay; and desired an Answer. That no Answer was given him, so far as the Deponent heard. That then the Pannel put the Question to the Meeting, Who are for defending or holding out the Town? If any, let them speak. To which the Deponent said, That he was, though he should be alone there: That *Sir George Preston* said, And I; and that one or two more said the same: But the Generality of the Meeting were of another Opinion. Depones, That the Pannel then put the Question, Shall we send any to treat with them? Upon which the Deponent said, That he hoped not to have lived ever to have heard such a Question put by a Lord Provost of *Edinburgh*. But no Reply was given. And then the Pannel put the Question, Who shall we send to treat with them? Upon which the Deponent and *Sir George Preston* left the Meeting: And, upon their coming out, the Deponent saw some of the Captains of the Volunteers leading up their Men to the Castle to deliver up their Arms. Depones, That, upon Saturday the 14th, the Deponent was told, that the Ringing of the Fire-bell was appointed as a Signal for the Volunteers convening in the *Lawn-market*, there to receive their Orders from the Pannel: And the Fire-bell having been rung in Time of divine Worship on Sunday the 15th, in the Forenoon, the Deponent was told, it was to convene the Volunteers as above; and that they met accordingly: and as the Deponent went from Church, he

saw some of them in the *Lawn-market*, and some of them that had marched down to the *Grafs-market*. And being interrogate for the Pannel, What Answer Provost *Drummond* made to the Appeal that the Pannel made to him in Goldsmiths-Hall? depones, He does not remember he heard any Answer made. And further depones, That the New Church Isle was pretty full at the above Meeting, though the Deponent has seen it more crowded: That they were all Men, and no Women; but the Deponent cannot give any Judgment what Number they might have been.

VII. *Mr. John Glen*, Minister of the Gospel at *Edinburgh*, depones, That the Representation of the Ministers of *Edinburgh* to the Lord Provost and Magistrates, marked No. 4. in the List of Writings produced against the Pannel, now shewn to him, was signed by him; and that he saw others, whose Names stand there, also sign the same: Believes, that all of them did so whose Subscriptions appear; but cannot be positive; but says, that whether this Representation was given in to the Provost and Magistrates, does not consist with his proper Knowledge; but that he advanced Money in consequence of his Subscription, as the same was demanded. Depones, That he was present at a Meeting of the Inhabitants in the New Church Isle, in the Afternoon of Monday the 16th September 1745: That the Pannel was then in the Chair: That the Deponent staid but a very little Time there. And being interrogate, Of what sort of Persons he judged the Meeting was composed? saith, That the Bulk of them appeared to him not of the best affected in the Place; and that the Reasons of this his Opinion were, That he saw several of them who, he was informed, had concurred in a Petition to deliver up the Town to the Rebels; and several others who had not contributed Money towards defending the Town, as the other zealously well-affected Subjects had done. That as the Deponent staid but a very little Time there, he cannot pretend to give any particular Account of the Transactions in that Meeting: Only, the Pannel, while he was there, from the Chair, told the Assembly, That he had called them together, to take their Opinion what was proper to be done in the present Situation of Affairs: But that the Deponent left the Meeting before any Resolution was come to, by those who were there assembled. That the Deponent observed very few of the Volunteers at that Meeting: That several of them were then in the *Lawn-market*, the Deponent having come down that way to the Church; and others of them at the *Netherbow* Port, whom the Deponent saw there when he went out at the Port, in order to go to the Country. Depones, That he was informed by the Officers of the Volunteers, or by his Fellow-Volunteers, he himself being one, that the Signal for them to meet at their Alarm-post in the *Lawn-market*, was, the tolling of the Fire-bell. And being interrogate for the Pannel, What the Reason was why he who was a Volunteer left his Corps, and went away, in time of Danger? saith, That he had waited so long upon the Street among the Volunteers, without any Orders or Directions, not knowing what was to be done, that he begun to believe the Town was to be delivered up, and the Volunteers, with their Arms, put into the hands of the Rebels; and therefore, though perhaps it was not very agreeable to military Discipline, he thought it the safest and best for him, to retire. And also saith, That when he came to a Resolution to go away, he applied to one of the Officers of the Volunteers, to have Leave to put his Gun into the hands of a Castle-soldier who was there attending, and had been with him frequently before, in order to teach him somewhat of the military Discipline: which the Officer agreed to; and the Gun was accordingly put into the Soldier's Hands, with Sixpence for his Trouble in carrying it to the Castle.

VIII. *James Stewart*, Merchant, and one of the Bailies of *Edinburgh*, depones, That there was a Proposition, in the End of August, or Beginning of September 1745, for raising a Regiment of a thousand Men, by Subscription, for Defence of the City against the Rebels; but that the Deponent can say nothing from his proper Knowledge, by whom such Proposal was made to the Pannel, or how it was received by him; nor having been present; nor does he know of any Objections made by the Pannel against it, otherwise than by Hearsay from others. And further saith, That upon the 5th September 1745, which was a Day of publick Fasting in the City of *Edinburgh*, the Deponent, reflecting upon the present Danger that threatened the City and the Kingdom, began to think, that proper Measures were neglected, which ought to have been taken: And therefore he applied himself to set down in Writing what occurred to him as proper to be done on the Occasion. And the Result of this was, a Memorandum he wrote, and carried with him to a Meeting of a great many of the Inhabitants, who commonly used to assemble themselves in an Evening, to talk together of the present Posture of Affairs, and to consider what was proper to be offered for the Defence of the City, and for opposing the Progress of the Rebels. That, upon reading and considering the foresaid Memorandum, they came to a Resolution, to form a Petition and Address to the Lord Provost and Magistrates, That some of the Burghesses and Inhabitants of the City, who offered to serve as Volunteers, in Defence of the City, against the Rebels, might be properly disposed of, and commanded by Officers to be appointed. And, for this end, a Committee was appointed to draw up such a Petition, and Address; who accordingly did meet, and form the Petition and Address now shewn to the Deponent, marked No. 5. in the List of Writings produced for proving the Libel; which Petition and Address were wrote that Night, and signed by the Deponent, and several others, and next Day by more Persons; when a Deputation from the Meeting was sent with the said Petition to the Pannel, then Lord Provost of *Edinburgh*. That the Gentlemen who went to carry the Address to the Pannel, returned again to the Company, where the Deponent remained; and the Pannel came along with them; who, when he entered into the Company, seemed to be out of Humour, and complained that any such Paper should have been concerted and drawn up without acquainting him; and addressed himself particularly to the Deponent, telling him, He was greatly surprised, that he should have had any Concern in it, without giving him any Notice of it. That the Deponent answered, It was late upon the 5th of the Month before the Paper was concerted and drawn up, or signed by any body: That next Morning he was employed in getting Subscriptions to it, that it might be presented to the Pannel with greater Weight. To which the Pannel replied, That the Matter of this Address was what he was to consider, and not the Number of Persons who

subscribed

subscribed it; and that, in his Judgment, it was treasonable; and that he himself had taken the Oath of Abjuration, which obliged him to oppose every thing that was treasonable. And further added, with a Sneeze, That he knew of nothing to be Treason, but what the Law had made so. Upon which, some of the Company and the Pannel had some pretty high Words, arguing about the Nature of the Paper, and whether it was treasonable or not. Thereupon the Deponent said, He was afraid it would require some Time and Pains to convince the Pannel of the Reasonableness of it; but that he now had a Paper put into his Hands, signed by a Number of Gentlemen of Character; and that the Deponent hoped, that he would not reject it, without taking Advice; which if he did, and considered it thoroughly, the Deponent hoped he would alter his Opinion. That the Deponent, upon this, left the Company, and went to Mr. Solicitor Dundas's House; where he found Bailie Gavin Hamilton, and some other Persons, with Mr. Dundas; to whom he related what had passed in the Company, and what he has above said; and added, That he was persuaded Provost Stewart would not venture to reject the Proposition made to him, without calling for the Advice of the Crown-Lawyers; and therefore he, the Deponent, hoped Mr. Solicitor would be ready to give the proper Answer, if the Question was laid before him. Mr. Solicitor Dundas then said, He should early in the Morning wait on Mr. Craigie, then Lord Advocate, and concert with him what was fit to be done. Depones, That, at this Time, in Mr. Dundas's, it was concerted between the Solicitor, Bailie Gavin Hamilton, and the Deponent, that in case the Provost should reject the Petition, that Bailie Gavin Hamilton, being next Magistrate, should call the Council together, and lay the Matter before them, and endeavour to get the Advice of the Crown-Lawyers. Depones, That, upon Saturday the 7th of September, the Gentlemen who usually met together to consider what they could do for the Defence of the Place, thought it fit to publish a Paragraph or an Advertisement in the *Edinburgh News-papers*, in order to encourage People to associate themselves for the Defence of the Place. And such a Paragraph having been drawn up, narrating, that an Address having been made to the Magistrates, they had taken the Opinion of the Crown-Lawyers, who approved of it; and that it had likewise met with the Lord Provost's hearty Approbation and Concurrence, or Words to that Purpose; the Paragraph was sent by two of their Number, Provost Drummond, as the Deponent thinks, and the Deponent himself. Upon shewing it to the Pannel, he caused dash out that Part of it relating to his hearty Approbation and Concurrence; and insert in place of it, *which he heartily acquiesced in*. That the Deponent, and the Person who went along with him, represented, That the Reason of their using the Words which were altered by the Pannel, was, to encourage People to enter into the Association. However, the Pannel still continued of the Opinion he had expressed. Depones, That, about the Middle of the Week which preceded the Rebels Entry to the City of *Edinburgh*, at a Meeting of the Inhabitants, who usually came together in the Evening to consider of what was proper to be done for the Defence of the City, the deceased Mr. Maclaurin and the Deponent were present; when it was suggested, that several Things were left undone that ought to be taken care of for the publick Safety; and that it was proper these Matters should be laid before the Lord Provost. And it was proposed, the Deponent should go from the Meeting, and, in their Name, lay them before the Lord Provost. That the Deponent said he was willing to follow their Directions in that Matter, but did not care to trust to his Memory; and therefore called for Paper, Pen, and Ink, and took down in Writing such Particulars as Mr. Colin Maclaurin dictated to him. And, when that was done, as the Deponent thinks, Mr. Mark Sandilands went along with him to find out the Provost, who was then in a Tavern; and, as the Deponent thinks, in Walker's House. That they went to another Room in the House, where the Provost came to them; and they communicated to him what was contained in their Paper. Among other Things, that the Meeting they came from thought, it was proper there should be a general Search in the Town for Arms, lest there might be some concealed for the Use of the Rebels; as also, that the Lord Provost should concert with the Lord Advocate, or any proper Person, that a Search should be made in the Places adjacent to the Town, which were not within the Royalty. That to this the Pannel answered, That *Edinburgh*, and the adjacent Parts, could with very great Difficulty be searched so narrowly, as that concealed Arms should be discovered; and that he did not see any good Purpose it could serve to make a Search; or Words to that Purpose. But, if they insisted upon it, Orders should be directed for such a Search. Depones, That the last of the Particulars taken down in the Paper was, a Demand that the Pannel by himself, or others of proper Authority, should procure fifty, forty, or at least thirty Sailors, out of his Majesty's Ships, who were most expert in managing of Cannon, in order to be assisting in the Defence of the City, by taking the Direction of the Artillery that were placed upon the Walls, or in the Town. Upon reading of which, the Pannel fell into some Heat of Temper, and said, 'By God, Sir, while I am Provost of *Edinburgh*, Sailors shall not be admitted.' And the Deponent having represented to him, That there were none in Town that knew how to manage Cannon; and that Application had been made at the Castle, but no Gunners could be spared from thence; and asked, What he would substitute in their Place? he made no Answer, but the former repeated, That, by God, while he was Provost of *Edinburgh*, no Sailor should be admitted. And the Deponent being greatly surpris'd, as some time before, when he the Deponent had been insisting with him that Cannon should be provided for the Defence of the Place; he objected against it, and said, He could not see they could be of any Use, as we had Nobody that knew how to manage them: The Deponent therefore, raising his Voice, demanded to know the Reason of such an extraordinary Piece of Conduct. To which the Pannel replied, with some Heat, 'My Reason, Sir, is plain. If they should be admitted here, it would be, *Damn your Blood, Jack; fire away, and be damn'd*; and so they would fire upon, and murder the Inhabitants: And it is my Duty to protect the Lives of the Inhabitants, as well as to defend the Town against the Rebels; or Words to that Purpose. Whereupon the Deponent left him.

IX. James Grant, Merchant, and present Town-Treasurer of *Edinburgh*, depones, That, in the Afternoon of Monday the 16th of September 1745, which was the Day that immediately preceded that upon which

the Rebels entered the City, the Deponent was in the Goldsmiths-Hall, where the Pannel, and a good many other People, were met together, and heard two or three of those who were present, whom the Pannel publicly desired might give their Opinion, whether it was proper to defend the Town, or not, and who declined to explain themselves upon that Matter, observe to him, that if the Town was to be delivered up, proper Measures ought to be taken for preserving the Arms from falling into the Hands of the Rebels. And being interrogate for the Pannel, whether it related to the Government's Arms, or to the Arms of the City? depones, He does not remember any Distinction was made; or further, than that the Arms in general were mentioned. And further says, That this Observation was made by Major Thomas Cochran and Captain James Murray, and, as the Deponent thinks, by Dean of Guild *Harbison*. And depones, That he does not remember, whether any thing was said further upon that Subject. Depones, That when several of the Persons present had declined to give their Opinion as to defending the Town, the Provost declared, That it was his Opinion it ought to be defended; and that they might hope for better Terms, in case the Town were at last to be surrendered, with Arms in their Hands. That, betwixt Three and Four in the Afternoon, while the Deponent was at this Meeting, Mr. Graft came in, sent, as the Deponent believes, from the Lord Justice-Clerk, or some other Person; and made an Offer to the Pannel of a hundred Dragoons, to assist in defending the City, if he would send an Order for their entering the same. To which the Pannel answered, He would sign no Order; but if they came in, they should be made very welcome. And depones, That he left the Meeting, and went home. And being interrogate, Why he left the Meeting, when they were deliberating concerning the Defence of the Town? saith, That he went away in the Belief that the Town was to be surrendered; induced to think so from the Dragoons marching Eastward; and that he perceived the Well-affected in the Town had a Jealousy of the Provost: And the Deponent likewise perceived, that the Removal of the Dragoons had made People's Spirits sink. Depones, That, some few Days before the Rebels entered the Town, the Pannel spoke to the Deponent in the Parliament-cloze, and told him, That, as the Volunteers had made the Proposal of bearing the Charges of repairing the City-walls, he thought it was proper the Money should be immediately advanced, because he doubted, if that was not done, it would in the end fall upon the Town. To which the Deponent answered, That it could not be expected they could advance the Money at that time. Further says, That Mr. Alexander Webster joined them at this Conversation; and the Pannel made the same Proposition to Mr. Webster that he had made to the Deponent; who made the same Return as the Deponent had done. And being interrogate for the Pannel, Whether this Conversation related to the Reparation of the Walls, as to which Orders had been given by the Council to repair the same, and the Reparation was going on; or as to some additional Fortification, which had been proposed by the Volunteers? depones, That he knows Orders had been given by the Council for repairing the Walls before that Conversation happened; but that this Conversation related to the Expence of the Work: But whether it was the Expence of the Reparation of the Walls, or of some new projected Piece of Fortification, the Deponent cannot be positive.

X. Mr. Joseph Williamson, Advocate, one of the principal Clerks of the City of *Edinburgh*, depones, That he was present at a Meeting of several of the Burgeses of the City of *Edinburgh*, upon the 5th September 1745; when it was agreed, that a Petition should be presented to the Lord Provost, for Leave to such of the Citizens as should please to associate themselves as Volunteers for the Defence of the City. That accordingly such a Petition was framed; and the Deponent assisted in framing it. And the Paper marked Number 5, in the List of Writings subjoined to the Libel, being shewn to him, depones, It is the same framed as above; which was signed by all the Company present that Night. That he did not see this Application offered to the Pannel the next Day; but had Occasion to converse with him on the Subject of it in the Evening of that Day; when he told the Deponent, that he looked upon the Paper as treasonable; and asked his Opinion thereon. To which he answered, He did not think it treasonable, to take up Arms in Defence of the King and the Country, though without Warrant, there being a subsisting Rebellion in the Country. Depones, That, after the Petition was approved of, he was present at making a Draught of an Advertisement to be inserted in the News-papers; in which there were Words to this Purpose: That the Pannel heartily agreed or concurred with the Desire of the said Petition. That two of the Company, when the Draught was made, were sent to wait upon the Pannel with it. That they went; and, when they returned, reported the Draught with an Amendment made by the Pannel's Order, by dashing out the Words, *heartily agree or concur*; and putting in place thereof, *acquiesced in*: And that he heard the said Report, and saw the said Amendment. Depones, That he was present at a Meeting in the New Church Isle, upon the 9th September fore said; to which the Pannel came, and named the six Captains; and, as the Deponent remembers, expressed his Satisfaction with the Zeal of the Petitioners; but in what Terms, he does not remember: Nor did he himself observe any contrary or disrespectful Behaviour of the Pannel's on that Occasion, tho' he heard others talk differently of it. Depones, That, upon Wednesday the 11th September fore said, the Deponent went round the City-wall, from the *Bristow* Port to the *West* Port; upon which he saw but four or five Men working. That, on Friday thereafter, the 13th, he was desired by several of his Brethren Volunteers, to remonstrate to the Provost and Council, that the Reparation of the City-walls was carried on slowly; and to lay before them some Proposals that were thought necessary for that Purpose: Some of which the Council agreed to, and some were disagreed to: But that he remembers only one Article disagreed to, relating to a House at the *Potter-row* Port, which was proposed to be taken down, or so built up as not to infest the Walls at that Port. That the Deponent and the Pannel had some warm Words with respect to the Works going on slowly: And he proposed to the Pannel, that Bailie Hamilton should be authorised to oversee these Works; but the Pannel replied, That that Trust was already committed to Bailie Robert Baillie. Depones, That he was not present when the Proposal for putting Arms only in the Hands of such of the Trained-bands as were well-affected

affected to the Government, was first made. But some time after, he heard the same Proposal renewed to the Pannel; and his Answer was, He could not think of distinguishing or discriminating one Part of the Trained-Bands from another. That upon Wednesday the 11th of September, he and, he thinks, Bailie Wilson carried a Proposal to the Pannel, to search for Arms within and in the Neighbourhood of the City; and he believed a former Message had been carried to the Pannel for that Effect. That the Pannel answered, He was willing a Search should be made in the Neighbourhood; but he could not agree to make it within the City, because it would create a great deal of Confusion, as he said. Depones, That he was not at the general Meeting held in the New-Church Isle, upon the Afternoon of the 16th of September; because, just before it, the Fire-Bell was rung, which was the Signal to the Volunteers to repair to their several Posts; and which he accordingly did: And that neither before his repairing thither, nor while he staid there, was there any Orders sent by the Pannel, to the Volunteers how to dispose of themselves, so far as he knows: And that Provost Drummond, then a Captain of one of the Companies of Volunteers, having represented to the other Officers, that no Orders had come how they were to dispose of themselves, suggested, that he thought it was proper, since they got their Arms from the Government, and it seemed were not to use them, or were not at Liberty to use them, or Words to that Purpose, that therefore it would be proper for them to return them to the Castle. Upon which they immediately marched up to the Castle, and delivered up their Arms. And being interrogate, how long he thinks they might have been at the Alarm-post, before they marched up and delivered the Arms; and how the Volunteers came to take upon them, without Orders from the Pannel, their Colonel, or without knowing that they were to receive no Order, to deliver them up? depones, That he cannot precisely tell how long the Volunteers were upon the Alarm-post; but that he went to Captain (Provost) Macaulay's House, whose Lieutenant he was, desiring him to go to the College-Yards to their Company; that after going there, and finding the Company was gone, they returned to the Lawn-Market; but by the Way, the Deponent stepped into the Goldsmiths-Hall, where he staid hardly so much as a Quarter of an Hour: That, when he came to the Lawn-Market, the Company was there: And that there were two Chefts of Arms in the College-Yards, and the Carts, Carters and Horses, which had brought them, standing by, without so much as a Centry; which Mr. Macaulay and he insisted they should carry back again; but which the Carters refused at first to do: And an Officer, who came from the Castle, also declined to have it done; because his Orders were to leave them there: And what betwixt persuading the Officer to allow them to be carried back, and threatening the Carters to yoke their Horses to carry them, which at length was complied with, a good deal of Time was spent: And when the Arms were delivered into the Castle, it began to be duskish. And to the latter Part of the above Interrogatory, depones, That about the Time that, without Command, the Volunteers delivered up their Arms, it was whispered by severals among them, though he himself did not say so, that they were betrayed; and they would be cut in Pieces, without doing any good Service: But the publick Reason given as above was, That they had got no Orders, and had no Reason to expect any. Depones, That one Part of the Proposals made by the Deponent to the Pannel, was in relation to bringing in long Ladders in the Suburbs of the Town; to which the Pannel agreed, and said, He would issue Orders accordingly. He does not know if such Orders were given or not; but he, upon Application to the Bailie of Potter-row, and by his Warrant, seized, and brought into the Town, several long Ladders, about fourteen or sixteen, from the Potter-row, and thereabouts, upon the 16th September.

XI. Sir Robert Dickson, of Carberry, Baronet, depones, That in the Evening of Sunday the 15th September 1745, he came to the City of Edinburgh upon the Head of one hundred and fifty Volunteers from Inveresk, Musselburgh, and the Neighbourhood, according to the Report of Daniel Matthison, an old Serjeant, who had drawn them up to number them. That he acquainted the Pannel that Night about Ten o'Clock, that he had marched these Volunteers to assist in Defence of the City, under his Command, against the Rebels; and desired that the Pannel might furnish him and them with Arms for that Purpose. That the Deponent met with a so and so Reception; that is, not such as he expected: For that he did not thank him for bringing in the Men, but carried him into a Room in Mrs. Clarke's House, where there were several of his Acquaintances. That the Pannel said, It was too late to give out Arms to them that Night, but that they should have them next Morning. That the Pannel ordered a Refreshment for the Men; and they were quartered in the New-Church Isle. That no Arms were delivered to them next Morning. That the Deponent applied to the Pannel on the Monday Morning for Arms; and he answered, They should have them by Nine o'Clock: But they were not then delivered; and the Men staid in the Town till about Mid-day, Monday; and he believes went then home. But that an Hour after the Deponent had been with the Pannel that Morning, he desired Bailie Lindsay of Musselburgh to go to the Pannel, and inquire for the Arms; for he the Deponent would not go near him again. That when the Deponent talked with the Pannel that Morning, he the Pannel proposed to the Deponent, that his Men he had brought to Town should insist in the Edinburgh Regiment.

XII. Gavin Hamilton, Bookseller, and late one of the Bailies of Edinburgh, depones, That he was desired by some of the Meeting which had formed and presented the Petition to the Pannel and Council of Edinburgh, in relation to the Association of Volunteers, to meet with them, to talk on that Subject, on the Evening of the 6th of September 1745. That the Pannel declined going, upon account of his being tired going round the Walls of the City, with this Deponent, the deceased Mr. Colin MacLaurin, and several others. And the Deponent replied, That the Gentlemen of that Meeting positively expected him there. To which the Pannel made no Reply; but he understood the Pannel went to the Meeting, though he the Deponent was not there. Depones, That after the Council of Edinburgh had ordered the City-Walls to be repaired in September 1745, this Deponent upon the 6th of September, walked round the whole of them with the Pannel. That on the 7th of September, he again went to visit the said Work; and found but nine Men working at that Work, although he

expected to have seen two or three hundred; and that meeting with Deacon Mack, who had the Charge of the Workmen, he asked the Deacon, How it came there were so few People employed in the said Reparation? And he thinks the Deacon answered him, That the Pannel had told him, that unless he had a more special Warrant for his Work, he might get it for his Payment. That that very Day, this being complained of in Council, that the Work was carried on very slowly, the Deacon obtained a more special Warrant for making Reparations of the Walls, and obtained Prels-Warrants against Workmen. That the next Day, being the 8th of September, he again made the Round of the Walls, and found only fourteen Men at Work. That several Complaints were made of the Slowness of the Work to the Deponent, and several others of the Council: But the Deponent knows not whether any such Complaints were made to the Pannel. Depones, That when the Reparation of the Walls was first proposed, the Pannel objected to it, on account of the Expence, and the Lowness of the Town's Funds: But the Deponent recovered, from Bailie Hope, he thinks, the Account of the like Expence which was incurred in the Year 1715, amounting to but about two hundred Pound, or three hundred Pound. That this Objection was dropped, and the Work begun. That he knows nothing of the Proposal that was made to the Pannel, for getting Sailors expert in Gunnery to serve the City-Cannon; but some time after he heard of that Proposal, he saw upon the Council-Table a Letter lying from the Commander of the *Urfula*, one of his Majesty's Ships, addressed to the Pannel, acquainting him, that he had no Gunners to spare for the Service of the City: And the Deponent supposes that this was an Answer to a Letter wrote by the Pannel demanding Gunners. Depones, That he himself made a Proposal to the Pannel, for laying aside the Trained-Bands from the Service of the City, because he believed there were too many disaffected to the Government amongst them. That the Pannel rejected it; and said, he would stand for the Honour of the Trained-Bands. Depones, That some Volunteers came from the Neighbourhood of Musselburgh, Dalkeith, and other adjacent Places, on the 15th of September; and that the Deponent had Occasion to meet with Dr. Tait, just as he parted with the Pannel: That the Doctor complained, that the Pannel had used him roughly, and was in a Passion at him, for no other Reason, as he said, but for bringing in his Men. Depones, That at a Council-Meeting upon the 16th September 1745, in the Goldsmiths-Hall, he saw a Petition signed by several of the Inhabitants of Edinburgh, and particularly by some of his own Acquaintances, (whom he chided for having signed it) desiring a general Meeting to be called, to consider what was proper to be done. That he does not know how the said Petition came in; nor does he remember whether it was read or not; nor can he say, that it was presented, or put in the Hands of the Pannel, though he saw it in his Hand. And the Paper, marked Number 8. in the List subjoined to the criminal Letters, being exhibited to the Deponent, depones, It is the same which he saw on the Table, in the Goldsmiths-Hall, and in the Pannel's Hand. That the Meeting in the Goldsmiths-Hall soon broke up, and another was immediately held in the New-Church Isle; at both which the Pannel presided. That in this last Meeting, there was a great deal of Confusion; the Petition was again talked of; but he does not remember it was read: And it was under the Consideration of that Meeting, whether the Town should be defended, or delivered up to the Rebels? and the far greater Number of the Meeting were for the latter. It was also under Consideration, if some Dragoons should be brought into the Town for the Defence of the City, in consequence of Offers to that Purpose, severally made by Mr. Grosset, and Mr. Lindsay, Secretary at War; but the Cry of the Generality was, *No Dragoons, No Dragoons*: and he heard the Pannel repeat these Words, *No Dragoons*; but whether as his own Opinion, or as the Sense of the Meeting, he cannot say: But the Meeting rested in that Opinion. That in the same Meeting, the Deponent proposed, that the Arms of the City should be secured in the Castle, since the Meeting had resolved not to defend it; and the same Proposal also comprehended the King's Arms then in it: Which Proposal the Pannel repeated to the Meeting, as coming from the Deponent; and was agreed to. But afterwards it being moved, and insisted on, that if the Arms were delivered into the Castle, they could expect no Capitulation or Terms, the Resolution of delivering them into the Castle was altered. After which, such of the Members of the Council as were in the Meeting, went to the Goldsmiths-Hall; where, and in the Council-Chamber, they remained all Night. Depones, That at the Meeting in the Goldsmiths-Hall, before that in the New-Church Isle, and at the said Meeting in the New-Church Isle, there was an Offer of Dragoons made to the Pannel twice, once by Mr. Grosset, and another Time by Mr. Lindsay, Secretary at War; to one of which (he thinks it was to Mr. Lindsay, in the New-Church Isle, who pressed the Offer much upon the Pannel) he answered, If the commanding Officer would send in Dragoons, he might do it; but he, the Pannel, would give no Orders for that Purpose. The other Offer by Mr. Grosset, which he also pressed much, and which the Deponent thinks was the first, being made in the Goldsmiths-Hall, the Pannel refused to accept of. Depones, That at the Meeting in the New-Church Isle, there was a Letter from the Pretender's Son brought in, in what Manner he knows not, further than it was said to be handed in from the Door: And the first Time he saw it, was in the Hands of Deacon Orruck; who broke it open, and looked at the Subscription, and was going to read it; but a Cry being made against reading it, the Members of the Council insisted it should not be read; and the Pannel forbade it to be read. And it was not read at that Time; but it was read in the Goldsmiths-Hall, to which, as said is, the Pannel and the Council retired. That, upon reading this Letter, it was proposed what kind of Answer should be made to it: And it was moved, That the Advice of the Assessors should be taken upon it. That they were accordingly sent for; but none of them were in Town, except Mr. Patrick Haldane; who came down to them a little, but declined to give any Advice. And, in Explication of what he has already said, depones, That the Motion for sending for the Assessors, arose upon a Proposal which had been made, That the City should capitulate or surrender upon Terms; and that the Pannel having asked at several of the Council, if they would go and capitulate, which they declined to do, it was then, or about that Time, that the Motion for taking the Advice of the Assessors was made. That Mr. Haldane

Haldane was sent for, and came; and then one of these two Things was proposed to Mr. Haldane to give his Advice upon, either what was proper to be done in the present Juncture in general, or what should be done in relation to answering the said Letter, he does not remember which; to which he thinks Mr. Haldane said, *These things are too difficult for me to give any Opinion of*; and thereupon rose from his Seat, and walked off; but does not remember if the Letter was read or shewn to Mr. Haldane. That afterwards the Pannel changed the Terms of his Proposals; and suggested, that it might be proper to send out some of their Number, to gain Time: And a Committee of the Council of four, was appointed to go, whereof the Deponent was one; and their Instructions were, to call only for such of the Gentlemen in the Rebel Army as they were acquainted with; and to propose to them, if they would send some of their Number into the City, to tell what they proposed to have done; and to assure, upon the Part of the Pannel, such as should be sent in, that they should be allowed to return safely. That the said Deputation accordingly went out; and the Paper, marked No 2. signed and sealed by John Murray, the Pretender's Son's Secretary, now exhibit and shewn to the Deponent, was given to him, as the Answer to the first Deputation; which he refers to as Part of his Deposition. That the Deponent having given in this Paper, as the Report of the said Deputation, it was objected to it, That it could not be agreed to by the Council; and John Coultis, then one of the Councillors, and late Provost of the City, said, That it was impossible to agree to it; and that they must send back again another Deputation, to see and get better Terms. Depones, That, when he returned, he was told by some Members of the Council, That Sir John Cope, with the Fleet in which the Troops under his Command were, were arrived at Dunbar. That then it was proposed, that a fresh Deputation might be sent to obtain better Terms; which was agreed to. The Deponent was proposed to be one of the Deputies; but refused it, and very soon thereafter left the Council: But he understood, that a Deputation of four did go, and was told so by one of the Deputies; and saw the Paper marked No 3. mentioned in the List of Writings; which was the Result of that second Deputation. Depones, That of the City-arms there were between thirteen and fourteen hundred Firelocks and Bayonets; about a hundred of which Number were in bad Condition. Depones, That, after the Pannel, and the Deponent, with the other Members of Council, retired out of the New Church Isle, to Goldsmiths-Hall, or Laigh Council-House, he was deputed by the Pannel, and the other Councillors, to wait of the Lord Justice-Clerk, that he might give his Advice, either to the Council, or to as many of them as should wait upon him, what it was proper for them, at that Juncture, to do; and others at the same time were appointed to carry the same Message to the Lord Advocate and Solicitor for the Time. The Deponent went, in obedience to this Order; but, before he had gone a little Way from the Goldsmiths-Hall, he received certain Information, that the Lord Justice-Clerk had left the City; which he reported to the Pannel, and the Council, in the Goldsmiths-Hall. And depones, That the same Answer with respect to the then Lord Advocate and Solicitor, was returned in the Deponent's Hearing. That they had left the Town.

XIII. John Wilson, Merchant, and late one of the Bailies of Edinburgh, depones, That, upon a Saturday towards the End of August, the Deponent was pressed by several of the Burghers to go to the Provost, and complain, that nothing was a-doing for the Defence of the City, notwithstanding that it was then certain that the Pretender's Son was landed in the North, and on his March Southwards. That the Deponent accordingly went the same Day; and for the above Reasons, proposed, that the Provost should forthwith call a Meeting of the old and substantial Burghesses of the Town. That the Provost at first received the Proposal with a little Laugh; but, after Reflection, agreed to it. That the Deponent proposed that the Meeting should be called that same Night; but the Pannel said, the Burghers would be gone to their Diversions, and would not be got together. To which the Deponent answered, That no Time was to be lost; and, if the Meeting was not called that Night, it should be early Monday Morning. That the Deponent, at the same time, told the Pannel, that, during the Rebellion in the Year 1715, the Town of Glasgow had raised a Regiment of 600 Men, and he was sure that the City of Edinburgh could raise 1000; but the Pannel seemed to laugh at the Proposal, believing that Money could not be got to pay them; and said to the Deponent, You remember, John, that upon a certain Occasion, we could not raise a small Sum for a particular Purpose; and how do you imagine we should be able to maintain 1000 Men? He added further, That they could not raise such a Body of Men, without being guilty of Treason, unless they had the King's Sign-manual. To which the Deponent answered, That he knew that very well; but, if that were applied for, it might be got. Depones, That the Meeting of the Inhabitants was not called till the Tuesday; and then it was held in one of the Church Isles, where two or three hundred Burghesses were present, and the same Proposal was again made of raising a Regiment of 1000 Men; and several other Proposals were made for putting the City into a Posture of Defence. That the Pannel did not seem to oppose any of these Proposals. That it was agreed by the Meeting, to apply to the Crown-Lawyers to procure his Majesty's Sign-manual for raising the Regiment; and also, to take their Opinion concerning certain Volunteers who offered their Service. Depones, That, in that Meeting, the Pannel, who presided in it, directing his Discourse to the Deponent, said, in a jocular Way, John, this is your Meeting. To which the Deponent answered, My Lord, I am not ashamed of it. Depones, That, after the said Meeting, a Petition was drawn up, to be signed by such of the Inhabitants as were so disposed; praying the Magistrates and Council's Allowance to associate themselves as Volunteers in Defence of the City; and several different Copies of the same Petition were left in the New Church Isle to be signed, from time to time, by such of the Inhabitants as inclined: And the Petition in the Clerk's Hands, now shewn to the Deponent, being the 5th in the List of Writings subjoined to the Criminal Letters, is the Petition that was signed by this Deponent. That, when they had got about two hundred Subscriptions, a Committee of four or five of them were sent to the Pannel, to desire he would be pleased to name their Officers: That the Deponent and Bailie Nimmo were two of those who were sent: That they thought the Pannel was very dilatory in naming their Officers.

That the Deponent himself applied two or three different Times to him for that Purpose; and several Days intervened betwixt the first Application, and his naming any of them; and, at last, he named the Captains, and allowed them to name their Subalterns: But it was then but about ten Days before the Rebels got Possession of the Town. And, being interrogate for the Pannel, depones, That they had several Meetings in the New Church Isle with the Pannel; and he doubts not but the Pannel may have named the Captains on Saturday the 7th of September, though the Deponent cannot be certain of the Day of the Week or Month; but is sure, that a List had been given to the Pannel, out of which he might name these Captains, five or six Days before he named them. And, being further interrogate for the Pannel, depones, That it was understood, that the Field-Officers were to be named, not from among the Volunteers themselves, but proper Persons to be found who were more skilled in military Affairs. Depones, That there were many Complaints, that the Reparation of the Town-Walls went on very slowly; and particularly remembers, that that Part of the Wall which seemed most dangerous, to wit, at the College Kirk, and from the New Port to Leith Wynd, was not repaired or barricaded till Monday the 16th of September, the very Day before the Rebels entered the Town: And the Deponent, on that Monday, went to the Council himself, and complained, and got proper Warrants to press Workmen; one whereof was signed by Bailie Robert Baillie, and another of the Volunteers got a Warrant, signed by Bailie Mansfield. That Bailie Robert Baillie was the Second Bailie that Year; and the Second Bailie is called *The Bailie of the Publick Works*; because, by his Office, he has the Over-sight of these Works; That the Deponent had several Times complained to the Pannel, and others of the Magistrates, that these Works went on very slowly: And particularly remembers, that he once complained to the Pannel himself on that Account; and the Pannel answered, That he had given Orders to Bailie Baillie about the Works, and Power to press Workmen. But depones, That, about that Time, the Election of the Deacons was going on, which happened upon a Saturday; and then the Work went much slower on than at other times; and the Trades-people were so taken up about their Elections, that the Deponent believes it was hardly in the Power of the Pannel or Magistrates to get the Tradesmen to work. And being further interrogate for the Pannel, Whether that Part of the Wall above deponed upon, at the College Kirk, and from the New Port to Leith Wynd, was not so far repaired before the 16th of September, that the Breaches were made up, and the Parapet built, so that nothing was wanting, but the barricading the Ports? depones, That it was another Person, and not the Deponent, who was employed to see that Part of the Repairs made on the 16th; and therefore the Deponent cannot with Certainty answer the Question: But knows, that these Ports had not been barricaded as some of the other Ports of the Town had been (which was all the Deponent meant in the former Part of his Oath on this Article); and knows that a great many Hands were got, and a great deal of Work done that Day; and the Tradesmen themselves said, That they had done more that Day than for some Days before. Depones, That the Deponent was present at a Meeting that several of the Burghers in Town had with the Pannel in the House of Mr. Wilson, Taverner in Edinburgh; and which Meeting was held in consequence of a Request made by some of these Burghers, that the Pannel should meet with them: And there were present at the Meeting a good Number, the Deponent cannot be positive how many; but there were, he thinks, twenty, or thirty, or forty of them: And that Meeting desired of the Pannel, that he would discriminate the Trained-Bands one from another, and put Arms only in the Hands of such as were known, by the old Burghers, to be well-affected to the Government: But the Pannel said, That that was too delicate a Point for him to meddle with. And being interrogate for the Pannel, depones, He knows nothing of that Proposal's being made to the Council. Depones, That he knows there came in several Volunteers from Musselburgh and Inveresk, along with Sir Robert Dickson; and another Body of Volunteers from Dalkeith, under the Command of Mr. Lewis Douglas Advocate, and Dr. Tait. That the Deponent knows nothing of their Reception by the Pannel, further than that the Body that came from Dalkeith, on Saturday the 14th, were lodged in the High School, and ordered to keep Guard at the High School Yards; but were not joined to any other Body of Troops till Monday at Two o'clock Afternoon, that the Deponent went to the Pannel's House, and proposed that they should be joined to some other Company: And the Pannel desired him to join them to any Corps that he thought proper; and the Deponent accordingly joined them to that Company of Volunteers where he himself served, and which was commanded by Sir George Preston. Depones, That, in the Afternoon of Monday the 16th of September, as the Deponent was keeping Guard at the Netherbow Port, he was informed, that there was to be a Meeting of the Inhabitants in the New Church Isle; and it was reported that the Town was to be delivered up: Upon which the Deponent asked Leave of his Captain, Sir George Preston, to go to see what was doing. That the Deponent came, and found the Pannel, and most of the Magistrates, with several of the Inhabitants, in Goldsmiths-Hall. That the Deponent said to the Pannel, What, are you a-going to give up the Town, when we have thirteen hundred Men in Arms, that are ready and willing to defend it to the utmost? To which it was answered, either by Mr. Lauder the Surgeon, or by Mr. Orrock, Your Champion Mr. Williamson has given up the Defence of the Town; and do you pretend to hold it out? The Deponent replied, That he would not believe that, unless he had it from Mr. Williamson's own Mouth; for none but a Coward, or a Jacobite, would give it up. Upon which Mr. Williamson appeared; and said, He was willing to hold it out to the utmost, if his Men would stand by him; but that he had not above ten or twelve Men that appeared where they should have been. And the Deponent says, Mr. Williamson was Lieutenant to a Company of Edinburgh Volunteers. That he knows not what the Number of that Company was; but that he believes it was fifty, sixty, or seventy Men. That the Deponent then asked the Pannel, What he was resolved to do? And he said, That he would take the Advice of his Brother-Burghesses. That, about this Time, Mr. Grosf came into the Meeting with a Message from some of the Crown-Lawyers, offering the Dragoons for the Defence of the City, if the Provost would order them: And the Pannel answered,

That he would give no Orders; but that, if they were sent in, he would receive them. Depones, That Mr. *Laurence Dundas*, being in the Meeting, insisted, that the Pannel, as Provost, should give the Orders for bringing them in: That the Pannel repeated his former Answer; and Mr. *Dundas*, or some one of the Meeting, said, That, if he refused, he behoved to answer for it, if the Town was given up. Depones, That the Deponent was ordered by the Pannel to his Post at the *Netherbow*; and that Instant, or in a very little Time, the Fire-bell rung; so that the Deponent was not present at the Meeting in the New Church Isle. Depones, That, upon the Deponent's Return to the *Netherbow*, he acquainted Sir *George Preston* of what had passed; who thereupon immediately left him, to go to the Meeting; and did not return for Half an Hour, or an Hour; during which Time the Deponent knew nothing of what was doing. That, upon Sir *George's* Return, he ordered the Deponent, and the rest of the Company, and another Company also upon Guard there, to march to the Alarm-post, which was in the *Lawn-market*. That, when they came to the Cross, they got Notice, that the other Companies of Volunteers had gone to the Castle, and delivered up their Arms; and, when they came to the Alarm-post, finding none of the Volunteers there, they also marched up to the Castle, and delivered up their Arms; and thinks it was then about Sun-setting. Depones, That the thirteen hundred armed Men that he mentioned to the Provost, as above deponed, were composed of the City-Guard, the *Edinburgh* Regiment, the *Edinburgh* Volunteers, the Seceders, the *Inveresk*, *Musselburgh*, and *Dalkeith* Volunteers. That the Deponent cannot, from his Memory, now specify the particular Number of each Corps: But he is sure, that, at that Time, he did count them, and they did amount to the foresaid Number; and were all well armed with Guns, Swords, and Bayonets. Depones, That, by counting, the Deponent means no more than adding the Numbers of the several Corps as reported by their Officers.

XIV. *Walter Grosset*, late Collector of the Customs at *Alloa*, now one of the General Inspectors of the Customs of *Scotland*, depones, That, upon Monday Afternoon the 16th of September 1745, as the Deponent was coming to Town in Company with Lord Justice-Clerk, they met several People coming full Speed out of Town; who informed them, that the Rebels were by that Time at the West Port. That thereupon Lord Justice-Clerk sent the Deponent with a Message to the Pannel, then Lord Provost of the City, while at the same Time the Lord Justice-Clerk himself rode to meet the Dragoons, who were then a Mile North-east of the City of *Edinburgh*: That the Message to the Pannel was, to know whether he was resolved to defend the City of *Edinburgh*; to press his defending it; and to assure him, if he was to defend it, he should have a hundred Dragoons, or as many as he pleased to desire; and to get the Pannel's Answer. That the Deponent, in his Way to the Town, met the then Lord Advocate, to whom he reported the Message he was sent with; who approved of it, and pressed him to haste to deliver it. That the Deponent found the Pannel in the Goldsmiths-Hall, with severals of the Magistrates and Council, and other Persons, it being then betwixt Three and Four Afternoon; and the Deponent delivered his Message to the Pannel in the above Terms, as from both the Lord Justice-Clerk and Lord Advocate. That the Pannel shifted to give a direct Answer to the Message: And, being pressed to it by severals of the Meeting, he at last made a Speech; in which he said, He would do nothing unworthy of the Station which he was in: He urged the Uncertainty of Sir *John Cope's* coming to their Relief, and the Danger of the Lives and Properties of the Inhabitants; and concluded, That he was against defending the Town; but said he would be advised by his Council. And being interrogate for the Pannel, What were the Expressions that imported his being against the Defence of the Town? depones, That he cannot remember the particular Words; but the whole Purport of his Speech tended that Way. Depones, That, as there were several Altercations betwixt the Deponent, as well as other Persons present, and the Pannel, the Deponent desired an Answer in Writing: Which the Pannel declined to give, saying, That the Deponent was very capable to return a verbal Answer. That the Deponent still insisted for an Answer in Writing; and the Pannel repeated the same Answer. Then the Deponent said, He could make nothing else of the Pannel's Answer, but that he refused to defend the Town, and admit the Dragoons. And, upon that, the Pannel agreed to give him a written Answer; and believes might have said, That the Deponent mistook him. That the Pannel accordingly gave the Deponent an Answer in Writing, directed to the Lord Advocate and Lord Justice-Clerk. And being shewn the Letter in the Clerk's Hands, produced in this Trial by Mr. *Craigie*, a preceding Witness, depones, That that Letter is the Answer he then got from the Pannel. Depones, That, upon receiving that open Letter, and reading it, he said to the Pannel, That he had already assured him from Lord Advocate and Lord Justice-Clerk, that it was their Opinion that he should defend the Town; and that he should have a hundred, or as many Dragoons as he should desire, to assist in the Defence of it; and that he must answer for the Consequence of that unnecessary Delay. Upon which the Pannel left the Meeting, and the Deponent came off with the written Answer. Depones, That, at the above Meeting, in answer to what the Pannel had said of the Uncertainty of Sir *John Cope's* coming in Time, the Deponent said, That as they had certain Advice, that Sir *John Cope* and the Troops were at *Aberdeen*, and were to embark for *Leith*, they had Reason every Hour to look for their Landing. Depones, That, at the same Meeting, some of the Company, and, the Deponent thinks, Capt. *James Murray*, said, That, if the Town was not to be defended, it was necessary that Care should be taken of the Arms in it, so as they should not fall into the Hands of the Rebels: And, as the Deponent understood it, that Speech was directed to the Pannel, as was every thing else spoke out in that Meeting, in which he presided; but the Pannel made no Answer to it. Depones, That the Deponent returned from that Meeting to the Lord Justice-Clerk's at *Brunstaine*, and shewed him the aforesaid written Answer. That the Lord Justice-Clerk sent him immediately with it to the Lord Advocate, and Brigadier *Fowkes*, then at *Musselburgh*. That the Deponent delivered the said written Answer to Lord Advocate. That by that Time Lord Advocate had got Advice by two Letters from *Dunbar*, of the Arrival of Sir *John Cope* with the Transports, and Troops under his Command, off that Place; and Lord Advoca-

cate insisted, that the Deponent should immediately return to *Edinburgh*, and shew the Pannel those Advices he had got; and at the same time wrote a Letter, certifying, that these Letters carried by the Deponent were the original Letters carrying the Account of Sir *John Cope's* Arrival. That the Deponent forthwith set out from *Musselburgh*, it beginning then to grow dark, and came with all the Speed he could make to *Edinburgh*, and found the Pannel, with his Council, in the Council-chamber, and put into his Hands the Lord Advocate's Letter, with the foresaid Letters of Advice. That the Pannel, upon reading them, said, They were come too late; for they had agreed to capitulate, and had sent some of their Number to treat about the Terms; and at the same time reached to the Deponent a Letter, which, upon opening it, the Deponent found to be signed, *Charles, P. R.* and is the same Letter mentioned in the first Article of the List of Writings subjoined to the criminal Letters; the same being now shewn to the Deponent. Depones, That the Deponent then proposed, that as probably the People sent out to the Rebel-Camp could not by that Time be got the Length of the Camp, a Messenger should be immediately sent to bring them back; which the Pannel agreed to; and it was done accordingly. That, about that Time, Provost *Drummond* came into the Council-house, and he and Provost *Macaulay* insisted, that they should then resume the Defence of the Town; that for that End, the Fire-bell should be rung, That being the Signal for convening the Inhabitants, or bringing them to their Posts. That the Pannel answered, That they must be tender of the Blood of their Fellow-Burghers: That, should they ring the Alarm-bell, the Rebels might hear it; and should those of their Number, who were sent out to treat with them, be arrived at the Camp, they might hang them, or use them ill; or Words to that Purpose. That some others in the Meeting said the same thing; particularly Dean of Guild *Hatburn*, as the Deponent thinks, but cannot be positive. Depones, That some of the Company, the Deponent thinks Provost *Drummond*, answered, That the City ought not to lay down their Arms till the Treaty was concluded; and the preparing for their Defence, was the best Way for obtaining good Terms: And, at the same time, proposed, that, if they did not incline to ring the Fire-bell, a Bank might be sent through the Town (by which the Deponent understood beating a Drum), or any other Method for bringing the Inhabitants together. To which the Pannel answered, That that was a Matter of too great Importance for him to take upon him by himself, for he would be determined by his Council. That Provost *Drummond* said to the Pannel, That he was the Person that must give the Orders, and must answer for them; and the Council had nothing to do in it. Depones, That the Council, at least severals of them whom he knew, were present in the Meeting, but none of them spoke. That then the Pannel was going to leave the Chair; but some of the Council insisted that he should keep it; which he did accordingly. Depones, That thereafter the Pannel, and some others of the Council, particularly, as the Deponent remembers, *Mark Sandilands*, urged, that the Town was not defensible. To which the Deponent answered, That he well knew the Situation of the Town, and likewise knew the Condition of those who were to come against it, who had no Cannon, and were very ill armed; and that he would undertake to be one of fifty to defend the weakest Part of the Town: And some of the Council joined the Deponent, particularly one Mr. *Currie*, who offered to make one of the fifty, and to find the rest of them within the Town. That thereupon the Pannel seemed to come to a Resolution to defend the Town, provided General *Guesl* would give them what Arms were necessary. That the Deponent offered to go to General *Guesl*; and that the Pannel might be satisfied, that he did not mistake or misrepresent his Message, desired that one of the Council, who the Pannel could confide in, might be sent alongst with him; and accordingly Provost *Coutts* was sent. That, upon delivering the Message to General *Guesl*, he expressed his Satisfaction with the Resolution of defending the Town; assured them they should want no Assistance that was in his Power to give them; and that how soon they should distribute the Arms properly belonging to the City, they should have what more Arms they had Use for: That he had already given Orders to spike up the Cannon on the City-walls, and beat off the Trunnions; but that now he would countermand these Orders. And being interrogate for the Pannel, depones, That no Part of the Message, sent by the Pannel to General *Guesl* by his Hands, was touching the Dragoons; neither did the Deponent make any Proposition to the General relating to them. Depones, That, upon Provost *Coutts* and the Deponent's Return from the Castle to the Council-chamber, the Pannel told the Deponent, That, as the Messenger they had sent after their Deputies had not overtaken them, the Council were come to a Resolution not to defend the Town: And the Council, at least severals of them known to the Deponent, were present at the Time. Depones, That thereupon it was proposed, and, as the Deponent thinks, by Provost *Drummond*, That, if the Town was not to be defended, Care at least should be taken to secure the Arms, that they should not fall into the Rebels Hands. Upon which the Pannel reached to Provost *Drummond* the before-mentioned Letter, signed *Charles, P. R.*; by which, he said, Mr. *Drummond* would see, that if the Arms were put out of the Way, the *Hghlanders* would plunder the Town. To which Provost *Drummond* answered, That if the Town should furnish the Rebels with Arms to fight against the King's Troops, had they not Reason to expect, that when the Town should be retaken by the King's Troops, they would look upon the Town as Enemies, and use them as such? That thereupon the Deponent insisted to have the Pannel's Answer in Writing to the Message he had brought him from Lord Advocate. To which the Pannel answered, That he had already put too much in Writing that Day, and he would write no more upon the Subject. And thereupon Provost *Drummond* and the Deponent came away. And being interrogate, Whether at this Time, when he left the Pannel in Council, he did not say, he was going to bring in the Dragoons? depones, That he was so far from saying so, or intending it, that had he met the Dragoons coming in, he would have turned them back, in respect of what had passed in his last Conversation with the Pannel.

XV. Mr. *Lewis Douglas*, Advocate, depones, That betwixt Two and Three o'Clock Afternoon of Sunday the 15th September 1745, the Deponent, and one Mr. *Tait*, a Physician in *Dalkeith*, came with 47 Men, be-

ing, as the Deponent thinks, all Inhabitants of *Dalkeith*, to offer their Service to Provost *Stewart*, to assist in the Defence of the City of *Edinburgh*, against the Rebels. That, in their Way to *Edinburgh*, Mr. *Tait* left the Deponent with the Men, in order to find out the Pannel, to get Arms for them. But about Six o'Clock Mr. *Tait* returned to the Deponent, and told him, that the Pannel said he had no Arms to give them; and that upon this Mr. *Tait* had applied to the then Lord Advocate; who told him, that it would be necessary for him to draw a Petition, addressed to him the Lord Advocate: Which Mr. *Tait* accordingly did; and the Lord Advocate subjoined a Recommendation on the Foot of the Petition, directed to General *Gust*. Which Petition and Recommendation being presented by Mr. *Tait* to General *Gust*, General *Gust* granted a Warrant upon Mr. *Lyon* Storemaster, to deliver to the Deponent, and the Men that came along with him, fifty Stand of Arms, a Barrel of Ball, and a Barrel of Powder: And that about Six or Seven o'Clock they were accordingly received. Depones, That Mr. *Tait* informed the Deponent, that when he Mr. *Tait* conversed at first with the Pannel, and was told, as above, by the Pannel, that he had no Arms to give the Men who were coming from *Dalkeith*; Mr. *Tait*, upon that, asking, If the Men might notwithstanding come into the Town of *Edinburgh*? the Pannel said, They should be very welcome. That, upon their Return from the Castle, the Deponent, with the Men that came along with him, went to the Parliament-Close, where they remained until that Mr. *Tait*, who had gone in Search of the Pannel, should receive Orders from him, both as to their Quarters, and the Place of the Town which they were to defend. That it was some time before Mr. *Tait* returned; and when he returned, he told the Deponent, that the Pannel declined for some time to give any Orders; but at last, by the Intercession of Provost *Drummond*, the Quarters which were allotted for them was the High-School; and the Place of the Town they were to defend, was from the Cowgate Port to the Back of the Infirmary. That they remained there, and kept Guard all Night: But in the High-School, where their Quarters were allotted them, they had neither Meat, Coal, or Candle. Depones, That betwixt One and Two o'Clock, as the Deponent thinks, the Pannel made his grand Round: And that then the Deponent, with his Men, turned out their whole Guard to him. That he is positive the Pannel did not speak to him; and, so far as he remembers, he did not speak to any of the Men: And that Mr. *Tait*, with a Party of sixteen Men, escorted him from their Guard to the next Guard. Depones, That a Message coming to Mr. *Tait* about Twelve o'Clock on Monday the 16th of September, giving an Account that his Wife was dangerously ill, and who accordingly died that Day, Mr. *Tait* was obliged to leave the Town, and the Command of the Men wholly upon the Deponent: And the Deponent having gone to wait of the Pannel, to acquaint him of what had happened to Mr. *Tait*, and to desire that the Pannel might appoint some proper Person to command the Men who came along with the Deponent in Conjunction with himself; the Pannel made Answer, That your Men were in so good Order last Night, that I do not think you stand in Need of any Assistance; but if you know of any proper Person, you may name him, and I will appoint him. Upon this Bailie *Wilson* came in, and told he was very glad to see the Deponent with the Pannel; for it was upon the same Errand he was come to speak to him, to know how these Men were to be quartered. The Provost's Answer was, That he had so many Things in his Head, and was so much hurried, that he desired the Bailie might give Orders thereanent himself. Depones, That betwixt Ten and Eleven of the Sunday Night, Bailie *Wilson*'s Wife sent to the Deponent and Mr. *Tait*, desiring that they might come and eat something with her. They accordingly went; and, when in her House, she said she was sorry they had been so little taken Notice of. That the Deponent and Mr. *Tait* were a good deal surprised, that none of the Magistracy, or those who had the Direction of the Affairs of the Town of *Edinburgh*, came near them; considering the Place which they were sent to guard, and which, in the Deponent's Apprehension, was of very great Importance to the Town of *Edinburgh*. This made the Deponent believe, and say to Mr. *Tait*, That the Defence of the Town was altogether a Joke; and that he would return next Morning back to *Dalkeith*. Mr. *Tait*, in Answer to this, said, That he was wrong in thinking in that Manner; for such a Piece of Conduct would appear foolish, if they should come the one Day and return the other: And, besides, if they acted a Part becoming themselves, they were not answerable for the Conduct of others. And being interrogate for the Pannel, How they were provided in Meat, Drink, Coal, and Candle, the Time they remained in the Town of *Edinburgh*, and when it was they left it? depones, The whole Time they remained in *Edinburgh* they were obliged to provide for themselves. And, upon hearing the Fire-bell ring upon Monday Afternoon, he immediately sent up to know what was the Matter; and the Person he sent, meeting with *James Carmichael*, Writer to the Signet, Mr. *Carmichael* sent the Deponent Word, that it was his Business to march up his Men forthwith to the *Lawn-market*. And the Deponent upon this imagined, they were immediately going out to fight the Rebels; and therefore marched up his Men, without Loss of Time, to the *Lawn-market*. And when he came there, he found the Volunteers all coming down from the Castle, after having delivered up their Arms. Upon which the Deponent marched up his Men to the Castle, and delivered in his Arms also. And, upon this, the Men got Ladders, scaled the Walls, and went to *Dalkeith* that Night; but he himself staid in the Town all that Night.

XVI. Mr. *John Tait*, Doctor of Medicine in *Dalkeith*, depones conform to the preceding Witness, in so far as concerns the Facts which happened while the Deponent was in the Town of *Edinburgh*; with this Variation, That he does not remember that he used the Word declined to Mr. *Douglas*, when he was giving him an Account of the Orders he then received from the Pannel with respect to the Men's Quarters who came along with him, and the Place of the Town they were to guard; but he told Mr. *Douglas*, that the Pannel delayed giving Orders for some time. Neither does he remember, that he used that Expression to Mr. *Douglas*, That it was by the Intercession of Provost *Drummond* that the Orders were then procured; but told him these Orders were wrote by Provost *Drummond*, and signed by the Pannel. Nor does the Deponent remember the Expression which Mrs. *Wilson* had to Mr. *Douglas* and the Deponent upon

their not being so much taken Notice of as they ought to be; but remembers there was then some such Expression by some of the Company.

XVII. *Archibald Macaulay*, Esq; late Lord Provost of *Edinburgh*, depones, That he resided in the Town of *Edinburgh* in the Months of August and September 1745, when Accounts were brought that the Pretender's Son was landed in the Western Islands, and that he was marching with a Body of Rebels Southward. That the Deponent, being in the Town of *Edinburgh* in the Year 1715, observed then a Zeal and Warmness in the Inhabitants, which proceeded from that Disposition appearing first in the Magistracy, and which soon spread itself among the other Ranks of People. That the Method taken at that Time for the Defence of the City, was by Parish-guards, there being four hundred Volunteers, who had associated themselves together besides, and who were very well disciplined before the Rebels came then near to the Town. That the Trained-Bands were laid aside, as being a promiscuous Set of People, whereof many were disaffected; and the Care of the Town was given, in place of them, to the Parish and City-Guards, in whose Hands Arms were put, as being known to be People well-affected to the Government. That, upon the late Rebellion, the Deponent did not observe in the Town of *Edinburgh*, such a Keenness and Zeal for the Support of his Majesty's Government; and at this Time nothing but Coldnesses (*i. e.* Lukewarmness). But hearing that the Rebels intended to come to the Town of *Edinburgh*, although at first it was reported they intended to pass another Way, the Deponent met with some other well-affected People of the Town, and expressing his Concern for the Welfare of it, they proposed the raising of a Regiment of 1000 Men, and to get some People to associate themselves into Companies of Volunteers, as was done in the Year 1715. The Pannel about this Time did call a Meeting of the principal Inhabitants of the Town of *Edinburgh*, to consult what was proper to be done then: And at that Meeting it was agreed, That a Committee of the Town-Council, in Conjunction with some other of the Citizens, should wait upon the Lord Advocate, Justice-Clerk, and other People about the Town of Distinction, and consult with them, both as to the Legality and Expediency of raising the Regiment of one thousand Men, and associating some Companies of Volunteers. That, in this Meeting, there were several Difficulties started, and even among the Lawyers; but they all agreed in this, that they could not set about the levying of the Regiment of one thousand Men, without procuring first from the Regent's a Warrant for that Effect. Upon this severals of the Meeting pressed, that an Express should be immediately dispatched, in order to procure it: But the then Lord Advocate suggested, they would appear ridiculous, if they should obtain any such Licence, when, at the same time, they were not ascertained of the Money that was sufficient to pay the Regiment. Upon this it was proposed at that Meeting, that the Provost should make a Trial how the Money should be raised: And the Provost suggested, that the proper Method for doing this would be, by recommending it to the Ministers and Kirk-Sessions. Against which Proposal no Objection then was made. That the Meeting upon this broke up. And the Magistrates and Council accordingly recommended it to the Ministers and Kirk Sessions to make a Trial how the Money could be raised: But the Ministers, upon receiving the Warrants for so doing, objected to the Warrants, as not being properly signed by the Town-Clerks. But the Deponent, and some others of the Inhabitants, hearing that the Ministers made this Scruple, met together, and called for their Stent-Books, and made out a List of such People as they thought would willingly contribute for the Support and Maintenance of the Regiment: And, upon considering the said List, they were of Opinion, there would be no Difficulty of raising a Sum sufficient for that Purpose. That next Day the Deponent coming to the Street, he met with the Pannel, who, it would appear, had by that time got Notice that the Deponent, and some others, had been making out the above List; and told the Deponent, That he found some People were taking a good deal upon them; that, as he was Provost of *Edinburgh*, he would maintain it; and although he had a great Regard for the Constitution of his Country, he had also a Regard for the Honour of the Magistrates, and Liberties of the Town of *Edinburgh*; and that Nobody should wrest the Dignity of Provost out of his Hands. And this he seemed to say in a Passion. To this the Deponent made Answer, That there were three of his own Magistrates in Company; and they only proposed to do that in a more expeditious Manner, which he himself wanted to have done. That the Forenoon of that Day, as the Deponent thinks, he met Mr. *William Alexander* Merchant; and talking of the Payment of the Regiment of the thousand Men, how it was to be ascertained, Mr. *Alexander* said, 'Why should there be any Occasion of Delay on that Account? I am willing to give my Bond for three thousand Pounds, if any body will join with me;' and the Deponent made Answer, That he was not a very rich Man, but he would join with him. Upon this they both agreed to go up to the then Lord Advocate, and tell him so much; which, after they had done, the Advocate told them, That he could only transact with the Magistrates; but he was very glad to hear of their Proposal, and he would immediately write about it: As he was then just sending off an Express, and had wrote his Letter, he then added a Postscript to it; which in Substance was, telling the Offer that had been made by two Citizens of the Town, which he thought were good for Three thousand Pounds, and desired therefore, that the Warrant or Order for levying the Regiment might be forthwith sent down. Depones, That two or three Days before the Rebels came to the Town of *Edinburgh*, the Deponent remembers to have heard some Proposals made to the Pannel, for searching the Inhabitants Houses for Arms: And upon these Occasions he heard the Provost always say, That there ought to be no Distinction made, but all Houses searched without respect of Persons; but the Deponent does not remember to have heard of such an Order granted. Depones, That he happened to be with some others, in Mrs. *Clarke*'s House, where the Provost and Mr. *Maclaurin* were present; and it was then proposed, that the City-walls should be put in some tolerable Posture of Defence: And Mr. *Maclaurin*, at that Meeting, produced a Scheme of what was necessary for that Purpose. To which the Pannel agreed; but made some Difficulty with regard to the Expences that were necessary for doing such a Work. The Deponent thinks, that the Provost might in this have acted a prudent Part for the Town of *Edinburgh*; but the Deponent thought this ought at that Time to have occasioned no Delay; and Mr. *Maclaurin* said to

too. Depones, That he heard the Reverend Mr. *Alexander Webster* once and again make a Proposal to the Pannel in the Council-House, where there were a good many of the Council present, and a great many other Inhabitants, of raising, upon his own Credit, five hundred Guineas, to be distributed to five hundred of the ablest-bodied Journeymen of the several incorporated Trades in the Town; who, as they were very bold and hardy in the extinguishing of Fire, he believed would willingly undertake to mount the City-walls, and assist in the Defence of them, in case they should be attacked by the Rebels, and judged them much more proper for that Purpose than the Volunteers were. That the Answer which the Deponent heard the Lord Provost make was, That, if Mr. *Webster* would undertake to raise the Money, he would be Caution that Mr. *Webster* would perform it. Depones, That he was present, both when Mr. *Lindsay* Deputy Secretary at War, and Mr. *Groset* Collector of the Customs at *Allea*, made a Proposal to the Pannel, for bringing into the Town a hundred Dragoons for the Town's Defence; and Mr. *Groset* added, if he desired, even the whole two Regiments, provided that the Provost would desire it in Writing. The Pannel's Answer was to both these Gentlemen, That if the Dragoons would come into the Town, they should be welcome; but he would sign no such Desire. Depones, That he was present in the Council-House on Monday Evening the 16th of September; when he heard it proposed, that there was a Necessity for securing the Town's Arms, Ammunition, and Cannon on the Walls, from falling into the Hands of the Rebels: But as there was very great Confusion that Night, the Deponent does not remember any more of the Matter. Depones, That the Number of his Company, to the best of his Knowledge, consisted of Sixty or Seventy; and that Mr. *Joseph Williamson* was his Lieutenant.

XVIII. *James Nimmo*, Esq. late one of the Bailies of *Edinburgh*, depones, That, upon Monday the 16th September 1745, as the Deponent was upon Guard at the *Netberbow* Port, with Sir *George Preston* of *Valleyfield*, he received a Message from the Pannel, he thinks between Four and Five at Night, to come and speak with him, and some of the Town-Council, then in the Goldsmiths-Hall. That, when he came there, in obedience to the said Message, he understood, the Pannel, his Council, and some of the Inhabitants, were engaged in an Argument, what Answer should be returned to a Letter which the Pannel had received from the Lord Justice-Clerk, or the then Lord Advocate; by which Message an Offer of a hundred Dragoons was made to the Pannel, or more if he pleased, to assist in the Defence of the City. That, after some time spent in this Debate, the Pannel observed, that a Thorn had been put in his Foot; for that if he should accept of that Offer, and the Town should be taken, he might be charged with having ensnared so many of his Majesty's Troops; and, on the other hand, if he should refuse to accept of the Offer, he might be blamed, if the Town was taken, for having lost it by not receiving that Succour. That, in Answer to this, the Deponent observed, that it was an easy Matter for the Pannel to put the Thorn in their Foot, by making an Answer to this Offer, That if the Lord Justice-Clerk or Lord Advocate should think it fit, and for the Service of the Government, to send a hundred Dragoons, or the whole of them for the Purpose aforesaid, the Pannel should be ready to receive them; which Expedient the Pannel, and several of the Gentlemen then present, seemed to approve of; and the Pannel set about writing an Answer, as the Deponent imagined, to that Purpose: But, when he heard the Answer read, he did think it did not fully come up to his Proposal. Upon which he left the Meeting, and repaired to his Post; and, about Five o'Clock, the Alarm-bell rung, the Signal for calling the Volunteers to repair to the *Lawn-market*: But, before the Deponent left his Post, he sent several Messages to the Pannel, to receive Orders what to do; and to the third Message, he thinks, for the first Time, received an Answer, to repair to the Alarm-post; which accordingly he did: and that he was not present at the Meeting in the New Church Isle, held much about this Time, judging it more his Duty to remain at his Post; besides, he saw a great many People crowding into that Meeting, whom the Deponent did not look upon as proper Persons to consult with in a Juncture of that sort, when the Rebels were reported to be at the Distance of only about two Miles from the City.

XIX. Mr. *Alexander Webster*, one of the Ministers of *Edinburgh*, depones, That the Week before the Rebels got Possession of the City of *Edinburgh*, he was present at a Meeting in Mrs. *Clarke's* with the Pannel, some Officers of the Army, and well-affected Inhabitants of the City. That in it the Deponent observed, that the Reparation of the City-walls was carried on by much too slowly; and that the Tradesmen should be called to give a Reason why they were so slow in executing the respective Parts of the Works to them assigned. That the Pannel observed, That, being about the Election-time, and pretty late, it was very probable the Tradesmen might have got a Cup too much for Business that Night; and it would be better to defer that Inquiry till next Morning: And, at the same time, observed, That the Care of these Works had been appointed to a particular Committee named by the Council for that Effect. At the same time some of the said Officers who were present complained, that what they called the Bastions of the Town-wall were too weak; that is, the Scaffolding upon which the Cannon was placed, was not strong enough; the Parapet round the Wall, in some Places, was too narrow; so that one Man could not pass another; nor were the Parapets sufficiently cleared. That the Deponent knows there was a Plan made by the deceased Mr. *Colin Maclaurin* of the City-walls, and Bastions, and other Works necessary to be made for the Defence of the City; which was agreed to by the Council, as the Deponent was informed, and a Committee named for bringing it to Execution. That the Deponent observed, upon the 9th of September, as he thinks, that a Ditch near *Wallace's Tower*, which had been projected by Mr. *Maclaurin* to be made on the North-side of a Wall there, was erroneously made on the South-side of the Wall; whereby it became rather a Security for, than a Defence against the Rebels; and which Mistake, so far as the Deponent remembers, was never corrected, but rather carried on, as the Deponent observed, upon visiting the same upon Wednesday the 11th of September: But, as he did not mention this as any Article of Complaint in the fore said Meeting in Mrs. *Clarke's*, he does not know, that any Part of this Mistake could be charged against the Pannel. Depones, That, at the Meeting in Mrs. *Clarke's* above men-

tioned, the Deponent remembers, that Bailie *Robert Baillie* came into the Room: Upon which the Deponent renewed this Complaint against the Workmen for carrying on the Works so slowly; which he did, because he was informed, that Bailie *Baillie* was the chief of the Committee above mentioned. Upon which the Bailie sent for one of the Tradesmen, who made the following Excuses: That they had made the Bastions as sufficient as the Timber they could find for that Purpose would admit of; and that they had carried on the Work as fast as they could find Hands to do it. Depones, That some time of the said Week, he casually met with the Pannel in the Parliament-Close, and again renewed his Complaint to him about the Slowness of carrying on the said Works; which appeared to him should have been carried on without Loss of Time: And the Pannel mentioned something about the Expence of the Work, and proposed, that the Volunteers would advance the Expence thereof according to their Engagement. To which the Deponent replied, That he did not doubt but the Volunteers would fulfil their Engagements, though he suspected it might be a Difficulty for them at present to advance the Money. Depones, That he was present at a Meeting in Mr. *Wilson's* House, when a Petition, signed by a considerable Number of the well-affected Inhabitants of the City, was presented to the Pannel, for associating themselves as Volunteers; which the Pannel objected to as High Treason; but added, that he should consult the Crown-Lawyers about it: And that he expressed his Dissatisfaction at the Manner of promoting that Petition, and in attaining so many Subscriptions, without previously consulting with him. Depones, That it was observed, that those Parts of the Walls near *Potter-row* Port, and *St. Mary and Leith Wynds*, were commanded by the adjacent Houses; and it was thought, that it was proper to build up the Doors and Windows of the said Houses, to make the Defence of those Parts of the Walls practicable; or to possess those Houses with Parties of the Volunteers. It was also proposed, to possess the Houses at the *Potter-row* Port with a Party, and to make a Communication by a Bridge, by which they could retire to the Walls in case of being dislodged. But nothing of this kind was executed; nor did the Deponent make the Non-execution of this any Part of his Complaint. Depones, That, some time in the Week before the Rebels entered *Edinburgh*, the Deponent had Occasion to meet with the Pannel, and others, in the Exchequer-Chamber, and in Mrs. *Clarke's*; when he proposed to the Pannel to find Security, or, if it was thought necessary, even to advance 4 or 500 Guineas, to be distributed among the able-bodied Journeymen of the Brewers, Bakers, and other Tradesmen of the City, to encourage them to join with the Volunteers in defence of the City that Night in which it should happen to be attacked by the Rebels; which Proposal the Pannel seemed to approve of; and said, That the Deponent needed no Security for his Advance, for he the Pannel would become Caution for the Deponent's paying it. That the Deponent then proposed, that the Masters of those Journeymen, and others, should be sent for, to concert a Plan for the Execution of that Proposal: But the Pannel alledged, that it was too late for that then; and that some of them would readily be about their Bottle; but next Day he would do it. That, on Sunday the 15th, the Deponent asked the Pannel, If he had met with the Masters of the said Journeymen? &c. He answered, That, in the Multiplicity of Affairs, it had escaped his Memory, but that he would do it; but does not know if it was done or not. Depones, That, in the Afternoon of the 16th of September, he heard, that there was to be a Meeting of the Inhabitants in the New Church Isle, or that such a Meeting was then met; and just about this Time the Alarm bell rung, which was the Signal for the Volunteers to repair to their respective Posts. That the Deponent, being one of them, went to the Post assigned to the Company in which he served; so that he can give little Account of what past at that Meeting; But having stepped in to see what was going on, he thought it a very tumultuous Assembly. That the Deponent observed, very few of the well-affected Inhabitants that he knew were in it: That there were several of the Meeting, who, in his Opinion, were not well-affected to the Government; and that the Generality consisted of People, who, to the best of his Remembrance, he had never before seen. That the few who spoke for defending the City, were treated with very scurrilous and opprobrious Language; particularly the Reverend Mr. *George Logan*, who was speaking to that Purpose, seemed to him to have been pulled down from the Form on which he was standing, by Force. Upon which the Deponent left the Meeting, and repaired to his Post. Depones, That on Monday the 16th he went round the Walls of the City upon which the Cannon was planted; and observed there were two of them, one at the *Bristow* Port, and another at the South-East Corner of the Wall near *Bedlam*, upon which no Centinels were then attending; and it was observed, these Cannon could not be fired, without drawing the Shot; because they might be unloaded, or the Shot altered during the Time the Centinels were absent: But that, after the Deponent staid a considerable Time at the Cannon on the South-East Corner, as above, a Centinel at last appeared, who said, He had been planted as Centinel upon the said Cannon. Depones, That, upon the Evening of the said 16th September, he went along with the other Volunteers, to deliver up his Arms to the Castle; and, in his Return, met with Ensign *Robertson* on the Head of a Party of Men, sent by Gen. *Gust* or Gen. *Preston*, with Orders, as the Ensign told him, to spike up the Cannon on the Walls of the City; but that he was ordered, before entering the City, to apply to the Pannel for his Authority to do so. That he had dispatched *Robert Griffith*, a Gunner, to acquaint the Pannel thereof, and to ask his Authority. That the Deponent saw the said *Robert Griffith* return, who reported, that he had waited upon the Pannel, and that his Answer was, That he would give him no Authority; adding some Words which he at present cannot recollect; but the Impression they made upon him at the Time, and which he still retains, was, that they imported a Discouragement of the Execution of the Orders; for that the Ensign immediately said, being in Conversation with the Deponent, Should I force? or, I will force my Way into the Town; or Words to that Purpose. But the Deponent suggested to him, It would be more proper for him to make a Report of what had happened, to one of the Generals; which having been done by some one of the Party sent for that Purpose, they were recalled, and marched into the Castle. And, being interrogate for the Pannel, depones, That he gave it as his Opinion, at Eleven o'Clock

at Night of Monday the 16th, in the Laigh Council-House, that the Town could not then be defended, without the Assistance of the Dragoons, in regard that the Volunteers had lodged their Arms in the Castle; and that a great many of them were either gone into the Castle, or had left the City, upon the Resolution of delivering up the Town; and that he thought it extremely odd, to propose now a Defence of the City in their present Circumstances, when, it seemed, it had been judged not tenable, even when the whole Volunteers were in Arms, and an Offer made for the Dragoons to come in to its Defence: And therefore, upon the whole, was of Opinion, that a Message should be sent to the Dragoons to return, and some proper Methods taken, in the mean Time, to gather together as many Volunteers as possible. Depones, That the Deponent either heard Mr. Drummond himself, or some other Person, say, That he Mr. Drummond was going out to bring back the Dragoons; and he did not return while the Deponent was there. And depones, That he did not think the Alarm-bell a proper Signal for collecting the Volunteers, while the Dragoons were at so great a Distance, and the Rebels so nigh. That this he considered as an Intimation to the Rebels to make the Attack on the City ere it was possible for the Dragoons to come to its Defence; and any Intimation to the Rebels, of a Design of defending the City, would probably prove a Hardship on the Deputies that had been commissioned by the Town-Council to capitulate with them about the Surrender of it, and who were at that Time at the Rebel Camp.

XX. Alexander Scot, Merchant in Edinburgh, depones, That, in September 1745, he served as an Officer of Volunteers, for Defence of the City of Edinburgh, in the Company commanded by the present Lord Provost of Edinburgh. That some Day of the second Week of September, and, as he thinks, about the Beginning of that Week, the Deponent was present in the New Church Isle; when he heard a Question put to the Pannel, Whether such of the Volunteers as belonged to the Trained-Bands ought not to be exempted, during their Service as Volunteers, from doing any Duty with the Trained-Bands? To which the Pannel answered, That, when both a Company of Trained-Bands, and a Company of Volunteers, were upon Duty at the same Time, any Person belonging to both these Companies, might have his Choice which of them to serve in at that Time. And, upon a further Question put to the Pannel, he answered, That, when a Company of Trained-Bands, and a Company of Volunteers, to both which one and the same Person belonged, should happen to do Duty on different Days, such Volunteer should do Duty on both. That the Deponent does not remember to have heard any Objection made to these Answers, or any thing further said on the Subject in that Meeting: But the Deponent had Occasion to converse with some of the Volunteers, who thought it a Hardship; and doubts not, but it may have discouraged others from engaging as Volunteers. And, upon an Interrogatory put by the Pannel, depones, That he did converse with some of the Trained-Bands, to whom he proposed to enlist as Volunteers; who answered, That would bring upon them double Duty; that they were already bound to do Duty in the Trained-Bands; and, should they engage as Volunteers, they might be obliged to do Duty also in that Capacity, when the Trained-Bands were not upon Duty; but, were it not for that Hardship, they would have chosen rather to have served as Volunteers, than with the Trained-Bands. And being desired to condescend upon any Person who gave him such Answer, depones, That he cannot, at this Distance of Time, charge his Memory with the Persons Names; but thinks that he talked on that Subject once to a Friend of his, William Scot, Merchant, or in a Company where he was; and that either William Scot, or some other in that Company, gave the Deponent that Answer. Depones, That the Company to which the Deponent belonged were ordered to meet in the College-yards, in the Afternoon of Monday the 16th of September. That the Deponent, having been out of Bed all the preceding Night, and having gone only to Bed at Ten o'Clock that Day, it was about Two Afternoon before he came to the Place; and found some others of the Company there before him. That they had got no Orders what to do; and continued in the College-yards about an Hour after the Deponent came, and still received no Orders: And at last they consulted together, and marched to the Lawn-market; but the Deponent cannot charge his Memory, what were the Reasons that induced them to march thither, whether it was the ringing of the Fire-bell, because he does not remember, whether that Bell was rung before they marched, or if it was only rung after they marched; or if their Reason was, to be near the proper Place where they might receive Orders, for the Company was anxious or uneasy for Orders. That there were other Companies of Volunteers in the College-yards, who marched to the Lawn-market at the same Time, and the Deponent thinks for the same Reason. That, after coming to the Lawn-market, they waited there for a considerable Time without receiving Orders; till at last the Deponent, at the Desire of some other Officers of the Volunteers, went to the Goldsmiths-Hall, to desire the Pannel's Orders for those Companies of Volunteers. That the Deponent found a Crowd in the Goldsmiths-Hall, with some Difficulty got to the upper End of it, and told the Pannel, That he was sent by the Officers of the Volunteers, who were standing in the Lawn-market, to ask his Lordship what Orders he would please to give them: That the Pannel answered, That he was at a Loss to know what Orders to give them; and thinks he further added, That they were then deliberating about that Matter. That the Deponent waited some little Time, to see whether he would get Orders; but getting none, he left the Hall, and returned to his Company in the Lawn-market, and acquainted the other Officers of the Volunteers what had passed. That, not long after the Deponent's Return, he saw the Officers of the Volunteers that were in the upper End of the Lawn-market in a Knot together, and, as he supposed, consulting what Measure they should take; and the Deponent was soon thereafter told, That they had resolved to deliver up their Arms to the Castle: And, upon the Deponent's going up the Lawn-market, the Officers informed him of their said Resolution; and, agreeable thereto, the Deponent went up to his Company, which was the Westmost in the Lawn-market; and the whole of them marched up to the Castle. And the Reason given the Deponent for taking that Resolution, was, Because no Orders were given them, and

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they were apprehensive that their Arms might fall into the Rebels Hand.

XXI. Archibald Streichen, Writer in Edinburgh, depones, That he was an Officer of the Volunteers, for Defence of the City, in September 1745. That he was present at a Meeting that the Pannel had with some of the Volunteers in Mrs. Clarke's; where Mr. Webster the Minister was also present; and which, he thinks, was upon Saturday the 14th September. And depones, That he there heard Mr. Webster propose to the Pannel, that a Number of the Servants and Journeymen of the Brewers and Bakers in the Town should be hired to assist in the Defence of the City any Night it should be attacked, at the Premium of a Guinea each in hand; and a further Reward to be given them, according to their Behaviour, when the Matter was over. That Mr. Webster undertook to raise, by Subscription, a Sum of 500 l. to defray the Expence; and offered to give Security for Payment of the Money. That the Deponent did not hear what Answer the Pannel gave; but supposed that the Proposal had not been gone into, because he heard no Resolution taken upon it in that Meeting, nor did he afterwards hear any more of that Matter. Depones, That, in the Afternoon of Monday the 16th of September, and, as he thinks, about Four o'Clock, while the Volunteers were drawn up in the Lawn-market, he was sent by them with a Message to the Pannel, to ask what Orders he had to give to them? and likewise to ask, in case the Town was not to be defended, where they were to deposit the King's Arms? or Words to that Purpose. That he found the Lord Provost in Goldsmiths-Hall. That to the first Part of his Message he received no Answer, and got no Orders for the Volunteers, what they were to do: But to the second Part of the Message, the Pannel answered, That he would give Orders to receive the Arms at the Court of Guard. Depones, That the Deponent waited till the Pannel left Goldsmiths-Hall, and went to the New Church Isle; and, on the Way thither, in the Parliament-Close, the Deponent saw Alexander Cunningham, Surgeon, come up to the Pannel, and deliver the following Message: 'That the Dragoons found that the Number of the Rebels were so far superior to them, that they were obliged to retire;' but the Deponent does not remember the Place he named where the Dragoons had gone to; and said, That the Number of the Rebels, so far as they could judge by Appearance, could not be under eight thousand strong. Depones, That thereupon he heard the Pannel say, If the Troops were retired, then all was over. That he believes the Occasion of Mr. Cunningham's being with the Dragoons was, that he expected there was to be an Action, and he attended them in the Way of his Business. And being further interrogate, depones, That he left the Provost as he was going into the New Church Isle, and returned to the Lawn-market, and reported to the Officers of the Volunteers the Answer he had got to the Message they had sent by him. That thereupon they consulted together; and some were for immediately delivering up their Arms into the Castle; but Provost Drummond, who was one of their Officers, insisted, that, before taking that Step, they should send a second Message. That a second Message was accordingly sent; but by whom, the Deponent does not remember; and the Messenger returned without any Answer: Whereupon the Volunteers marched up to the Castle, and delivered up their Arms.

XXII. Ensign William Robertson, of Edinburgh Castle, depones, That, in the Evening of the 16th September 1745, he being then an Officer in the Castle of Edinburgh, was sent by Gen. Preston about Six o'Clock at Night, after that the Volunteers delivered up their Arms in the Castle, with a Party, to bring up to the Castle the Cannon that were on the Walls of the City, or otherwise to render them useless, by spiking them up, and knocking off the Trunnions; and, for this Purpose, he had Carts and Horses along with him, and proper Instruments for spiking the Cannon, and beating off the Trunnions: But then, his Orders were restricted, not to do this without Licence and Order from the then Lord Provost of Edinburgh. Depones, That, with his Party, he marched down to the Reservoir; and then he first sent the Serjeant of his Party, and after that one Griffith, a Gunner in the Castle, with a Message to the Provost, to know whether he might enter the Town for the above Purpose; and the Answer which was returned to him from the Pannel, by both the Messengers, was, That he would give no Orders concerning the Cannon; but the Deponent might do as he thought proper. Upon this he sent to General Guest, to know how he should behave; and Orders were brought him to return to the Castle. Depones, That Mr. Webster was with him, procured him a Flambeau, some Smiths, Carts and Horses; and that, without going further, the Deponent returned to the Castle.

[29th October, betwixt One and Two o'Clock in the Morning.] It was now moved by some of the Jury, That they might have Leave to make a Motion in Court before any further Procedure in the Trial: Which being allowed of by the Lords, Sir Alexander Nisbet of Dean, Patrick Crichton of Woodhouselee, John Nisbet Portioner of Water of Leith, and Edward Lothian Jeweller in Edinburgh, four of the Gentlemen upon the Affize of the said Archibald Stewart Pannel, humbly represented and moved in Court, in their own, and in Name of the whole other Affizers, That the Court had now continued upon this Trial, without any Respite, since Tuesday Morning at Eight o'Clock, being upwards of forty Hours: That, by this Sederunt, several of the Affizers were already greatly fatigued, and one or two of them altogether unable to hold it out any longer, without some Relief: That the Affize could not imagine it to be the Intention, either of Prosecutor or Pannel, to kill or destroy them; which behoved to be the Consequence, should they insist upon finishing the Trial at one Sederunt: That their Lordships, as well as the Pannel, and other Members of Court who had attended this Trial, must be sensible, from what they had suffered themselves, of the Hardships undergone by the Affize, and consequently of the Reasonableness of their Demand: That, altho' other People's Situation and Strength might enable them to go on without Relaxation, the said four Gentlemen did, with great Candour and Ingenuity, assure the Judges, That they were no longer able to go on in their Duty upon this Trial: And therefore begged Leave to acquaint their Lordships thereof; at the same Time flattering themselves, that both the Pannel, and his Majesty's Advocate, would concur and agree, that the Trial might be put off, and continued for such a short Space of Time as the Lords should please to appoint, that in the mean time the Affize, and all concerned,

might have a little Rest. And, with the greatest Submission, moved the Court, That they would please to take this their Request into Consideration, and grant the Desire thereof accordingly.

Upon hearing of which Motion, Mr. Archibald Stewart Pannel, and his Counsel, in respect of the Distress which the Length of this Trial has already brought upon several of the Affize, and that it seems impracticable to finish the Trial at one Sederunt, consent to the granting the Desire of the Motion made as above by the Affizers, in case the Lords shall think proper so to do.

Signed

ARCH. STEWART.
JAMES FERGUSON.

Mr. William Grant, his Majesty's Advocate, does not oppose the granting the Desire of the foresaid Motion, agreed to by the Pannel and his Counsel; and hereby consents that the Lords grant the same, in case they so think fit; and that in regard the Jury have already attended forty Hours; and that several of them are so valetudinary, that they are unable to stand out the Trial, without some Respite; and also that several of the Prosecutor's Witnesses have given him Notice, that they are not able to attend longer without endangering their Healths.

Signed

WILL. GRANT.

The Lords Commissioners of Justiciary, having heard the Motion of the Affize, and the Consent to granting the Desire thereof, both of the Pannel and his Majesty's Advocate, as above, and fully deliberated and argued thereon, they, in respect thereof, and of the Necessity of the Case, continue the Diet till Eleven o'Clock of the Forenoon of this Day; and ordain the Pannel and Witnesses to attend then, each under the Pain of Law; as also the haill fifteen Affizers then also to attend, each of them under the Penalty of five hundred Pounds Sterling: And the said Affizers, in Token of their Acquiescence, hereby become bound and enacted, each for themselves, their Heirs and Successors, that they shall appear and give Attendance at the foresaid Hour, in this Place, each under the foresaid Penalty of five hundred Pounds.

Signed

ALEX. FRASER, I. P. D.

Alex. Nisbet.	Thomas Wood.	Alex. Campbell.
John Nisbet.	Pat. Crichton.	R. Fleming.
James Dewar.	Thos. Trotter.	James Stirling.
John Sturrock.	Hugh Clerk, junior.	James Hunter.
James Falconer.	Wm. Wight.	Edw. Lothian.

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, vigesimo nono Die Mensis Octobris 1747, per honorabiles Viros Magistros Alexandrum Fraser de Strichen, Patrietum Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, Commissionarios Justiciarii S. D. N. Regis.

Curia legitime affirmata.

Lord Strichen Præses.

ARCHIBALD STEWART of the City of Edinburgh, Merchant, and late Provost of the said City, Pannel, indicted and accused as in the former Sederunt.

The haill fifteen Affizers being called over, and answering to their Names, his Majesty's Advocate proceeded to the remaining Part of his Proof, by adducing the following Witnesses, viz.

XXIII. Robert Griffith, one of the Gunners of the Castle of Edinburgh, depones, That, about Five or Six of the Clock in the Afternoon of Monday the 16th of September 1745, after that the Volunteers had delivered their Arms in the Castle, it was thought proper, by the Commanding Officer of the Castle, to give Orders for bringing up the Cannon, and other Arms, such as Patteraroes, that were on the City-walls, or otherwise to render them useless, that so they might not fall into the Hands of the Rebels. That a Party was sent from the Castle for this Purpose, under the Command of Ensign Robertson; and the Deponent was sent by General Guesf to follow that Party, to inquire if the said Mr. Robertson had Provost Stewart's Liberty to go on with the said Work: That Mr. Robertson declared he had no such Concurrence; but had sent his Serjeant to the Provost for that Effect. That the General ordered the Deponent also to go forward, and demand the Pannel's Licence or Concurrence to effectuate the same. Accordingly the Deponent waited on the Pannel, and demanded from him his Licence or Authority to go on, and bring to the Castle, or demolish, these Cannon, &c. which were then mounted on the Town-walls, lest they should fall into the Hands of the Enemy. That the Pannel's Answer was: He had no Authority to give, as the Dragoons were gone Eastward, and his Volunteers had laid down their Arms. That he had lately received a Letter from the Enemy, which he desired the Deponent to read. That the Deponent told the Pannel, that his, the Deponent's Duty was not to expostulate, or lose time with the Pannel, but in a positive Manner to have his Concurrence; which the Pannel positively refused; but added, 'That we might do as we would, without his Liberty.' That when the Deponent left the Pannel, he found Ensign Robertson and his Party standing in the Lawn-market Street, with a Couple of Carts, and some Blacksmith-Boys, with Fore-hammers in their Hands, whom Mr. Robertson had impressed to facilitate his Work. That the Deponent went to General Guesf, and acquainted him, that he could not procure the Provost's Licence to bring in, or demolish the foresaid Cannon: That the General was then in Conversation with George Lauder, Surgeon in Edinburgh, whom the Pannel informed the Deponent, that he had sent to the General. That the General ordered the Party to return to the Castle; and, at the same time, told the Deponent, that the proper Time was over for effectuating the foresaid Work, it being then dark. Depones, That, when he entered the Door where the General and Mr. Lauder were in company, he heard the General say, 'I am sorry the Provost has not granted my Request.' And being interrogate for the Pannel, Whether he reported to General Guesf the last Words of the Pannel's Answer to him, particularly that they might do as they would, without his the Pannel's Authority? depones, He did. And the Deponent further desired

of General Guesf to give the Party his Authority to go on with the foresaid Work, without the Pannel's Liberty. To which the General answered, The Provost had lost the proper Opportunity; and, if the Party remained any longer in Town, they might fall into the Hands of some flying Party of the Enemy. And, being further interrogate for the Pannel, depones, That the Garrison of the Castle of Edinburgh consisted then of the Castle company, which ought to be a hundred Men; and two Companies of Colonel Lauder's Regiment, which ought to be seventy Men each; but none of the above Companies were complete. That the Party sent for the Cannon, consisted of an Officer, two Gunners, a Serjeant, and twenty Men; and their falling into the Hands of the Rebels, would very much have weakened the Garrison.

XXIV. Joseph Mial, one of the Serjeants of the Castle of Edinburgh, depones, That, upon the Evening of the 16th of September 1745, he was desired, by Ensign Robertson, to get ready a Party of twenty Men; which, after the Deponent did, Ensign Robertson ordered him and the Party to follow him; which accordingly they did; and, after they were come a little way down the Castle-hill, Ensign Robertson ordered the Deponent to go to the Pannel, and acquaint him, that the Ensign was come with a Party, in order to render useless the Cannon that were on the City-walls, and wanted the Pannel's Commands thereant. The Deponent accordingly went to the Pannel, and delivered his Message. To which the Pannel made Answer, That Ensign Robertson might do as he would. That, upon this, one Dr. Lauder, who was then in company with the Pannel, rose up, and desired Liberty to go and speak to the General; and that the Pannel said he might go. And accordingly Mr. Lauder and the Deponent left the Provost, who was then in the Council-House; and, when they came to the Castle, they met Major Robertson, who desired them to go to General Guesf; which accordingly they did. And Mr. Lauder, addressing the General, told him, That there was a Party come down to destroy and render useless the Cannon that were upon the Walls. To which the General made Answer, Why not? The Provost has not done what he ought. To which Mr. Lauder replied, What could he do? or, What could we do, since the Forces have left us? And the Deponent telling the General the Message he had been sent with by Ensign Robertson to the Pannel, with the Pannel's Answer, the General ordered Ensign Robertson, with his Party, to return to the Castle; and which Message to the Ensign was sent by Mr. Lauder; and the Deponent believes Mr. Lauder delivered that Message to the Ensign, because the Deponent remained with the General till Mr. Lauder was gone, and then asked the General, what Commands he had for his Officer, Ensign Robertson? To which the General made answer: You may go and tell him to withdraw his Party to the Castle: And the Deponent having gone, found that the Ensign and his Party were already returned.

XXV. Patrick Lindey, Depute-Secretary to the Forces in North-Britain, depones, That, about Two o'Clock of Monday the 16th of September 1745, he being in company with General Guesf, the then Lord Advocate and Solicitor came into the Room, and told the General, That it was thought proper that a hundred Dragoons should be brought into the City of Edinburgh, to assist in the Defence of it; and desired that he might give a Warrant for bringing them into it. The General agreed to the Proposal; but thought it was proper that a Petition should be signed by the Pannel, the Lord Advocate, and Solicitor, requesting the Thing from him; which Petition the Deponent wrote: And the Lord Advocate carried it down, as the Deponent thinks, to have it signed by the Pannel; and desired that the Deponent might come in a Quarter of an Hour to his House to get the Petition when signed. That, after this, the Lord Advocate and Solicitor left the General, and Colonel Clayton came into his Room, who was going that Day to Brigadier Fowkes. That the General told him what the Lord Advocate and Solicitor had been with him about; and, at the same time, gave him Orders, upon his seeing the foresaid Petition signed and delivered to the Deponent, to acquaint Brigadier Fowkes, that it was his Orders that a hundred Dragoons should be forthwith sent into the Town of Edinburgh. The Deponent and Col. Clayton went from the Castle to Lord Advocate's House in a very short time after this; and calling for the above Petition, he received it, signed by the Pannel, Lord Advocate, and Solicitor, and shewed it to Colonel Clayton; who immediately left the Deponent, in order to go to Brigadier Fowkes. Depones, That, about an Hour after this, the Deponent, being with General Guesf, and the General, hearing that there was some Design among the Inhabitants for delivering up the Town, sent the Deponent to the Pannel, to know, whether he still desired that the hundred Dragoons should come to Town in Terms of the above Petition or Request; because, if he did not, he would send contrary Orders to Brigadier Fowkes. The Deponent accordingly went, and delivered his Message to the Provost, whom he then found in a very numerous Meeting of the Inhabitants in the New Church Isle; but does not remember that he told the Pannel the General's Reason for sending this Message. That the Pannel demanded the Opinion of the Meeting, whether the Dragoons should be brought in, or not? Whereupon a great Number cried out, No Dragoons. And the Pannel upon this told the Deponent, that he would neither bid nor forbid them, but that the General might do what he thought proper. The Deponent upon this, having the Petition or Request in his Custody, took it out of his Pocket, and wrote upon the Back of it, The Generality of this Meeting are not for receiving the Dragoons. This short Note he presented to the Pannel for him to sign; but this he refused, and said, Why will ye distress me about these Dragoons? or Words to that Purpose. And depones, That at that Time, or some time after, speaking to the Pannel upon the Subject of admitting the Dragoons, the Deponent asked him, since he had once signed a Request for bringing in the Dragoons, why he would not either continue the same Request, or counter-order it? And the Pannel's Answer was, That he signed the Request at the Desire of the Advocate or Solicitor. Depones, That, when he wrote the above Note, he did not tell the Pannel that the Paper upon which the Note was wrote, was the Request, which he, the Advocate, and Solicitor, had formerly signed; nor did he shew him any more than the Back-side of the Paper. And being interrogate by the Pannel, What it is the Deponent means, by his saying, that he had a Conversation with the Pannel, at that Meeting, or some time after, about admitting the Dragoons; whether he means that Day or some Day thereafter? depones,

depones, He cannot be positive as to the Day. And depones, That, upon delivering General Gough's Message to the Pannel, he did it aloud; and is positive, that the Meeting delivered such an Opinion as he has already deponed upon; and thinks the Provost put the Question as he has already deponed; but as to this last Particular he is not positive.

XXVI. *Donald Mackay*, Cadie in *Edinburgh*, depones, That, on Monday Afternoon, the 16th of September 1745, *William Henderson* gave the Deponent a Letter to be carried to *Leith*, to one *William Ross*, a Gunner; which the Deponent was told was to bring him up from *Leith* to the Pannel, then Lord Provost of *Edinburgh*. That, after the Deponent had delivered his Message, and returned, as he was walking about the *Luckenbooths*, a Man dressed in black Cloaths came to the Deponent, and asked him, If he knew him? The Deponent answered, 'I do not know you, Sir.' The Man replied, 'What, do you not know me?' And the Deponent said, 'I believe I may have seen you once or twice; but I do not know your Name.' Then the Man said, 'Here is a Letter to the Provost; you must find him out, and give it him; and here is Three-pence for your Pains, and next time I see you I will give you a Shilling.' That the Deponent went in quest of the Provost, and saw Mr. *Charles Erskine* Advocate, *Charles Fraser* Merchant, and the deceased Mr. *Robertson* Minister, standing together. That the Deponent came up to them, and asked them, if they knew where the Provost was; for here was a Letter he had to give him. Mr. *Charles Erskine* said, 'Give me the Letter, and I'll deliver it to him.' And the Deponent gave the Letter to Mr. *Erskine*. Then *Charles Fraser* said, 'I am lighter-footed than you; give me the Letter, and I'll carry it to him.' And Mr. *Erskine* gave him the Letter, and *Charles Fraser* went off with it. And depones, That the Deponent did not then know, nor does he yet know the Contents of the Letter, nor from what Person it was. And depones, That after the Rebels had got Possession of the City of *Edinburgh*, he saw the same Person who had given him the Letter as above, who was then an Officer in the Service of the Rebels, and craved him for his Shilling that he had promised him; but did not get it.

XXVII. Mr. *Charles Erskine* of *Edinburgh*, Advocate, depones, That, upon the Evening of Monday the 16th of September 1745, as he believes, though he cannot be positive of the Day, the Deponent, *Charles Fraser* Merchant, and the now deceased Mr. *Robertson* Minister, were standing together opposite to the *Tolbooth*; when a Street-Cadie came running up in some Halle, and said, 'Who is there? Where is the Provost?' And the Deponent turning about his Face to the Cadie, said, 'Why, what do you want the Provost for?' The Cadie answered, 'Here is a Letter I have to give him.' The Deponent said, 'From whom is the Letter?' The Cadie answered, 'I do not know; a Man in black Cloaths gave it me to give him.' The Deponent replied, 'I believe the Provost is just now in the New-Church Isle.' And then *Charles Fraser* said, 'I believe the Provost is in the New-Church Isle; if you will give me the Letter, I will carry it to him.' And the Deponent having before taken the Letter out of the Cadie's Hand, he, at the Cadie's Desire, then gave it to *Charles Fraser*. That the Deponent looked at the Back of the Letter, and saw that it was addressed to the Lord Provost; but cannot say, that, in the Hurry they were then in, he observed what more was in the Address, nor did he look at the Seal. And being shewn the Letter in the Clerk's Hands, which is the first in the List of Writings subjoined to the criminal Libel, depones, That he cannot say, whether it is the same with the Letter above deponed upon, or not.

XXVIII. *Charles Fraser*, Merchant in *Edinburgh*, depones, That, between Five and Six o'Clock of the Evening of the Day before the Rebels came into the City of *Edinburgh*, the Deponent being standing on the Street, with Mr. *Erskine* the preceding Witness, a Cadie came up to them, asking, where was the Lord Provost? Mr. *Erskine* answered, 'What do you want with him?' The Cadie said, 'I have a Letter to give him.' Mr. *Erskine* said, 'Let me see it.' The Cadie gave him the Letter, and Mr. *Erskine* said, 'The Provost is in the New-Church Isle; I'll go in with it to him.' Then the Deponent said to Mr. *Erskine*, 'Sir, Don't trouble yourself; give it me, and I'll carry it to him.' And the Deponent got the Letter, and went with it to the New-Church Isle; when the Deponent found a great Crowd of People there, and some Difficulty to get at the Pannel; and therefore gave the Letter to Mr. *Polson*, a Vintner in Town, to hand it to the Pannel: And the Deponent saw it handed accordingly; and staid till it was broke open. That the Deponent cannot say, he saw it in the Pannel's Hands, nor knows he by whom it was opened. And the first Thing the Deponent noticed in the Reading, after they had read a Line or two of the Letter, was, that they said it was from *Charles P. R.* Upon which there arose in the Meeting a great Noise and Murmuring, some calling out, not to read it: And then the Pannel, and the rest of the Meeting, dismissed; and the Magistrates, as the Deponent thinks, went to the Goldsmiths-Hall. And being shewn the Letter, which is the first in the List of Writings subjoined to the criminal Libel, depones, He believes it may be the very same that he has deponed upon, though he did not then either observe the Seal, or that it was addressed to the Magistrates and Town-Council, as well as to the Lord Provost of *Edinburgh*.

XXIX. *William Henderson*, Writer in *Edinburgh*, depones, That, upon Monday the 16th of September 1745, the Deponent was in the New-Church Isle; where he saw the Pannel, and a Number of other Persons, met together; but remaining there for a very little Space, he did not know what was transacted amongst them. That he went from that Place towards the Castle-hill, and returned from thence to the Goldsmiths-Hall about Six o'Clock at Night; where he found the Pannel, the other Magistrates, and most of the Council met. That he saw a Letter lying upon the Table; which, from Curiosity, he took up, and looked at: and the Letter marked Number 1. which is now shewn to him, he says, is the Letter he so looked at; and which Letter, he was told by some Person in the Hall (the Deponent does not call to mind who that Person was) had been brought in to the Meeting in the New-Church Isle. That, very soon after the Deponent came to this Place, the Pannel proposed, the Town's Assessors should be sent for, for their Advice; which was agreed

to. And the Deponent was for the deceased Mr. *James Graham*, and Mr. *Robert Pringle*; but found none of them: That, after he returned, he reported, that Mr. *Graham* was not to be found, and that Mr. *Pringle* was out of Town; and thereafter Mr. *Solicitor Haldane*, one of the Town's Assessors, who had been called upon by the Provost and Magistrates, came in to the Meeting; and the Pannel then took the Chair; and the Deponent was ordered, he believes by the Provost, to read the Letter; and having read the Address, and the Subscription, which is *Charles P. R.* and begun to read a Line, Mr. *Haldane* withdrew, and said, That these were Matters too high for him. Upon this the Provost said, *Good God! I am deserted by my Arms, and by my Assessors.* That then there was a Pause; and the Pannel having demurred about reading the Letter, one of the Meeting said, He thought there could be no Harm in having it read. Whereupon the Deponent proceeded, and read the Letter. That then a Motion was made, to send a Deputation to the Rebels Camp, as the only Means to save the Town from the Menaces contained in the Letter. And being interrogate, who it was that made the Motion? says, That several of the Members of the Meeting seemed to be of that Opinion; but who it was that made the Motion, the Deponent cannot tell; but, as he remembers, there was a good deal of Confusion among them. However, this Motion was agreed to by the Meeting. And at this Time the Deponent was called upon by Dean of Guild *Allan*, and by him desired to go to the Parliament-Close, where the *Edinburgh* Regiment was, and tell the Officer, without Loss of Time, to march his Men up to the Castle, and to deliver in their Arms. That the Deponent accordingly went, and found one Mr. *Burns*, who was Adjutant to the Regiment, and acquainted him with the Message sent by Dean of Guild *Allan*. But he having asked of the Deponent, whether the Pannel had given Orders for that Purpose? and the Deponent having received no Commission, but from Dean of Guild *Allan*, Mr. *Burns* demurred to follow the Advice given. That the Deponent immediately returned, to acquaint the Dean of Guild of what Mr. *Burns* had said. Whereupon he immediately went down Stairs to speak to Mr. *Burns*; who they met coming up to the Goldsmiths-Hall. What passed between them the Deponent knows not; but, in a very little after, he saw the Regiment march to the Castle. Depones, That after he returned with his Answer to Dean of Guild *Allan*, he was informed in the Meeting that four Persons had been named as Deputies to go to the Rebels Camp, namely, *Bailie Gavin Hamilton*, *Bailie Yetts*, *Conveener Norris*, and *Deacon Orrack*. Whether there were more named or not, the Deponent knows not; nor does he know further as to any Instructions given them, but that they were to find out upon what Terms or Conditions the Rebels were to enter the Town. That, in pursuance of this, the Deputies went out; and returned again betwixt Nine and Ten o'Clock at Night, with a written Answer, Number 2, in the List of Writings subjoined to the Libel: Which having been shewn to the Deponent, he says, it is the Answer the Deputies brought in. After this Answer was delivered by them to the Meeting, which by the Time the Deputies had returned, had gone from the Goldsmiths-Hall to the Laigh Council-House, it was observed, that it contained a Limitation of Time, namely, Two o'Clock in the next Morning, within which a precise Answer was to be given by the Magistrates and Council. And as, by this Time, the Magistrates had some Information, that Sir *John Cope*, and his Majesty's Forces, were off *Dunbar*, and that it was believed by that Time they would be landed, the Meeting came to a Resolution to send a second Deputation, in order to try if they could prevail to have the Time lengthened out 'till Nine or Ten o'Clock next Day. That the Deponent does not know precisely who these second Deputies were, nor did he see them set out or return; but that, a Day or two after, a Paper was put into his Hands by Provost *Coutts*, who was the only one of the second Deputation whom the Deponent knows of, or remembers, which, he said, was the Answer returned upon the second Deputation to the Magistrates and Town-Council: And the Writing marked Number 3, in the List subjoined to the Libel, now shewn to the Deponent, he says, is the Paper he received from Provost *Coutts*, as above. And being interrogate, whether the Pannel made the Motion, or acquiesced or concurred in the Deputations? says, He does not remember that he made the Motion; but that he took it for granted that he concurred or acquiesced in it, either explicitly or tacitly; not being able to call to mind any thing he uttered or said concerning them, excepting that, when the Instructions were given to the second Deputies, he urged them to insist, That it was then late, and he could not have the Sense of the Inhabitants; and therefore it was reasonable they should be indulged 'till Ten o'Clock, that they might have an Opportunity to see what the Sentiments of the Inhabitants were concerning that Matter. And depones, That he, as under the Town-Clerks, always attends the Magistrates when they meet together in the Council as Magistrates; but the Deponent knows of no Minute of Record that was made of the Transactions of that Day. And depones, That, about Four o'Clock, or a little after, he had Directions from the Pannel to go to the Cross, and to desire that such Inhabitants or Burgesses as he there met with, should repair to the New-Church Isle; which the Deponent accordingly did. And says, That the aforesaid Directions were given him by the Pannel as he was proceeding from the Goldsmiths-Hall to the New-Church Isle. And further says, That the Paper marked Number 8, in the List of Writings subjoined to the Libel, he verily believes, is the Paper which he saw in the Pannel's Hand about Three or Four o'Clock, which of the two the Deponent cannot be positive; but that it was that same Afternoon before the Meeting in the New-Church Isle above-mentioned.

XXX. Sir *George Preston*, of *Valleyfield*, depones, That, in September 1745, the Deponent was Captain of a Company of Volunteers for Defence of the City of *Edinburgh*; and, on Monday the 16th of that Month, his Station was to keep Guard with his Company at the *Netherbow* Port, along with another Company commanded by Mr. *James Nimmo*. And, when it was pretty far in the Afternoon, the Companies being drawn out upon the Streets, the Deponent went to the Pannel to receive his Orders what they were to do, and he found the Pannel in the New-Church Isle; who ordered the Deponent to march the Companies to their Alarm-post in the *Lawn-market*, and to remain there till further Orders. That the Deponent

Deponent immediately marched up the Companies to the *Down Market* and there met with several Volunteers in their Return from the Castle of *Edinburgh*, who told the Deponent, That they had marched up their Companies to the Castle, and delivered up their Arms there; and it was high Time for him to do so likewise. And the Reason they gave the Deponent for having taken that Step, was, That they said, that now the Town was not to be defended; and that a Resolution had been taken in the New Church, not to defend the Town. That the Deponent followed their Advice, marched up with the two Companies above-mentioned to the Castle, and there delivered up their Arms. Depones, That between three and four o'Clock of the same Afternoon, there came in at the *Netherbow Port* sixteen or eighteen Carts loaded with Spades and Shovels, which it was said to the Deponent, were carrying to the Castle; and a Town-Officer came to the Deponent, with Orders, as from the Pannel, then Provost, to let them pass; which he did accordingly. That thereafter, when the Deponent went to the Castle, he asked Mr. *Lyon*, the Store-Keeper of the Castle, Whether these Spades and Shovels had been brought thither; who answered, That there came none there; for they had no Use for them; and they had great Abundance of their own.

XXXI. *James Miller*, late Servant to the deceased *Alexander Bruce of Kinnel*, depones, That upon the 16th of September 1745, the Deponent was standing at the Entry of the Tolbooth-Church, in the Afternoon, and saw several Carts, how many he cannot now say, loaded with Shovels, Spades, and Mattocks, brought towards the Entry to the Laigh Council-House, and taken into the Door which enters in to the North-gate of the Parliament-House; but where they were carried afterwards, the Deponent knows not. And further says, That some Town-Officers told him, that these Carts were brought thither by the Order of the Lord Provost; at least one of the Town-Officers, whose Name he knows not, but he is an old Man, and he would know him if he saw him again, told him so. And upon an Interrogatory put to him, further says, That whether that Officer was waiting upon the Carts, or attending the Provost, who, he believes, was in the Goldsmiths-Hall, he does not know.

XXXII. *Baillie Bryden*, Lieutenant of the Royal Regiment of Artillery, depones, That he was in a Tavern with the Pannel some little Time before the Rebels entered the Town, in the Year 1745, when a Gentleman was brought in to them, who said, He had carried along with him from *Dalkeith* about fifty Men to assist in defending the City against the Rebels. That the Deponent did not observe the Pannel say much to him; but he rose up from his Seat, and thanked him. That the Provost seemed to be at a loss where to quarter them; but at last the Provost gave Directions to carry them to the High-School, as the properest Place to quarter them. And further depones, That he was employed in placing the Cannon on the Walls of the City; and did not find any Occasion of Complaint to the Provost concerning any other Matter, than what related to his own Business; and it was chiefly concerning the making of the White-Iron Cases for the Grape-Shot; in which he thought the Tinman that was employed did not make such Haste as he ought to have done. As to the other Parts of the Works carrying on, he thought that the People he happened to see working, went on pretty well. And further says, That he waited on the Pannel, along with the deceased Mr. *MacLaurin*, who was in a Tavern (he thinks, but cannot be positive, that it was in the Evening before the Rebels entered the City); and desired Orders in Writing to load the Cannon on the Walls. That the Pannel did not give orders in Writing, but verbally ordered him to load them; and that Provost *Drummond* was then present, and said he would give Orders in Writing, which accordingly he did. And upon a further Interrogatory he recollects, that upon the Saturday a Number of Men were ordered by the Provost to assist him (as the Deponent heard, though he cannot tell to a Man, they were twenty-four) to mount the Cannon; which accordingly was done, as far as the Deponent can recollect, from *Bristow Port* to the *Netherbow*; and that it was upon the next Day, being Sunday, he waited upon the Pannel, with Mr. *MacLaurin*, and received the verbal Orders above-mentioned. In consequence whereof, and of a written Warrant from Provost *Drummond*, the Cannon were accordingly loaded; the Deponent cannot say all of the Cannon, because he came away about eleven o'Clock at Night, and left the Town's People at Work, at least he left them there upon the Cannon when he came away; the Gunners which he brought along with him having returned to the Castle before he left the Town's People. That a Sailor from *Leith*, who was said to the Deponent to have Skill in loading Artillery, was come to the Place where the Deponent was at Work; and it was said to the Deponent, the rest of the Cannon were to be loaded. And being interrogate, Why the Guns were not sooner loaded? depones, That the Materials for loading them were not sooner ready. And being interrogate for the Pannel, Whether or not the Scaffolding, upon which the Cannon were placed, was sufficient? depones, That he saw Boards upon which the Cannon were placed, to make them run upon; but no Scaffolding whereupon they were placed; the Swivels which were placed upon the *Netherbow* and *Bristow Ports*, were to be fired by Men who were to stand upon the Scaffolds placed there for that Purpose. And further depones, That upon a Message delivered by *Baillie Baillie*, and some other Persons that came along, sent to Gen. *Gust*, he sent the Deponent, and some other Artillery-Men, to the Town, to follow such Directions as should be given them by the Pannel concerning the Cannon: That, as the Deponent thinks, there were two Messages delivered to Gen. *Gust* concerning Gunners to be sent down; but that he was sent down but once with the Orders above set down, before the Saturday the Transactions whereof are above set forth. That when they came down the first Time to clean the Guns, they had no Orders from Gen. *Gust* to attend upon the Walls, and to fire the Guns, but only to assist in planting them upon the Walls; nor does the Deponent know of any Gunners the Town had, excepting the Sailor above-named: But that he was present when Mr. *MacLaurin* applied to one *Ferment*, the Master of a Vessel at *Leith*, to assist in managing the Guns; but he declined it.

XXXIII. *Robert Brown*, Taylor in *Edinburgh*, depones, That upon the 16th of September, in the Year 1745, the Deponent served in the Trained-Bands of *Edinburgh*, and was under the Command of Capt. *Hepburn*, and was placed at the *West-Port*, and continued there till three o'Clock, or thereabouts, in the Morning after. That their Captain having gone

up to wait upon the Provost and Magistrates, as the Deponent believes, to receive Instructions from them how his Company was to be disposed of, when he returned, he signified to those under his Command, that his Orders were, That every Man should repair to his own House; and that thereupon they went off. And further says, That the Deponent having asked his Captain, what should be done with the Arms of his Company? he told them, his Orders were to leave them in that Place where they then were, which was a Sort of Guard-Room; and told him, that his Half-pike was to be left there also. Accordingly, when they dispersed as above, they left their Arms there.

XXXIV. *Edward Inglis*, Druggist in *Edinburgh*, depones, That upon the 16th of September 1745, he was a Soldier in the Trained-Bands, in the Company commanded by Capt. *Hepburn*, which was stationed at the *West-Port* about Eight of the Clock in the Morning of that Day, and remained there till about Half an Hour after Three next Morning; when their Captain told them, That he had Orders from their Colonel, that is, the Pannel, to disperse, and leave their Arms in the Place where they kept their Guard-Room. In pursuance whereof, they accordingly dispersed, and left their Arms in the foresaid Place. And depones, That about Five o'Clock Monday Evening before they dispersed, the Deponent having heard from Capt. *Dalzell*, one of the Officers of the City-Guard, that the Town was to be delivered up, he applied to Captain *Hepburn*, and said, That, since that was to be the Case, he thought the best Way for them was to go to the Castle, and deliver in their Arms, and every Man to go to his own Home; but the Captain answered, That they could not desert their Station, and behaved to wait Orders from their superior Officers.

XXXV. *Alexander Hepburn*, Merchant in *Edinburgh*, depones, That upon the 16th of September, in the Year 1745, he commanded a Company of the Trained-Bands in the City of *Edinburgh*. That he and his Company were planted as a Guard upon the *West-Port*, about Eight o'Clock of that Morning, and continued upon that Station till about Three next Morning; when they dispersed, and left their Arms in the Room where they kept Guard. And being interrogate, By whose Orders they dispersed, and left their Arms there? says, That he was sent for, to come to the Provost and Magistrates, who were then in Mrs. *Clarke's*; he believes he received the Message by a Cadie. When he came to Mrs. *Clarke's*, where the Magistrates were, Mr. *Tennent*, the Captain Commandant of the Trained-Bands, chid him for having lingered so long upon that Station where he was; for that he had sent for him, by *George Wemyss*, some time before that; that he and his Men should disperse, and leave their Arms in the Room where they kept Guard. That the Deponent answered, He had received no such Message; but that he came now in Obedience to a Message from the Council; and now he attended, and desired to know their Pleasure; and that the Commandant then, in the Presence of the Provost and Councillors, gave him Orders forthwith to disperse his Men, and to leave the Arms in that Room where they were keeping Guard; and that *John Hislop*, the Store-Keeper of the Town, was that Morning to come and take away the Arms. That all the while the Deponent staid in the Room, and while he was receiving the Orders from the Captain-Commandant, the Pannel's Head was lying on his Hand on the Table, and, to the Deponent's Apprehension, was asleep. That the Deponent immediately left the Council, and returned to his Station at the *West-Port*; intimated those Orders to his Men, and dispersed them; who left their Arms in the said Room where they had kept Guard. And being interrogate, Whether, when he communicated his Orders to the Company, he had told them, That it was by the Lord Provost's Order that he had dispersed them? says, That he cannot be positive; that it is possible he might have said his Orders were from the Provost, because the Council were all present when the Commandant gave the Deponent his Orders. And depones, That, as Captain of the Company stationed at the *West-Port*, he ordered the Gates to be opened to the two several Deputations that were sent by the Magistrates, and to the first Deputation when they were on their Return; but that the Guard was dismissed before the Return of the second Deputation. And further says, That he understood in general, that the Deputies were sent out to make some Treaty or Capitulation; but, as to Particulars, he learned nothing from them, or any body else. That he cannot charge his Memory at present, nor can he recollect, that the Deputies told him any thing of their Errand going out, or the Answer of the first Deputation; and is positive, that none of the Men under his Command did that Morning, or the Day before, at any time, tell him of any Surrender of the City, or propose carrying their Arms to the Castle.

XXXVI. *Robert Tennent*, Merchant in *Edinburgh*, depones, That, upon the foresaid 16th of September, he was Captain-Commandant of the Trained-Bands of *Edinburgh*; and that he knows Captain *Hepburn's* Company was placed at the *West-Port*; and that they dispersed about Three o'Clock next Morning. And being interrogate, by whose Orders they dispersed, and left their Arms in the Guard-Room? says, That, upon an Alarm brought in from the Street into the Laigh Council-House, some time in the Evening of the 16th, he cannot be positive as to the Hour, that the Highlanders had entered the City at the *Netherbow*, and were chasing the Dragoons before them; it was thought dangerous that the Trained-Bands should be found by the Rebels with Arms in their Hands: And therefore he, the Deponent, moved to the Provost and Council, that Orders might be given to the Men under the Officers of the Trained-Bands, to lay down their Arms, and disperse; and that, upon this Motion, it was agreed by the Provost and Council, that such Message should be sent. In pursuance whereof, the Deponent sent Capt. *Wemyss* to the three several Companies; one whereof was posted at the Weigh-House, and two at the *West-Port*, to signify to them the Provost and Council their Pleasure to the foresaid Effect. That, as it appeared afterwards, Capt. *Wemyss* did not go to the Companies at the *West-Port*, but had gone only to the Company stationed at the Weigh-House; which, in consequence of the Order he transmitted to them, dispersed: But what they did with their Arms, the Deponent knows not. And the Council being informed by *Baillie Mansfield*, who had Occasion to be at the *West-Port* that Morning, that Capt. *Hepburn* and his Company were still there, they sent for the Captain, and upon his coming to Mrs. *Clarke's*, where the Council then were, the Deponent

Deponent asked him, in their Presence, Why he had not dispersed his Men sooner, upon the Notice sent him by Capt. *Wemyss*? he replied, He had never received any such Message. And, upon an Interrogatory, the Deponent further says, That the Message, as he understands it, sent to Capt. *Hepburn* by the Council was to dismiss his Men, and come up to them; and that he had actually dismissed his Company before the Deponent saw him, as he the Deponent supposes; and that he does not know what Orders were given to Capt. *Hepburn* anent the Disposal of the Arms. And further depones, That, when Capt. *Hepburn* came to the Magistrates, the Deponent does not remember, and cannot be positive, whether the Pannel was present among them or not; he having about that time been pressed to go to Bed, and take a little Rest: for he was fatigued, and faint. And, being further interrogate, Whether, when he the Deponent represented to the Council the Report that was heard at the Door, that the Highlanders had burst in at the *Netherbow* Port, and were chasing the Dragoons up the Street, any particular Orders were given as to the Disposal of the Arms? depones, That he cannot be positive, further than that they were to lay down their Arms; and he supposed they were to leave them in the Place they kept Guard. And also says, That, after it was found that the Alarm upon which the Orders were sent to the Companies to disperse was false, the Deponent did not think of sending a second Order, for he thought the first Order was executed: And as for the Arms, the Deponent does not know that any second Orders were sent concerning the Disposal of them. And depones, That there are in all sixteen Companies of Trained-Bands: And that before Sunday there were never so many as three Companies on Duty, as far as the Deponent can recollect; but that then the three Companies were ordered upon Duty; and that three Companies continued to do Duty, till they were dismissed, as above: And that the Deponent does not know, or remember, of any Orders given to *John Hislop* to gather up the Arms; nor that any Mention of *Hislop* was made in his Hearing when Capt. *Hepburn* attended the Council. And, upon a further Interrogatory, depones, That, after it was agreed upon in the Goldsmiths-Hall to have a Meeting in the New Church Isle, the Pannel recommended it to all who were present to attend; and to desire such Burgesses as they met with to come there also; as also, to such as were at the Head of any Corporation or Society, to take the Opinion of the Members of the same, whether it was proper to stand out and defend the Town? That thereupon the Deponent assembled the Officers under his Command in *John Ross's* Tavern; and the Captains were in one Room, and the Subalterns in another. That he asked the Captains first, What their Opinion was concerning the defending of the Town? And they were all of Opinion, that, since the Dragoons had fled Eastward, and that some of the Volunteers had begun to separate, it was not practicable to defend the Town: And that, upon advising among the Subalterns concerning the same Proposition, they were unanimously of the same Opinion; as it was reported to the Deponent by Mr. *Auchinlack*, who was his Lieutenant, from the Lieutenants; and by Mr. *Hutton*, his Ensign, from the Ensigns: And that he and his Officers, at least a great many of them, attended the Meeting in the New Church Isle. And further says, That the Deponent had received the Key of the Wicket of the *Netherbow* Port; but that, upon Monday Night, in Presence of the Pannel and Council, the said Key was by him delivered to Capt. *Hamilton*, to whom, at the same time, the great Key of the Gate was also delivered, in order to let out the Dragoons Baggage; some of whom were left to take care of it, and made a very great Noise for it at the Time.

XXXVII. *John Dalgleish*, Watchmaker in *Edinburgh*, depones, That he was a Captain of the Trained-Bands, on Duty upon the Evening of Monday the 16th of September 1745; and, between Seven and Eight o'Clock at Night, he received a Message by one of the Town-Officers, containing Orders to him to cause his Company to lay down their Arms, and to dismiss them: Which he did not incline, on that Message, to do; but sent his Ensign, *William Sibbald*, Taylor, with Orders to find out the Provost wherever he was, and to acquaint him; and, if he could not be found, the Captain-Commandant; that he, the Deponent, had received the above Message as from the Pannel, or some of the Council; and to inquire at one, or either of them, if such a Message was sent; and what he should do in relation to the Subject thereof? That his Ensign accordingly went, and returned to him between Eight and Nine o'Clock, with Orders, as from the Pannel, to dismiss his Guard, and lay down their Arms: And the Deponent being then standing at the Door of the Weigh-house, which was his Post, and where he had planted two Centries, his Men rushed out upon him, leaving their Arms behind them. And depones, That he received no Direction from any Person in what Manner these Arms should be disposed of, or secured. Depones, That he first mounted Guard upon the Evening of the Fast-day, which was held two Weeks before the Rebels came to Town; and mounted Guard again, upon the 16th Day of September, about Seven o'Clock in the Morning; and, just before that, saw the Pannel in the Goldsmiths-Hall, who acquainted the Deponent, that he would get Powder and Ball, and Cartridge-boxes, from *John Hislop*, the City Store-keeper. That, about Nine o'Clock he sent to Mr. *Hislop*, desiring to have them; but he not being in the way, the said Ammunition was not brought till about Eleven o'Clock, when as much as was thought would be useful was delivered to him for his Company. Being interrogate for the Pannel, depones, That, betwixt Nine and Ten of the Sunday Morning the 15th, the Officers of the Trained-Bands were called by the Captain-Commandant, by the Pannel's Orders, to the Crown Tavern, where he, and the rest of the Captains, who were all in one Room together, received Orders from their Commandant, to be ready to draw out their Companies on a Minute's Warning, which each Captain communicated to his Subalterns; with Orders, to such of them as were there, not to leave that Tavern, without leaving Word where they might be found. That, about Three of the Clock of the Afternoon of this Day, the Captains got Orders to repair to their respective Bounds, and draw out their Companies; which they accordingly did: And then the Deponent's Company had Arms distributed among them; and, as far as he could observe, Arms were delivered to the other Companies: And that, before the Companies were dismissed, they received Orders to be ready to march at Tuck of Drum.

XXXVIII. *Mark Sandilands*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That he was one of the associated Volunteers, who, on the 7th of September, proposed to publish a Paragraph in the *Edinburgh Courant*, on the Monday following, containing an Account of the Steps taken for Defence of the City of *Edinburgh* against the Rebels: That he shewed a Copy of the Paragraph, as concerted, to the Pannel; some others of the Volunteers being in Company, which contained Words to this Purpose, 'By the Advice of the Crown-Lawyers, he cheerfully accepted of the Offer of their Service,' (which referred to the Volunteers;) and the Pannel said, He could not agree to that Draught, because it was not true: And it was amended by the Pannel's Direction; and after the Words, *Advice of the Crown-Lawyers*, it was made to run, *he acquiesced in, and accepted of their Service*; giving this for his Reason, That he differed in Opinion with the King's Lawyers; for, as the Law stood, he thought it was unlawful to take up Arms, without the special Warrant of his Majesty. Depones, That he was present when Bailie *James Stewart* proposed to send to the King's Ships in the Road, to desire to have some Sailors, accustomed to fire Cannon, for serving the Cannon mounted on the City-Walls; which the Pannel did not relish; because, he said, they would be rash, and they would fire on Friends, as well as Foes. And, being interrogate, If, when the Pannel did not approve of said Proposal, he mentioned any other? depones, He does not remember.

XXXIX. *George Dunbar*, Merchant, and late Bailie of *Edinburgh*, depones, That the Paper, No. 8, annexed to the Criminal Letters, was framed by the Deponent, and some other Citizens, betwixt One and Two Afternoon, of the 16th of September 1745; and that, while they were in the Course of signing it, Bailie *Gavin Hamilton*, and Bailie *Robert Baillie*, sent *George Lindsay* for the Deponent, to ask him, What sort of a Paper it was to which he was procuring Subscriptions? That the Deponent went, and explained the Substance of it; and said he would give them the Scroll of it; which he sent for, and delivered to them; and, after reading it, they were well pleased with it; saying, They believed it to have been a Paper of another Nature. That the Deponent went along with them to some more of the Council assembled in the Goldsmiths-Hall, where the said Scroll was delivered to Dean of Guild *Hathorn*. That, about Three o'Clock of this Day, he met the Pannel at the *Stinking Style*, and put the said Paper, then signed by a great many of the Inhabitants, in the Pannel's Hands; relating to him, at the same time, the Substance of it; and he promised to lay it before the Magistrates and Council. The Deponent attended him to the Goldsmiths-Hall; and, as they were entering the Door, a Crowd of the Subscribers rushed in behind them; at which the Pannel was vastly offended; and, turning about, said, What, Gentlemen, think you to compel me to grant the Desire of your Petition by Force? Upon which the Deponent endeavoured to stop, and pacify them, and went down Stairs, the Bulk of them following him to the Parliament-Close; where he remained for some little Time, and until he received a Message from Capt. *Hepburn*, who commanded the Company of the Trained-Bands in which the Deponent, who was a private Man, served, That his Company was mutinying, because the Volunteers were going to lay down their Arms; that this was before the Fire-bell rung. That when, in obedience to the Captain's Commands, he went to the *West-Port*, he found a Disorder among the Men of the said Company upon the Account foresaid; to whom the Deponent addressed himself much to this Purpose: Let the Volunteers do what they will; let us remain upon our Duty, till we shall receive the Lord Provost our Colonel's Commands; and I will stand by you as long as I can carry a Musket. That, about Four o'Clock, he saw that Part of the Town-Guard, which had gone out to support the Dragoons, standing in the *Grass-market*, some of them under Arms, and the Arms of others grounded; and this in his Way to Capt. *Hepburn*. Depones, That, betwixt Four and Five o'Clock at Night, the Pannel, with some other of the Magistrates, came to the *West-Port*, attended by Mr. *MacLaurin* and *John Scot*, Plumber, and gave Orders to shut the Ports; to let in any Soldiers or Dragoons that should come there, but no Stragglers or Strangers; to let in any Forage that should come for the Dragoons, or Persons having Messages to the Magistrates; and to prime and make ready the Cannon planted at the *West-Port*: All which things that required immediate doing, were done. That the Charge of the Cannon was given to the Captain of the Trained-Bands, and to the Captain of the Town-Guard; but he observed no Gunners there; and *Scot*, who, in Conjunction with Mr. *MacLaurin*, had primed the Cannon, staid by them for some time; he does not know how long. And, being interrogate for the Pannel, depones, That, by Capt. *Hepburn's* Order, as from the Pannel, he the Deponent, and three more of the Guard, mounted the Town-Wall by a Ladder, to observe if they could see any of the Dragoons coming; where they remained two Hours; but none came in but one. That the Deponent staid on Guard till about Two o'Clock in the Morning; when he went up to Mrs. *Clarke's*, where the Magistrates and Council were, to acquaint them, that they would do well to send some of the Soldiers of the City-Guard to take care of the Cannon, which were primed, and People with Flambeaux going near them; and he received for Answer from the Magistrates, That they would be taken care of. That the Pannel was not then in the same Room with the other Magistrates and Council; but in another Room, as he was told, sleeping. That he did not return to the Guard again, but remained a considerable Time with the Magistrates. That the Deponent, before he left the Guard, saw the Gentlemen of the first Deputation from the Magistrates and Town-Council to the Rebels go out, and return; and saw the Gentlemen of the second Deputation go out in a Hackney-Coach; but those of the first went out on Foot.

XL. *Richard Lindsay*, late one of the Bailies of *Musselburgh*, depones, That he did assist in getting together betwixt 140 and 150 Men in the Town and Neighbourhood of *Musselburgh*, to be employed in the Defence of the City of *Edinburgh*; and, upon Sunday the 15th September, marched them near to *Cristall's*; where Sir *Robert Dickson*, a former Witness, received them, and marched them that Night into Town. The Deponent returned to *Musselburgh*, and next Morning came into *Edinburgh*; and, about Nine o'Clock in the Morning, waited on the Pannel, and acquainted him, then in the Goldsmiths-Hall, that the said Men, who were quartered in the New Church Isle the preceding Night, were turned very impatient to be properly

properly employed for the Defence of the City, for which End they had come; and that he wanted to have them delivered off his Hands. That the Pannel thanked him very much, and told him, he would send one to receive them immediately. That the Deponent returned to the New Church Isle to keep his Men together, where he remained about the Space of Half an Hour; and, at their Desire, he again waited upon the Pannel at the Goldsmiths-Hall, and acquainted him, that the Men had grown still more impatient, and desired they should be taken off his Hand: which the Pannel said should be done immediately; and sent for a Man that could not be found: Whereupon the Pannel desired him to return, and keep his Men together, and he would send one immediately to receive them. That he accordingly did return; and, after staying about a Quarter of an Hour with the Men, who began to blame him for bringing them to Town, he waited a third Time upon the Pannel, representing, as above; and the Pannel seeming to be very much surprised that Nobody had come near him, desired the Deponent to return to his Men, and that what he insisted for should forthwith be done. That, soon thereafter, one of the Bailies, *Mrs.*, he thinks, and a Serjeant of the City-Guard, came; that they cast some of the Men, and swore the rest to be faithful to his Majesty; which last were delivered over to the Care of the said Serjeant, and a good many of the former listed with the *Edinburgh* Regiment, as they themselves told him. That he knows nothing of their having received any Arms; and that the Bulk of them returned that Night home.

XLI. *Robert Bailie*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the 16th of *September*, there was a Motion made in Council, where the Pannel was present, that the City-Arms should be secured, by sending them up to the Castle. That the Members of it were divided in their Opinion; and the Majority of them thought that no Orders should be made for that Purpose; and that the Pannel seemed to be of the Opinion of the Majority; and that it appeared to him, that there was an evident Majority for the foresaid Opinion, though no Vote was put; and it was from what the Pannel said, that the Deponent took him to be of the Opinion of the Majority: And that the Pannel, according to his usual Custom, asked the Opinion of severals before he spoke on the Subject himself: And that it is the common Practice of the Provost of *Edinburgh* in Council, when any Proposition is made, to ask the Opinion of five or six, or sometimes more, of the Council; who, if they give it all one Way, he usually declares it to be the Sense of the Council, unless a Vote is demanded. That, in the present Case, though there was a Difference in Opinion, yet no Vote was insisted for; and, as the Majority had given the Opinion above-mentioned, in consequence thereof he refused to give the Order.

XLII. *Hugh Hathorn*, late Dean of Guild of *Edinburgh*, depones, That he does not remember, that the Pannel told him the Message that was delivered him by *Andrew Alves* from the Rebel-Army; and thinks he did not hear of it till about the Time, or a little before *Andrew Alves* was committed Prisoner. And depones, That he was present in the Goldsmiths-Hall, both before the Meeting in the New-Church Isle, and afterwards in the Council-House; in both which Places, the Goldsmiths-Hall and Council-House, there was a great many of the Council present; that there was also a great many other People who did not belong to the Council; and in neither of these Meetings does the Deponent remember any Proposal to have been made for securing the City-Arms in the Castle of *Edinburgh*: But remembers to have heard a Message sent, as the Deponent thinks, from some of the Out-Guards about the Ports or the Walls, to know what they should do with their Arms? And the Reason why this Message was sent, the Deponent believes to have been, That it was publicly talked, that the Volunteers, before this time, had delivered up their Arms; and the Answer made to this Message was, That they should secure them the best Way they could; and the Deponent thinks this Answer fell to be made by the Pannel, as he was in the Chair. And, being interrogate for the Pannel, whether this Answer was given as being agreeable to the Mind of the Council? depones, He did not hear the Opinion of any of the Council asked, nor did he hear any of the Council contradict it. And depones, That the Provost of *Edinburgh* cannot of himself, as he thinks, give out any of the Town's Arms to be used by the Inhabitants, without a previous Consent of Council; and he knows that the Fact is, when any of the Arms are given out, it is always done by an Order of Council.

XLIII. *James Murray*, Esq. Receiver-General of the Customs of *Scotland*, depones, That, upon *Saturday* the 14th of *September* 1745, he received a Letter from *Mr. Drummond*, now Lord Provost of *Edinburgh*, desiring him to come forthwith to the City of *Edinburgh*; and that at the Request of the Pannel: And the Deponent accordingly that Night came. That the Deponent met the Pannel in the Street, and asked his Commands. He desired the Deponent to go to the Lord Justice-Clerk's; where he instantly went, and was followed in two Minutes by the Pannel. That there the Deponent was told, whether by the Pannel, or the Lord Justice-Clerk, he cannot tell, being both present, that the Rebels were within two Days easy March of the Town; and, as it was proposed to defend it, they desired that the Deponent would give his Advice and Assistance. To which he answered, That it was his Duty and Inclination to do every thing in his Power for the King's Service. After this Provost *Stewart* and the Deponent went to the Street; and the Pannel told him, there were several Town's Gentlemen met in a Tavern, and desired he would go there. That accordingly they went together; and *Mr. Drummond*, now Lord Provost of *Edinburgh*, who was there, told the Deponent, they had sent to him for his Assistance in the Defence of the Town; and, as they were ignorant of military Matters, and convinced that the Deponent understood more of them than they did, hoped he would give them proper Directions how to dispose of the Men they had in Arms, in the best Manner for the Defence of the Town: Then they told the Deponent their Numbers, which, so far as he remembers, they said, might be about eleven or twelve Hundred; but cannot be positive. That the Deponent dictated to them the Method of disposing their Guards; and some Rules of Discipline they were in that Hurry to observe; Guards to be immediately placed, Alarm-posts assigned, and, besides, continual Patroles. There were several Rounds appointed for that Night; and the Pannel was to go the grand Round after Midnight. That Orders were instantly given for disposing every thing

according to those Directions. That the next Morning the Deponent went with *Mr. Colin MacLaurin* to visit the Walls, and Stations of the Guards, and ordered Barricadoes at the Gates. That, about Mid-day, he, the Deponent, coming to the Streets, met the Pannel, who told him, he had gone the grand Round, and was sorry to tell the Deponent, that, notwithstanding the strict Orders given, he neither found the Guards nor Centries alert; but that they were huddled together, under the Shelter of the Wall. That the Barricadoes were immediately set about, and, by Night, pretty far advanced. That next Day, being *Monday*, the Dragoons, and City-Guard, marched out of Town Westward; but about Four or a little before Four in the Afternoon, they returned in some Hurry, and the Dragoons retired towards *Leith*, and the City-Guard retired in good Order to the Town. That the Deponent observed this threw a Damp on the Spirits of the Inhabitants, who, till then, had shewn a good Countenance. That the Pannel, with many other Gentlemen, assembled in the Goldsmiths-Hall, sent for the Deponent. That the Deponent went immediately; and the Pannel made him some Compliments, and then asked him, if he thought the Town tenable? The Deponent told him, they had Hands enough; but that the Pannel, and the other Gentlemen present, were best Judges of their Hearts: But that, if they entertained any Thoughts of delivering up the Town, they were not to add to that Reproach, the Crime of delivering the King's Arms to the Rebels. And, being interrogate, whether any Mention was made by himself, or others in the Company, concerning the City-Arms? depones, That he did not at that time know, that the City had any Arms properly belonging to itself, other than what served the City-Guard. And that, after he left the Goldsmiths-Hall, having still some Confidence that the Town was to be defended, he went to his House, loaded his Pistols, put them in his Pockets, and came to the Street; where, observing a Party of armed Men marching up the Street, he asked them, where they were going? They answered, To the Castle, to deliver their Arms. Upon which the Deponent went to the Goldsmiths-Hall, and, with great Difficulty, got Access, and desired of the Pannel, that he would order the *Netherbow* Port to be opened to let the Deponent out of Town; that he being an Officer of the Revenue, it was unsafe for him to stay any longer; which the Pannel ordered accordingly. And, being interrogate for the Pannel, if the Deponent heard him express his Opinion anywise for defending the City? depones, That the first Time he came to the Goldsmiths-Hall, he heard the Pannel say, That, if the Town was to be defended, he would do his Duty, if he was to leave his Bones on the Walls: And he appeared to the Deponent to be very warm for the Defence of the Town; but that there was such a Confusion, he could not hear all that the Pannel said.

XLIV. *David Lindsay*, Writer in *Edinburgh*, depones, That he served as Lieutenant in *Mr. Drummond*, now Lord Provost of *Edinburgh*, his Company of Volunteers; and, being in the *Laton-market* with the said Company after the Resolution was taken by the different Officers of the Volunteers, the Deponent was sent by *Mr. Drummond*, as he thinks, to General *Guest*, to acquaint him, that the Volunteers were immediately to come up to the Castle, and deliver up their Arms, for that no good could be done by keeping them; for that the Town was to be delivered up: That, upon his coming to the Castle, he met with Major *Robertson* at the Castle-gate, who asked the Deponent, where he was going? To which he made Answer, that he was going to General *Guest*. The Major then said, *Mr. I ask you what may be your Business? To which the Deponent made Answer, that he was come, at the Desire of Mr. Drummond, to deliver the above Message. To which Mr. Robertson answered, That the General knew all that already; and he expected them, without Loss of Time; and desired him to go back directly, and tell Mr. Drummond so much; which the Deponent accordingly did; and thereafter the Volunteers marched up, and delivered in their Arms.*

XLV. *John Hislop*, Store-keeper of the City of *Edinburgh*, depones, That, in the Month of *September* 1745, the Deponent was Keeper of the Town of *Edinburgh*'s Magazine, where their Arms and Ammunition were laid. That, at that Time, there was in the Magazine one Thousand two Hundred-Fifty Firelocks, besides two Hundred that were insufficient; by which he means altogether useless; and of the one Thousand two Hundred and Fifty, there was a great many that the Deponent would not give Half-a-Crown the Piece for; and the most of these were very old, but could fire: And besides, there was in the Magazine not quite two Hundred Bayonets, and about three Hundred Cartridge-Boxes in bad Case. That of Ammunition, there was about two Boxes, and a Bag with some loose Ball, and no Gun-powder; but that, in the Beginning of *September*, the Deponent got from the Powder-House four Hundred Weight of Powder. That, besides the above Arms that belonged to the Town of *Edinburgh*, there was the Arms of the City-Guard of *Edinburgh*, consisting of 75 Firelocks, Bayonets, and Cartridge-boxes. That the Powder and Ball was made up into Cartridges: And of the above Arms, there was one Hundred sent to *Leith*, but returned again to the Magazine, on *Monday* the 16th of *September*. That, by the Pannel's Orders, the Deponent gave, upon *Sunday* the 15th, betwixt fifty and sixty Firelocks to each Company of the sixteen Companies of Trained-Bands, except the *Canongate-Head* Company, who got but about twenty-four; and that thirty-nine Firelocks were given to the thirty-nine additional Men of the City-Guard. And, upon *Monday* the 16th, the Deponent having got Orders from sometimes the Pannel, and sometimes the Magistrates, being all his Masters, gave accordingly Cartridges to those who came for them; and, particularly, he gave five Hundred Cartridges to each of the three Companies of the Trained-Bands who that Day kept Guard; and a good deal to the Seceders, who kept Guard at the Infirmary. That, before the said 16th of *September*, all the Powder which was in the Powder-House was sent up to the Castle by Order of the Pannel: And, by the Pannel's Orders, on the said 16th, the Deponent got back from the Castle four Hundred and twenty-five Pound Weight, for the Use of the Cannon that were planted on the City-Walls, and for Cartridges; and the Deponent gave it out for charging the Cannon, and he gave Cartridges to such as called for them: And the whole Ammunition was given out, except about a fifty Pound Barrel: That, with respect to the Arms that were not given out, and the above Quantity of Powder, he received no Orders from the Provost, or any body else; and the Firelocks which he gave out, as above deposed upon, were never

never again returned to him. That upon the 16th, the Deponent laid by the Keys of the Magazine, the Armoury, and the Wardrobe, in some secret Place, which his Servant *Alexander Dryburgh* knew. And, upon the 17th, after the Rebels got Possession of the City, he stepped aside, not thinking it proper to keep his own House; and the Account which his said Servant gave of the Keys afterwards was, That the Rebels threatened to break open the Doors of the Magazine, Armoury, Council-House, and Wardrobe; and therefore *Bailie Mansfield* came to *Alexander Dryburgh*, and advised him to deliver up the Keys of the above Places; which he accordingly did: And the Day thereafter the Deponent saw the Rebels carrying down Arms on their Shoulders along the Streets, which he apprehended to be the Arms belonging to the Town of *Edinburgh*. And depones, He got no Orders for securing, or bringing back the Arms which he had given to three Companies of the Trained-Bands that were upon Duty upon *Monday* Night the 16th; and that he was so fatigued, by sitting up three Nights before, that he was not able to sit up longer. And depones, That, after the Rebels had carried off the Arms, as above deponed upon, they delivered the Deponent the Keys of the Magazine, which was about fourteen or twenty Days after they entered the City. And, upon the Deponent's going into the said Magazine, he found no Arms there, except a few of the broken Guns above-mentioned; and even these were afterwards carried off by them. And, being interrogate for the Pannel concerning the Spades and Shovels that were brought to the Magazine on *Monday* the 16th, depones, That on that Day there were four Carts of Shovels and Spades, belonging to *William Millar*, Seedsman in the Abbey, sent up to the Magazine; and the Carter said to the Deponent, that *Bailie Hamilton* desired that he might take them under his Care and Custody; and the Deponent accordingly did so: And that on *Sunday*, the 29th of *September*, the Rebels came and carried them off down to the Abbey; but, upon the Proprietor's making Application for them, the Deponent heard him say, that he afterwards got them back.

XLVI. *Alexander Dryburgh*, Servant to *John Hislop*, the preceding Witness, depones, That in the Month of *September* 1745, upon *Monday* the 16th Day, in the Evening, he knew, that his Master, *John Hislop*, had secreted the Keys of the Town of *Edinburgh's* Magazine and Store-houses below a Form in the Council-house. And, upon the 17th, after the Rebels had entered the City of *Edinburgh*, and wanting Access to the Council-House, they threatened to break open the Door; and the Deponent by Accident meeting *Bailie Mansfield*, who knew that he had the Key of the Council-House, desired the Deponent to give the Key to the Rebels, rather than have the Door broke open; which he accordingly did: And, after the Rebels had got Access to the Council-House, they found out the Keys of the Magazine, Armoury, and Wardrobe, out of which they carried off all the Arms that were then to be found there; the Deponent having seen the very Arms carried down the Streets in Carts, and on Men's Shoulders; and that, when the Keys were again restored to his Master, and the Deponent had Occasion to enter into the Armoury, he saw no Arms there.

XLVII. *Thomas Dalzell*, one of the Captains of the City-Guard of *Edinburgh*, depones, That, in *September* 1745, the Deponent was one of the Captains of the City-Guard, which then consisted, including Officers and Soldiers, of 126 Men. That, about Ten o'Clock of *Monday* the 16th of *September*, the Deponent, by Order of the Pannel, marched out with the whole Guard to the *Colt* Bridge, leaving only a few of the Men behind to make-up Cartridges. That they remained at the *Colt* Bridge till about Three o'Clock Afternoon, when, by Order of the Commanding Officer of the Dragoons, they marched back to Town, and went to the Court of Guard; where they received Orders from the Pannel, which was brought them by *Mr. Orrock*, to march two Squads of the Guards to the *Grass-market*, and to leave the other Squad at the Court of Guard. That the Deponent accordingly marched with the two Squads to the *Grass-market*, and received from the Pannel the Key of the Wicket of the *West-Port*, with Orders to allow Nobody to go out, or come in, but such as he could be answerable for. That the Deponent, and his Party, remained in the *Grass-market* till about Eight o'Clock at Night; and, about Seven o'Clock, as the Deponent thinks, he saw *Bailie Yetts*, *Bailie Hamilton*, and some others come from the Town to the *West-Port*, who, he was told, were a Deputation sent to the Rebel-Camp; but, some time before that, the Deponent had given the Key of the Wicket to one of the Captains of the Trained-Bands, *Alexander Hepburn*, who then kept Guard at the *West-Port*. That, about Eight at Night, *Capt. Maitland*, another of the Captains of the Town-Guard, brought the Deponent Orders from the Pannel to march his Men to the Court of Guard; which the Deponent did. And it being his Turn to be upon Guard that Night, he then went to the Pannel to receive his Orders, what Guard he desired to be kept that Night; and the Pannel ordered him to keep the ordinary Guard, which is a Squad, or a third Part of the Company, which then consisted of 126 Men; but the Deponent actually kept upon Guard 50 Men: And, by the Pannel's Orders, he sent a Detachment of these to keep Guard at the *Netherbow* Port; the Volunteers who had kept Guard there formerly, having left it. That the Detachment he sent first, consisted of 14 Men; but, as he was afterwards informed, that these had got themselves drunk, he was forced to change them; and, at last, that Guard was reduced to the Number of six Men; which was all that the Deponent could find that were fit for doing Duty. That the Deponent received Orders from the Pannel, not to suffer any body to go out or come in at the Port; but, upon Recollection, says, That these Orders were not given to the Deponent, but were carried by one *Henderson* to the Serjeant of the Guard in the Deponent's Absence, and by him sent with the said Detachment to the *Netherbow*. That the Deponent went to his own House about Four o'Clock, and did not see the Rebels come in at the Port; but was told by his Men at the Port, that before Five o'Clock, a Coach having come down the Street, and gone out at the Port, the Rebels took that Opportunity of rushing in, and seized the Centries, and took their Arms from them; and then marched up to the Court of Guard, and seized such of the Men as they could lay Hands on there, and took their Arms from them. That the Deponent soon after went in quest of the Pannel, to report what had happened. That he found the Pannel in a Tavern in the Writers Court, he thinks *Mrs. Clarke's*; and in Company with him, he found a Rebel-Officer, whom he afterwards knew to be *Sullivan*; and together with them, the Deponent thinks *Bailie*

Yetts, and several others of the Council; and the Deponent reported to the Pannel what had happened to his Guard. Depones, That the Guard-Soldiers had been greatly fatigued for several Days before, and had been under Arms by Four o'Clock in the Morning of *Monday* the 16th; so that, when, at Night, the Deponent marched his Men from the *Grass-market* to the Court of Guard, a great many of them were unfit for doing Duty. And, being interrogate for the Pannel, depones, That he had Occasion to observe the Town's Arms belonging to their Magazine, having picked out what he thought the best of them, in very bad Condition, several of them not fit for Use; many of them that would indeed fire, but of these, many that would not keep Priming. Depones, That, upon *Sunday* the 15th, the Deponent, with about 90 of the Town-Guard, and a Detachment of about 50 of the *Edinburgh* Regiment, marched out towards *Corstorphin*, to sustain the Dragoons; and, after they had passed the *Colt* Bridge in their Way to *Corstorphin*, there came up to them first, one *Mr. Lindsay*, and afterwards one *Ormiston*, who is a Copper-smith in the *West-bow*, and told them, that it was the Provost's Orders that they should halt there: But thereafter *Mr. Henderson*, who writes in the Council-Chamber, brought them Orders from the Provost to march forward to *Corstorphin*, and there to take their Orders from *Col. Gardiner*. And, being further interrogate for the Pannel, depones, That, when the Pannel, on *Sunday* Morning the 15th of *September*, ordered the Deponent to march to *Corstorphin* to sustain the Dragoons, the Deponent said, If he sent them there, he should provide them in better Arms; for their Arms were not fit for Service. Upon which the Pannel desired the Deponent to go to the Magazine, and pick out for them the best Arms he could find. But the Deponent answered, That there were no Arms in the Town's Magazine that he could depend upon. Upon which the Deponent got for his Guard the Arms that had been got for the *Edinburgh* Regiment, which were new Arms, and, as he supposes, had been got out of the Castle; and these were the same Arms that the Town-Guard had when the Rebels entered the Town, and were taken from them. And, upon a further Interrogatory, depones, That he did not get the whole Number of Arms himself from the Armoury; but, having got the Pannel's Allowance, he gave Orders to his Men, that such of them as thought their Arms not sufficient should, go to the Armoury, and leave them there, and take others in place of them. That the whole of them did not change their Arms, but the Bulk of them; and he believes about four-fifths of them went to the Armoury, and changed their Arms, as he directed.

XLVIII. *James Tait*, Goldsmith in *Edinburgh*, depones, That, in *September* 1745, both before and at the Time the Rebels entered the City of *Edinburgh*, the Deponent was Keeper, and had the Keys of the *Netherbow-Port*; but the Night before the Rebels entered, that is, the *Monday's* Night, the Deponent was obliged to go to Bed at Eleven o'Clock at Night, having been kept out of Bed the two preceding Nights with the Volunteers; and that *Monday's* Night he committed the Charge of the Port to his Servant *James Gillespie*, whereby it happened that the Deponent was a-bed on the *Tuesday's* Morning when the Rebels entered the Port; and knew nothing of them till he was raised out of Bed, and saw them in the Town. That the Deponent received no Orders, either on the *Monday* Night, or any preceding Night, about the Manner of keeping the Port; it being the ordinary Custom, to open the Port as People called either going out or coming in; but upon the *Monday's* Night, the Deponent left at the Port six of the Town-Guard Soldiers, besides his above Servant *James Gillespie*.

XLIX. *James Gillespie*, Servant to *James Tait*, the preceding Witness, depones, That, in *September* 1745, when the Rebels entered the City of *Edinburgh*, the Deponent was Servant to the preceding Witness *Mr. Tait*, and Keeper of the Port under him. That, upon *Monday's* Night, the 16th of *September*, *Mr. Tait* left the Charge of the Port to the Deponent, and gave him Orders, whatever Chairs or Coaches were entering the Town, or going out, to open the Port, and let them pass. That the Deponent attended the Port that Night, together with six Centries of the Town-Guard Soldiers; and, betwixt Four and Five in the Morning, a Coach came down the Street, in order to go out at the Port; and the Deponent, agreeable to his Orders, opened the Port, and let it pass; and after the Coach was past, the Deponent shut one of the Leaves of the Port; but as he was shutting the other, the Highlanders rushed in upon him, and beat him back, and then possessed themselves of the Port, and entered the Town. Depones, That Nobody offered to stop the Coach from going out: That he knows not whether any of the Centries spoke with the Coachman; but he observed him to stop a little talking with one of the Waiters at the Port of his Acquaintance. And depones, That he did not say to any of the Soldiers that he had Orders to let out that Coach; nor could he, since he had no other Orders but the general Order above-mentioned; nor did any of the Soldiers stop him from letting out the Coach. And depones, That the Deponent had no particular Orders from the Pannel, or any of the Magistrates or Council concerning the Port.

L. *Alexander Corfar*, one of the Soldiers of the City-Guard of *Edinburgh*, depones, That, upon the Night of *Monday* the 16th of *September* 1745, he was upon Guard as one of the Soldiers of the City-Guard; and, at Four o'Clock on *Tuesday's* Morning, was ordered, with five or seven more of his Brother-Soldiers, by the Serjeant of the Guard, to go to the *Netherbow* to guard it, and to relieve the like Number of Soldiers that were there before; and the Serjeant of the Guard ordered the Deponent not to permit any Person whatever to go out or come in at the Port. And the Deponent accordingly marched, and relieved the Guard at the Port: And in about Half an Hour thereafter, the Deponent, observing a Coach coming down the Street, sent two Men to meet, and stop it at the *Fountain-well*; but, as the Coachman would be forward, the Deponent went up and stopped it himself. That the Coachman said, He behoved to get out at the Port; but the Deponent said, He should not get out, unless he had an Order from Provost *Stewart*. The Coachman said, he had no Order from Provost *Stewart*; but that Provost *Coutts* had ordered him to be let out. The Deponent answered, Provost *Coutts* had now no more Power to give such Order, than any other private Gentleman; and he should not get out, without Provost *Stewart's* Orders. Upon which the Under-keeper of the Port who was *James Gillespie*, the preceding Witness, came

came up, and said, That he had an Order to let out that Coach; but did not say from whom he had it. Upon which the Deponent answered, O, Sir, it is very well if you have an Order to let it out; you have the Keys of the Port, you must answer for it, and I have nothing to say. And being further interrogate, depones, That the Under-keeper had no Discourse with either the Coachman or the Postilion, before he told the Deponent that he had an Order to let out the Coach. Depones, That then the Port was opened, and the Coach drove out, and was not past the Deponent two Yards, when the Highlanders rushed in, and Lochiel gripped the Deponent by the Arm.

Then the Lord Advocate declared his Probation to be concluded.

Follows a List of the Witnesses Names and Designations cited for Mr. Stewart.

N. B. Only those marked thus * were examined on the Pannel's Exculpation; and such as are marked thus † were cited both by the Prosecutor and the Pannel.

Thomas Allan, Esq. Merchant, and Dean of Guild of Edinburgh.

John Aiken, Bookseller there.

William Annon, Sheriff-Officer there.

Alexander Brown, Merchant there.

Charles Butler, Wright there.

Harry Barclay, of Colterny, Esq.

* David Baird, Merchant in Edinburgh.

John Brown, Servant to Archibald Inglis, Pewterer there.

Charles Banks, Stabler there.

* Thomas Cochran, Esq. one of the Commissioners of Excise in Scotland.

James Cleland, Vintner in Edinburgh.

Mr. Patrick Cuning, Minister of the Gospel there.

Thomas Cuning, Fletcher there.

William Cramond, one of the City-Officers there.

Ralph Dundas, Merchant there.

Robert Dundas, Merchant there.

Thomas Dundas, junior, Merchant there.

John Douglas, Armourer there.

Ronald Dunbar, Writer to the Signet.

Robert Davidson, Tacksmen of the Meal-market of Edinburgh.

John Dunsmore, Merchant in Edinburgh.

Charles Dickson, Goldsmith there.

Michael Elphinstone, late Store-keeper to the Castle of Edinburgh.

Alexander Erskine, Carter in Edinburgh.

Simon Fraser, White-iron Smith there.

Robert Forrester, Merchant there.

John Forrest, Merchant there.

John Ferguson, Shipmaster in Leith.

Mr. Francis Gordon, Advocate.

James Grierson, Merchant in Edinburgh.

Alexander Gray, Brewer, at the Back of the Canongate, Edinburgh.

* Walter Hamilton, one of the Captains of the City-Guard of Edinburgh.

Patrick Henderson, Merchant in Edinburgh.

Charles Hope, Merchant, and late Bailie there.

John Hay, Wigmaker there.

Archibald Hart, Merchant there.

George Home, Town-clerk of Leith.

John Hastie, Gardener in Heriot's Work, Edinburgh.

Paul Husband, Merchant in Edinburgh.

Archibald Inglis, Pewterer there.

David Jackson, Sadler, now Overfeer of the Scavengers there.

James Ker, Esq. Jeweller, present Deacon-Convenor of the Trades of Edinburgh, and Representative in Parliament for the City.

* Francis Kemptie, Merchant in Edinburgh.

Dr. Thomas Dundas, Physician, Brother to Dundas of Manor.

Capt. Francis Kinloch, Son to the deceased Jacob Kinloch, of Stonyflat.

* George Lindsay, Depute Town-Clerk of Edinburgh.

George Langlands, Surgeon there.

Deacon Patrick Lawson, Weaver there.

* George Lauder, Surgeon there.

John Learmont, Tanner there.

James Mansfield, Merchant, and late Bailie there.

Robert Montgomery, Merchant, and late Bailie of Edinburgh.

Charles Mack, Mason there.

William Macvey, Wright there.

James Macdonald, Waulker there.

William Mercer, Merchant there.

Ebenezzer Macculloch, Merchant there.

* William Macghee, Merchant there.

Richard Mackenzie, Vintner there.

David Murray, Stabler there.

Thomas Moor, Vintner there.

Samuel Neilson, Mason there.

William Ormiston, Coppersmith there.

* Mr. Robert Pringle, Advocate.

Alexander Purvis, Merchant in Edinburgh.

James Rob, Merchant there.

John Robertson, Mason there.

Willoughby Ramsay, Merchant there.

* Archibald Stewart, Merchant, and late Moderator of the Constables there.

James Scot, Merchant there.

Robert Smith, Surgeon there.

* Walter Scot, Merchant, and Bailie in Leith.

Charles Sheriff, Merchant there.

Alexander Sheriff, Merchant there.

James Stedman, Vintner in Edinburgh.

David Simpson, one of the Sheriff-Officers there.

William Shiels, one of the Sheriff-Officers there.

William Scot, one of the Town-Officers there.

Richard Tod, Merchant there.

William Trotter, late Surgeon to General Hamilton's Dragoons.

John Walker, Merchant in Edinburgh.

George Boswell, Sadler there.

William Straiton, Brewer there.

Mr. Patrick Haldane, Advocate, one of his Majesty's Solicitors.

* Charles Fraser, Merchant in Edinburgh.

* Archibald Macaulay, Esq. late Lord Provost there.

† John Wilson, Merchant, late one of the Bailies there.

† Gavin Hamilton, Merchant, late one of the Bailies there.

† James Stewart, Merchant, late one of the Bailies there.

† James Nimmo, Esq. late one of the Bailies there.

† Hugh Hether, late Dean of Guild there.

† Robert Bailie, Merchant, late one of the Bailies there.

† James Grant, Merchant, and present Town-Treasurer there.

† Sir Robert Dickson, Bart.

† The Honourable Mr. James Leslie, Advocate, one of the Commissaries of Edinburgh.

† Archibald Stevenson, Writer in Edinburgh.

† Nathan Porteous, late Deacon of the Skinners there.

† Patrick Lindsay, Depute-Secretary to the Forces in North-Britain.

† Robert Griffith, one of the Gunners of the Castle of Edinburgh.

† John Hislop, Store-keeper of the City of Edinburgh.

† John Dalgleish, Watchmaker there.

† Bailie Bryden, Lieutenant of the Royal Regiment of Artillery.

† Andrew Alves, Writer to the Signet.

† Thomas Dalzell, one of the Captains of the City-Guard, Edinburgh.

† Alexander Corfar, one of the Soldiers of the City-Guard there.

† Mr. John Glen,

† Mr. Alexander Webster, } both Ministers of the Gospel there.

† * William Forbes, one of the principal Clerks of the City of Edinburgh.

† * William Henderson, Writer there.

† James Murray, Esq. Receiver-General of the Customs in Scotland.

† James Paterson, Tide-Surveyor of the Customs at the Port of Leith.

† Mr. George Craigie, of Glendoig, Advocate.

† Mr. Robert Dundas, younger, of Arncliffe, Advocate.

† George Dunbar, Merchant, late one of the Bailies of Edinburgh.

† Mr. Joseph Williamson, Advocate, one of the principal Clerks of the City of Edinburgh.

† Robert Tennent, Merchant there.

† David Lindsay, Writer there.

† * John Coutts, Esq. late Lord Provost there.

† * John Yetts, Merchant, and sometime one of the Bailies there.

† John Stephen, Merchant there.

† David Inglis, Merchant, and sometime one of the Bailies there.

† Mark Sandilands, Merchant, and late one of the Bailies there.

Charles Hay, Tide-waiter at Dunder.

Follows the Proof adduced for the Pannel's Exculpation.

I. John Coutts, Esq. late Lord Provost of Edinburgh, depones, That the Minutes and Orders of the Town-Council [admitted by the Lord Advocate, and Mr. Lockhart as Counsel for the Pannel] now shewn to him, were truly and really transacted, as therein entered, and signed by the Pannel as the Lord Provost, in Prefence of the Council; and that the Minutes of the Committee [in like manner admitted by the Prosecutor and Pannel] also shewn to him, contain the true Proceedings thereof; and the Deponent was one of that Committee. Depones, That the Resolutions of the Council were reported to a Meeting of the Inhabitants, which was called about the latter End of August; which Meeting unanimously approved thereof, and appointed a Committee of their Number to join with the Magistrates to consult with the King's Lawyers, and such Judges as were in Town, touching the Legality of such Measures as had been under Consideration, for the Defence of the Town. In Prosecution of which, there was a Meeting of the Committee, at least part of them, in the Lord Justice-Clerk's House; where his Lordship and the Crown-Lawyers assisted. That several Proposals for the Defence of the City were under Deliberation, and particularly the raising of a Regiment of 1000 Men; which the said Judges and Lawyers thought would amount to High-Treason, without the Sovereign's Authority was first given. There was some Conversation how such a Regiment could be maintained, if raised; and such of the Committee of Inhabitants and Magistrates as were present, were desired to sound the Inclinations of the Citizens and Inhabitants, how far they would contribute to the Expence of it; and it was recommended to the Lord Advocate, to write to some of the King's Ministers at London, to obtain his Majesty's Royal Sign-manual for levying the said Regiment. Depones, That he knows, that the Pannel, and other Magistrates of the City, received several Proposals for putting the Town in a Posture of Defence; most of all which were complied with: And he knows, that Letters were wrote by the Pannel to the Ministers and Magistrates of neighbouring Burghs, to take particular Notice of the Motions of the Rebels, and inform the Magistrates of Edinburgh thereof. Depones, That, upon Sunday the 8th of September, in the Evening, or at Dinner, he heard that the King's Sign-manual was come; and a Council was held next Day, the 9th, where it was produced; and a Committee was appointed to carry it into Execution, by levying the Men, taking in Subscriptions, and, in general, doing every other Thing in relation to it. The first Meeting of which was appointed at the rising of that Council, and afterwards they were ordered to meet twice a-Day. Depones, That he subscribed for the Maintenance of the Regiment some time after the rest of the Council had subscribed; and he observed the Pannel's Subscription to be 20*l.* per Month, which was higher than that of any other Subscriber before the Deponent. Depones, That there was a Provision of Meal, sufficient for the said Regiment, before the Rebels entered the City of Edinburgh, made by the Direction of the Pannel, and other Magistrates; and Arms were furnished to the Regiment from the Arsenal in the Castle. Depones, That he heard Mr. Joseph Williamson complain to the Pannel, that the publick Works went slowly on. To which the Pannel answered, 'I have given Warrants to press Workmen and Carts; the Execution of the Work is committed to a Committee, under the Inspection of Bailie Robert Bailie: What would you have me to do more?' And the Deponent knows, that Bailie Robert Bailie was at the Head of a Committee, who had Orders to carry on all public Works for the Defence of the City with the greatest Dispatch. Depones, That, upon the Approach of the Rebels, what Cess was owing by the City, was paid upon Saturday the 14th, by the Intervention of the Pannel; at whose Request the Deponent went down to the Royal Bank, to wait till such time as it was paid in; and the Deponent saw it paid; and he thinks, that the Pannel signed the Order for Payment of the Cess to the General-Receiver of the Land-Tax, directed to the Cashier of the Royal Bank, to be stated to the Debit of the Town's Cash-Account. That it consists with the Deponent's

ponent's Knowledge, that the Pannel readily embraced a Proposal of the Lord Justice-Clerk's, of having Meetings and Consultations with several Noblemen and Gentlemen in and about the Town, to concert what was proper to be done at that Juncture; that he went to his Lordship, and told him, that he wanted Advice much, and would be very glad of such Assistance. Depones, That he knows no further of Application made for Gunners from the *Urfula* Man of War, other than that, upon Monday the 16th of September, he saw a Letter lying upon the Table of the Goldsmiths-Hall, which the Deponent casually took up, and read, dated from *Lith*, signed by he does not remember whom, directed either to the Pannel, or one of the City-Clerks, and bearing, that the Captain of the King's Ship in the Road could spare no Gunners; and that he thinks, but cannot be positive, it was before Dinner when he saw this Letter. Depones, That, about Eleven o'Clock of the said 16th of September, the Deponent went up to the Goldsmiths-Hall, where the Pannel and some of the Members of the Council were; or, rather, the Deponent having gone up to the Goldsmiths-Hall, the Pannel came up to him. That the Pannel took *Hugh Hathorn* and this Deponent aside, perhaps more of them, but he does not remember, and told them of the Message *Andrew Alous* had delivered to him, in Presence of *Commisary Leslie*, touching the Strength of the Rebel Army, which *Alous* represented as great; and that the City would be subject to military Execution, should they persist in the Defence of it; and asked their Opinion, if it would be proper to take Notice publicly of that Message, suggesting his Apprehension, that it might intimidate the Citizens and Inhabitants. That *Mr. Hathorn* and the Deponent gave it as their Opinion, it was better to hush the Thing, for the Reason already given: And, at this Time, the Pannel being called to visit some Part of the Walls, he immediately went, and the Deponent and *Mr. Hathorn* attended him, and they made a Round of a considerable Part of the Wall, and ended at or near the *West-Port*, and, when they came to the *Graf-market*, they were told of *Mr. Alous's* Message; whereby they saw the same was made publick. Whereupon the Pannel declared his Intention to go to the Lord Advocate's Lodging, to talk with him in relation to that Matter; but, meeting with some Company, the Pannel walked down with the Deponent some way towards the *Luckenbooths*; and then parted with the Deponent; and went backwards, as he believes, to execute his Intention; nor did he observe any Message delivered to the Pannel during this Period. He saw the Pannel soon after this, who told him he had been with the Lord Advocate; and that he had already signed, or was to sign a Warrant for committing *Mr. Alous* to Prison. Depones, That, on Monday Afternoon, about Three o'Clock, the Pannel went from the Goldsmiths-Hall, with Intention to go to the *West-Port*; and, about this Time, he heard of the Retreat of the Dragoons with some Precipitancy; and, before he left the Goldsmiths-Hall, he mentioned to the Deponent, that he had received a Petition from several of the Citizens and Inhabitants, desiring that the Town should not be defended, or, at least, not till a general Meeting of the Inhabitants was called to deliberate on its Defence: And the Pannel, in his Way to the *West-Port*, stepped into the Lord Advocate's Close-head, or went up to his House; he thinks it was only to the Close-head, he staid so short Time: The Deponent waited his Return; and in their Way to the *West-Port*, he told the Deponent he had signed a Paper, desiring, or consenting, that some Dragoons should be sent to the Assistance of the City. That, after the Pannel had given such Orders at the *West-Port*, which he judged the Flight of the Dragoons rendered necessary, he left it: And, in his Return, was surrounded by a great Crowd of People, whose general Cry was, 'Would he continue his Design of defending the Town, and have them all murdered, now that the Dragoons were fled?' And the Deponent observed, among those who made this Cry, *Thomas Dundas* younger of *Lithem*, who appeared to the Deponent to be full warmer on that Head than any of the rest, though his Brother *Laurence* declared, on the contrary Side, for the Defence of the Town. To which the Pannel replied, 'Would they now be guilty of Cowardice in giving up the Town, after obtaining his Majesty's Sign-manual, and doing so much for its Defence? and a great deal more to that Purpose, in Answer to their repeated Cries.' That, when the Pannel returned from the *West-Port* to the Goldsmiths-Hall, where a good Number of the Council, and many of the Inhabitants were assembled, it was proposed to, and agreed by him, forthwith to send Deputies to the Lord Justice-Clerk, the Lord Advocate, and the Solicitor; and Messengers were sent to each of them respectively, desiring them to come and assist the Pannel with their Advice: But, soon after, the several Deputies returned, and reported, that all of them had left the Town. Depones, That, immediately after this, the Pannel sent for the Officers of the Trained-Bands and Volunteers; and desired to have their Opinion upon the Defence of the City; and addressed himself to them in Substance to the following Purpose: 'That he hoped they would not now suffer Cowardice to poison their Councils; and that, after obtaining his Majesty's Royal Sign-manual, and doing so much with Spirit, they would not now think of giving up the Defence of the City: That, for his own Part, he would go to the City Walls, and to the Place of greatest Danger; and, so long as he could find ten Men to stand by him, he would persevere in the Defence of it.' That several of the said Officers came, and were thus spoke to; but few of them seemed to be inclined to give their Opinion, or speak; but one Gentleman, *Mr. Joseph Williamson*, said to this Purpose: 'Since he saw the Pannel so firmly resolved upon the Defence of the City, he would attend, and share Fates with him; but he feared he should not be able to bring with him Five, Ten, or some such small Number of the Company wherein he served. That the Deponent in particular remembers he pressed *Mr. Drummond* to give his Opinion; which he declined; and, taking the Deponent aside, said, 'I am surprised, Sir, that you should insist on my giving my Opinion. You know I am not so independent a Man as you or the Pannel. I hold a Place of the Government, and it may be very inconvenient for me to deliver my Opinion in this Place.' That the Deponent desired the Pannel to ask *Mr. Drummond's* Opinion; who still declined to give it: And, as the Deponent had begun to relate *Mr. Drummond's* Apology for not giving his Opinion, he interrupted the Deponent, and again took him aside; and said, 'I am surprised, *Mr. Coutts*, you should insist upon my giving my Opinion, when you know, that the Provost has the Articles of Capitulation of the City in his Pocket some Days ago;' adding,

That he was told that Day at Dinner by the Earl of *Horn*, that as, upon Thursday preceding, he was shaving or dressing in the Lord Justice-Clerk's Lodging, the Window open, he overheard the Deponent, coming up the Bank-Close, saying, 'What need is there to keep all this Pother or Bustle about the Defence of the City, when the Provost has in his Pocket, Articles of Capitulation for surrendering it to the Rebels?' The Deponent replied, 'That that Tale carried very little Credibility with it; for what a ridiculous Thing was it, to imagine, that he, the Deponent, in one of the most publick Closes in Town, under the Windows of an Officer of State, should be roaring out a Story of that Kind. That he could himself give no Credit to the Story: For that, tho' of late there had been a Dryness between the Earl and him; yet he looked upon the Earl as a Man of Honour, that could not be capable of saying such a Thing without any Foundation: so that certainly he, *Mr. Drummond*, must have mistaken his Lordship. And the Deponent added, *Mr. Drummond*, let us not now be talking of these Things, 'till afterwards, that the Earl, you and I have Occasion to talk about it. That, after what passed between the Pannel and the Officers of the Volunteers, Captain *James Murray* and Major *Thomas Cochran* came in to the Meeting; and the Pannel desired them to give their Opinion, if, or not, the Defence of the City should be continued: But both of them declined to give any, joining in Sentiment, that the Pannel, who best knew the Inclinations of the Citizens and the Inhabitants, was by much fitter to determine that Point than they; and that the Decision of it must ultimately land upon him. That the Pannel having again pressed *Mr. Murray* to give his Opinion, and to figure himself in the Pannel's Stead, and declare what he would do if that were the Case; *Mr. Murray* replied, 'I do most heartily pity you, my Lord Provost. I cannot, nor can any Man advise you; you must yourself decide it; and I am afraid you will get very little Advice.' Depones, That, much about this Time, *Walter Grovet*, Collector of the Customs at *Allea*, came in to the Meeting with a Message, whether in Writing or verbal he cannot say, from the Lord Justice-Clerk, or the Lord Advocate, or both, desiring the Pannel to give an Order for bringing some Dragoons in to the City. To which the Pannel answered, 'That he had already given his Consent or Order for bringing in one Hundred Dragoons, at the Desire of the Crown-Lawyers; and that he could not comprehend what the Meaning was, why an Order should be asked this Day for bringing them in, after what past last Night: But their Lordships were best Judges what was for the Service of the Government: If they should judge it for it, to send them in, they shall be received, but I will not now make an Order; because, if I should, and if they should come in, and the City and they fall into the Hands of the Rebels, I might be charged to have ensnared so many of his Majesty's Troops; if I should refuse to admit them, I might be blamed for rejecting a Succour which might have relieved the City: Let their Lordships therefore give their Decision, which I shall obey. And, as *Mr. Grovet* was departing, the Pannel called him back, and said, to prevent Mistakes, he would send a written Answer; which accordingly he did. And the Answer referred to in *Mr. Craigie's* Deposition being shewn to the Deponent, depones, it is the Answer then sent by the Pannel. Depones, That while *Bailie David Baird* was arguing in the Goldsmiths-Hall against defending the Town, because it was not tenable, *Principal Wishart* and *Bailie John Wilson* came in, and a great many others followed; and the *Principal* and *Bailie* averred, that no Man but a *Jacobite* would maintain such an Opinion. Upon which such a Hubbub arose, and so many People crowded into the Room, that the Deponent himself moved, that they should adjourn to some larger Place, where those who had a mind to speak might be better heard; and then the Cry was, *the New Kirk Isle*; to which the Meeting adjourned. That, in the Parliament-Close, they met a great many People in their Way, insomuch that the Deponent was carried off his Feet by the Crowd to the South-side of the Statue; and the Cry of the People who surrounded him was, praying the Deponent to prevail with the Pannel not to draw Destruction upon the City by a fruitless Opposition. That the Deponent followed the Pannel and a Multitude of the Inhabitants to the *New Kirk Isle*; where, at first, there was such a Noise, that he could hear nothing that past; but the Pannel at length prevailed so far in quelling it, that the Deponent could hear him say, 'That the Purpose of that Meeting was, to consult with them touching the Defence of the City; and made to them much the same Expostulation as he made formerly to the Captains of the Volunteers, so far as the Deponent could hear. That he heard *Principal Wishart* move, that the Meeting might be purged of *Jacobites*. To which the Pannel, or Somebody, answered, 'It would not be easy to distinguish a *Jacobite* from a *Whig* by their Countenance. That the Reverend *Mr. George Logan* begun to speak for the Defence of the City, but was soon interrupted by a great Noise, and a Cry, that That was impossible. Upon which he thinks the Pannel said, 'It is impossible to collect the Voice of every one. Shall I put the Question, whether the City shall be defended, or not?' Upon which the Cry of the Generality was, 'That the City could not be defended. And at this Period a Letter was brought into the Meeting, he does not know how; but he saw it first in the Hands of Deacon *Walter Orrack*, who, having broke it up, said, it was signed *Charles P. R.* Upon hearing of which, the Pannel forthwith said, 'I cannot be Witness to the reading of this Letter,' left the Chair, and went out of the Meeting to the Goldsmiths-Hall; whither several of the Council and of the Inhabitants followed him, and, among the rest, the Deponent. That the Letter appeared again there, brought, as he believes, either by the said Deacon, or *William Henderson*, one of the Clerk's Servants. And it being proposed by some that it should be read, it was urged by others, that to read it, would be Treason. Upon which it was moved and agreed to, that the Opinion of the Assessors should be taken; who thereupon were sent for: But it was reported they had all left the Town, except *Mr. Patrick Haldane*, who would be with them immediately. That, when he came, his Opinion was asked, if it was proper to read the Letter or not? and the Pannel, or some other Person, he does not remember who, told *Mr. Haldane*, it was a Letter signed *Charles P. R.*; upon which *Mr. Haldane* said, 'it was a Matter too high for him to give his Opinion in; and immediately rose from his Seat, and went out of the Goldsmiths-Hall: The Deponent followed him to the Door, and pressed him to give his Opinion; but he still declined. And being interrogated upon the Part of the Pursuer, if the Letter was begun to be read before *Mr. Haldane* left the Hall? depones, That said *William Henderson*, upon *Mr.*

Haldane's coming in, took up and began to read the Letter; but he was immediately stopped, and ordered to desist, by some Persons in the Meeting; he does not know by whom; but Mr. Haldane was one of those who stopped him, as the Deponent thinks; and he believes he might have been one of them himself. That, upon this, the Pannel complained, that he was now also deserted by his Assessors. Depones, That, after this, the Letter was begun to be read; and the Deponent, being at a little Distance, said, What is the Meaning that this Letter is begun to be read? To which some one of the Meeting answered, that it was necessary it should; that it might be known what Threatenings it contained against the City. That, a little after reading this Letter, it was proposed by some one in the Meeting, who he does not remember, that a Deputation should be sent, to desire, that until they could make a proper Answer to the Letter, nothing should be done against the City; the Intention of which was, to gain Time; the Purpose of the Meeting being to call the Burgesses and Inhabitants to deliberate upon that Affair. And accordingly, Bailie Hamilton, Bailie Inglis, Bailie Yatts, and Conveener Norris, were sent out with the said Message, about Eight o'Clock. And the Paper, marked Number 2, mentioned in the List of Writings annexed to the Libel, being shewn to him, depones, That it was the Return to the first Deputation. Depones, That the said Paper being laid before the Meeting, then in the Laigh Council-house, the Pannel immediately observed, that there was one Condition in the Paper that he would rather die, as submit to, namely, the receiving the Pretender's Son as Prince-Regent of Scotland, as he was tied by Oath to another Master; which appeared to be the common Opinion of the Meeting. And therefore, after a long Argument, a second Deputation was agreed, and determined to be sent out about Two o'Clock in the Morning; and five Deputies were sent, whereof the Deponent was one, with Instructions, begging a Delay till Nine o'Clock in the Morning, to the end the Meeting might have Opportunity to converse with the Citizens, who were then a-bed; which also was calculated to gain Time; which they chused to do, because they had heard, before the Return of the first Deputation, that Sir John Cope, with the Troops under his Command, were seen off Dunbar. And the Paper marked Number 3, in the said List, now shewn to the Deponent, was the Fruit of the second Deputation. That he remembers to have seen a Sergeant of the Castle, between Seven and Eight in the Evening, come in to the Meeting in Goldsmiths-Hall, who delivered a Message, which the Deponent did not hear; but heard it repeated by some of the Members of the Meeting to be this, That General Guesf sent him with Orders, to desire of the Pannel an Order to spike up the Cannon upon the Walls of the City, and to knock off the Trunnions; and that the Deponent whispered to some of his Neighbours that, considering the Threatenings in the said Letter, might it not do as well to make Answer to the Message, that the Pannel could give no express Order; but to acquaint the Sergeant, that the General might send and render the Cannon useless; which he should be at full Liberty to do. And accordingly, the Deponent, and the said William Henderson, desired the Sergeant to spike up the Cannon himself, or to do with them as he pleased. And the Adjutant of the Edinburgh Regiment having come in much about this Time, to ask how he should dispose of their Arms, he was also told that he was at Liberty to dispose of these Arms as he pleased, by the Deponent, who left it to William Henderson to explain the Reason thereof to the Adjutant. Depones, That, being fatigued, he went to take a Refreshment in Mrs. Clarke's; and during his short Absence of a Quarter of an Hour, the said Mr. Grosflet came to the Council, which was then more regularly met than formerly, with only a few Inhabitants; And, upon his Return, he found them in the Laigh Council-House; and a Letter, sent by Express from Mr. Fall to the Deponent, which had some-how fallen into Mr. Grosflet's Hands, had been just then laid before the Council, and read before the Deponent came in, as he is inclined to believe, because the Letter gave notice of General Cope's Arrival off the May; and he was told by some of the Council, that Bailie Mansfield had been sent out, if possible, to stop the Deputies of the first Deputation from executing it. That the Letter was again read after he came in, and delivered to him. That, upon this, they began again to consider, if the Defence of the City might not be refused. And while some People were talking, that the Volunteers should take Arms again, and others, that the Dragoons should be brought in; leaving these Things to be determined by the Meeting, the Deponent, Mr. Grosflet, and Mr. Lindsay, Secretary at War, were sent to General Guesf, to know of him, whether, if the Defence of the City should be refused, he would deliver out Arms to the Volunteers, and recall the Dragoons? To which he answered, That they might put the City-Arms in the Hands of such as were well-disposed; and, if the Provost should write him, that there was a good Spirit appearing in the People, and desire him to deliver out the Volunteers Arms, probably he might do it; and that he had sent Orders for recalling the Sergeant from rendering the Cannon useless; but that he judged it absolutely necessary for his Majesty's Service, that the Dragoons should be ordered to join General Cope, without whose Assistance his small Body of Men could not act. That the Deponent, Messrs. Grosflet and Lindsay, returned to the Council. That, by the Way, Mr. Grosflet and the Deponent agreed, at Mr. Grosflet's Request, that they should mention nothing of bringing in the Dragoons to the Town, because it was a clear Point they could have none of them, and it might intimidate the Inhabitants if they knew so much. However, the Deponent judged it his Duty to whisper the Pannel, that for the Reasons above assigned, he could not hope to have any of the Dragoons brought in. They found the Council still arguing upon the same Subject they left them upon, some proposing one Thing, some another, and some to ring the Alarm-bell. That, soon after this, Mr. Webster said, It was impossible to think of defending the City, without the Dragoons were brought in for its Assistance. Upon which Mr. Grosflet rose up, and said, 'Then I will go and fetch in the Dragoons;' and going to the Door, the Deponent followed him, and said, 'How can you impose so upon the Meeting, when you know from General Guesf that you can have none of them?' To which he replied, He could perhaps persuade Brigadier Fowkes to bring them in. Provost Drummond went along with Mr. Grosflet, and neither of them returned. That, immediately after this, Mr. Lindsay proposed to the Pannel, to get out the Arms for the Volun-

teers. To which he answered, That it was proper for him first to know what Disposition there was among the Inhabitants to make use of them. That, as to the Proposal of ringing the Alarm-bell, it was observed, and agreed to, it would be doing great Injustice to the Deputies, to ring it till they should be returned: And Dean of Guild Haldane observed, that if they did, they might expect to have the Deputies hanged like Rats, it being probable the Rebels were within hearing of the Bell. That the Deponent being one of the second Deputation, he remembers, when they went out to the Rebel-Army, they met with the late Lord George Murray, whom they applied to, and prevailed upon to second them in procuring the Delay proposed. That the late Lord George Murray went into the Room in which the Pretender's Son was; and the Deponent could hear, though indistinctly, so much of the Conversation, as convinced him, that the said Lord George was endeavouring to persuade the Pretender's Son to comply with it; and that he refused to do it; which the said Lord George came out, and reported to the Deputies: But, upon second Conversation with them, they prevailed upon him once more, to try if he could obtain the proposed Delay; which he accordingly attempted, but was refused; and the Deponent could hear the Pretender's Son say, 'My Lord Elcho, Lord George has not Spirit to put this Order in Execution; you must go and do it for him.' Upon which the late Lord Elcho came out of the Room from the Pretender's Son, and bid the Deponent, and the rest of the Deputies, to get them gone. That the said Lord George Murray followed the Deputies out, and whispered to the Deponent, I know your Pinch; you want to have the Consent of your principal Inhabitants: Make haste to Town; you will have an Hour or two to obtain it. That the Deputies made all the Haste they could to return, and went directly to Mrs. Clarke's; where they understood the Pannel and the Council were. The Pannel, who was asleep, was roused. The Deputies reported their Answer, and what Lord George Murray had said. The principal Inhabitants were ordered to be gathered together immediately. Some few of them, and particularly Mr. James Ker, now Member of Parliament for the City, were come, when Notice was brought, that the Rebels had broke into the Town, and made themselves Masters of it: Which put an End to all further Deliberation.

II. William Forbes, one of the principal Clerks of the City of Edinburgh, depones, That, on Monday the 16th September 1745, he came to the Goldsmiths-Hall about Three o'Clock in the Afternoon; where he found the Pannel, as he appeared to him, in a very great Passion; some of the Councillors were about him, and several other of the Burghers and Inhabitants of the Town. The Deponent went up to him, and asked him the Occasion of the Disorder he seemed to be in. The Pannel answered, That he had got a Paper into his Hands, which he by no means relished, and thought it was somewhat seditious: For that the Scope of it was, that the Town should be surrendered; which he swore he would not consent to. That, at this Time, the Crowd that was in the Room called aloud upon the Pannel, to take the Advice of the Inhabitants; but he told them, that he would listen to no Advice in a Matter of this Kind, till he had taken the Opinion of abler and better Counsellors. Upon which several Persons were sent to all his Majesty's Officers who usually resided in Edinburgh, humbly to beg that they would meet with them, and give their Opinion what was proper to be done in so critical a Juncture. That the Messengers sent, returned with a Report that they were all gone out of Town. The Pannel therefore, finding, that he could not have the Happiness of the Counsel of the Civil Officers, was resolved to call for the Assistance of such of the Military Officers as were in Town, and the Officers of the Volunteers. That, upon Messages sent, Major Thomas Cochran and Captain James Murray came to the Hall, as also a great many of the Officers of the Volunteers. That, upon their coming in, the Pannel opened to them the difficult Circumstances that he and the City were under at that time, and prayed their Advice. That such of the Officers of the Volunteers as were present, declined giving any Advice, except Mr. Joseph Williamson; who said, That, from the Beginning, he was determined to stand to the Defence of the City to the last Drop of his Blood; but that he was sorry to say, that he found some Alterations upon the Spirits of the People: For that, in the Company in which he was an Officer, there was not above six or seven of the Volunteers of that Company could be found. That the Pannel did, upon this Occasion, warmly exhort the People that were about him, to stand to the Defence of the City, representing the Expence they had already laid out in order to the Defence of the City; and that they had lately pledged their Faith to his Majesty, that they would, to the utmost, stand for the Support of his Person and Government, and for the Defence of the Town. The Pannel then addressed himself to Major Cochran and Captain Murray, who were the only two of the Military that could be found; and told them, that their Advice was necessary in a Matter of this kind, because of their Knowledge and Experience in these Matters. To which Captain Murray replied, that he regretted extremely the unhappy Situation of Affairs in general, and the Pannel's Case in particular; that he pitied him, because he foresaw, that the Decision of this important Question would chiefly lie upon him; and added, that if the Trained-Bands and Volunteers did not stand to their Arms in the Defence of the Town, it was a Matter of the greatest Consequence, that the Arms delivered out by the Government should not be suffered to fall into the Hands of the Rebels: And then, turning about to the Deponent, said, with an Oath, If they do, some People may come to hang for it. That Bailie Baird offered his Opinion; which was, that he thought the Town not tenable; as did Mr. Thomas Dundas, and several others: But Principal Wilsart, and some few more, were of a different Opinion. Whereupon the Principal said, None but Jacobites would be for surrendering the Town. Then ensued a loud Cry from many, that the Opinion of the Inhabitants should be taken; and, for that end, it was proposed to adjourn to the New-Church Isle; where they accordingly went: But, in their Way to the New Kirk Isle, there were loud Cries from all Corners, not to expose the City to the Fury of the Rebels. While the Pannel was in the Midst of the Crowd, there came a Gentleman on Horseback, who said, He wanted to speak to the Pannel; and accordingly spoke to him to this Effect: 'That Lieutenant-Colonel Whitney had sent him back to bring away the Dragoons Baggage that was left in Town; for that the Dragoons were

on their Way to Haddington. That the Deponent did not go in at that Time to the New Church Isle, having gone to refresh himself with a little Coffee; and, when afterwards he attempted to go in, he found the New Church Isle so chop-full of People, that he could not put in his Head. He then went towards the Cross, where he met with Bailie James Stewart, one of the Officers of the Volunteers, and several private Volunteers along with them. That he had in his Hands a Key, or two Keys, which made the Deponent ask him, What he meant? and where he was going? Who replied, He was going to give up his Charge with the Keys of the Netherbow Port; for he found that this Thing would not do. That thereafter the Deponent went to the Goldsmiths Hall, where, the Meeting in the New Church Isle having been dissolved, he found the Pannel, and a great many of the Council and Inhabitants of the Town, who were in a Dispute, Whether a Letter, that had been given in the New Church Isle, said to have been subscribed by the Leader of the Rebels, should be read, or not? The Pannel argued, That the Reading of such a Letter was at least bordering very near upon Treason; more especially if it produced an Answer. Upon the other Hand, some of the Inhabitants urged, That it was proper the Contents of it should be known, and they might afterwards consider what was proper to be done on it. That the Pannel upon this said, It was improper for them to come to any Resolution, until, at least, they had taken the Opinion of their Assessors; who were sent for; but none of them were found, excepting Mr. Patrick Haldane. To whom the Pannel represented, They were under a Difficulty with regard to a Letter signed Charles P. R.; that they wanted to be advised, Whether it should be read? and, if read, Whether it should be answered? and what Answer should be given? To which Mr. Haldane replied, It was a Matter of too high a Nature for him; and therefore he would give no Advice upon it. And upon an Interrogatory put to the Deponent for the Pursuer, Whether the first Mention of the Letter's being signed as aforesaid, was not on Occasion of Mr. Haldane's putting a Question to William Henderson (in whose Hands the Letter was), Who signed it? the Deponent, on Recollection, says, That he believes it was so. Depones, That, before the Pannel went to the New Church Isle, Mr. Grosset came to the Goldsmiths-Hall, and represented, That he had a Message from Lord Advocate, and Lord Justice-Clerk, to let the Pannel know, That, if he would give Orders for 100 Dragoons to enter the City, they should be forthwith sent. That the Pannel to this replied, That he could give no Orders, because he had no Power over them: That he was a little surprised with the Message, after what had happened in a Council of War held the other Night in Lord Justice-Clerk's House; where it was concluded not to be for his Majesty's Service that any of the Dragoons should enter the City, or Words to that Purpose; but that, if they were of Opinion, that it was for his Majesty's Service, and should order a hundred Dragoons, or more, he would receive them, and make them very welcome, and give them all the Assistance he could in Defence of the City. That Mr. Grosset insisted the Answer should be taken down and given in Writing; which was accordingly done; and the Deponent thinks it was to the above Purpose. Depones, That, while he was in the Goldsmiths-Hall, after the Meeting had come from the New Church Isle to that Place, he thinks about the Hour of Six, or after it, a Serjeant from the Cattle came in, and told the Pannel, he was sent by Gen. Guesf, in order to nail up the Cannon, if he would permit them so to do. To which the Pannel answered, That all Authority was wrested out of his Hands; but that Gen. Guesf might do what he thought was best for his Majesty's Interest or Service; and said, That the Town-Officers would shew them where the Cannon were. Depones, That, after the Meeting had left the Goldsmiths-Hall, and gone to the Laigh Council-House, the Deponent went in to them; where he saw two Ministers of the City, who were reasoning about the Surrender of the Town; and declared, that, as Things now stood, the Defence seemed impracticable: And, while this was the Subject of their Discourse, Mr. Grosset came in, and produced to them one Letter signed, but directed to Nobody, and another Letter also directed to Nobody, and unsigned: The first of the Letters importing, that the Troops had that Night landed at Dunbar; and the other, that the Fleet had been seen off the May, and would land that Night at Dunbar. Upon which the Pannel expressed great Satisfaction; and said, That, as long as there was any Prospect for defending the Town, he would not be for giving it up: But then it occurred to him, that the Volunteers had delivered up their Arms, and it would be difficult to get them again into their Hands; and that there was no Prospect of getting any Dragoons. Upon which a Deputation was made by the Meeting to Provost Coutts and Mr. Lindsay, to go along with Mr. Grosset to the General, to try if he would give Orders for bringing any Dragoons into the Town, and deliver Arms to the Volunteers. That, after they waited upon the General, the Report made by Mr. Grosset was, That he would go and bring in the Dragoons; and laying hold of Provost Drummond, they both went out. Upon an Interrogatory, the Deponent recollects, That this Offer of Mr. Grosset's was immediately after the Ministers had given their Opinion as above. However, Mr. Coutts reported to the Meeting, that no Dragoons could be spared to enter the City, since there was a Prospect of Sir John Cope with his Troops landing; because they would be of much more Service joined to the Foot that was with Sir John: And as to the Arms, reported, That there was no Reason to hope they would be delivered out, till it appeared that the Volunteers were more stable in their Resolution of defending the City. And depones, That when Provost Drummond, as he thinks, had proposed to ring the Fire-bell, to convocate the Volunteers, it was opposed by Dean of Guild Hathern, for this Reason, That this Signal might be understood by the Enemy, and provoke them to use the Deputies ill. Depones, That pretty late in the Evening of that Day, he was present in the Laigh Council-House; when he heard some People in that Meeting talking of a Message to be sent to Gen. Preston; and that Mr. Lauder was the Man to be named for that Purpose. What the Message was he was to be sent on, the Deponent did not then know; but heard them assign for a Reason of the Choice of Mr. Lauder to be sent to the Castle, That he was a near Relation of Gen. Preston's. That the Pannel, and some People about him, were the Persons he observed busied about the sending of Mr. Lauder to the Castle: And when the Deponent was, from Curiosity, asking, What the Nature of the Message was? he was answered, That it was improper at that Time to communicate it to any Person: But, when

Mr. Lauder returned from the Castle, upon the Deponent's asking him what Errand he went upon, he told him, That it was to prevail upon General Preston, to send down a Party to bring up the City-Arms; which he would not comply with. Depones, That upon Saturday the 14th of the foresaid Month, the Deponent, with Provost Coutts, and Mr. Hathern, accompanied the Pannel while he went round the Walls to visit the Works that were carrying on. That, where he observed the Workmen diligent, he encouraged them, and told them, they should be very well rewarded if they were diligent; and where he observed any of them, that he suspected to trifle with their Work, he chid and checked them; and told them, they should be paid accordingly. That, upon another Occasion, when Complaints were made, that Materials were wanting for carrying on the Work, (whether it was the same Day the Walls were visited as aforesaid, the Deponent cannot be positive, nor what Day it was, but that it was in the Period of Time when the City-walls and the Town were to be put in a proper Posture of Defence against the Rebels), he was present when the Lord Somerville and the Pannel joined as Justices of the Peace, in granting a Press-Warrant for procuring Men and Horses for carrying the Materials, and forwarding the Work. And, upon an Interrogatory by the Prosecutor, Whether the Deponent had ever related to any Person whatsoever this Circumstance of the Message sent by Mr. Lauder, or at any Time since the Year 1745, down to this Day? and being at the same time desired to recollect himself, and name any one to whom he had told it; the Deponent says, That he verily believes he had made Mention of it to several Persons; but until it came to be a Subject to be spoken of in this Prosecution, he could not with Certainty say who the particular Persons were: But he condescends on two different Persons, Mr. Ninian Cunningham, Writer, and Mr. George Dunbar, Merchant, to whom he has mentioned this; particularly about a Fortnight ago: Neither does he call to mind the Names of any of the Persons who were whispering with the Provost, when the Message was said to have been sent up by Mr. Lauder at this Distance of Time; but that the two Ministers he refers to in the former Part of his Deposition, were, Mr. Alexander Webster and Mr. Patrick Cumming.

III. William Macghee, Merchant in Edinburgh, depones, That he is one of those who signed the Petition or Representation which was given in to the Pannel, marked No. 8, of the List of Writings subjoined to the Criminal Letters. That he was present when the said Petition was delivered to the Pannel, which was just at the Door or Entry to the Goldsmiths-Hall: That he seemed to be in a very great Passion about it; and, turning about in an angry Manner, when he had got up to the said Hall, said to those who presented it, 'What do you mean? Do you think by Numbers to force me to grant the Desire of your Petition?' and with that forced to the Door, and turned the Deponent down the Stairs. And that this happened in the Afternoon of the 16th September 1745.

IV. Francis Kemptie, Merchant in Edinburgh, depones, That he was present on the Afternoon of the 16th September 1745, when the Representation, marked No. 8, of the List of Writings subjoined to the Criminal Letters, was presented to the Pannel in the Entry to the Goldsmiths-Hall. That the Pannel was very much offended with the said Representation, and said, 'What! do you think to cram your Petition down my Throat by Numbers?' and then he turned away.

V. Thomas Cochran, Esq. one of the Commissioners of Excise, depones, That, upon the 15th of September 1745, he was with Brig. Fowkes, and several others, in the Lord Justice-Clerk's House, where the Brigadier proposed bringing in his Dragoons to the Town of Edinburgh: But this the Deponent argued against, as being a Thing altogether improper, considering the narrow and long Lanes that lead to all the Ports of the Town. That the Brigadier still persisted in thinking, that the Design was very right; and that he could force his Way out at any one of the Gates he pleased. However, there was no fixed Resolution of bringing the Dragoons to the Town, so long as the Deponent remained in Lord Justice-Clerk's House. Depones, That after the Deponent went from Lord Justice-Clerk's, he went to the Meeting of some Gentlemen in Mrs. Clarke's House, where Captain James Murray, the Pannel, and a great many others were; and there they made a Disposition of the several Corps of armed Men, into the different Parts of the Town: And the Deponent heard the Pannel give his Directions or Orders agreeable to the Dispositions then made. Depones, That, upon the Afternoon of Monday the 16th September, the Deponent meeting Capt. Murray, he was told, That the Pannel sent for them both to come to him to the Goldsmiths-Hall; where they both accordingly went. And, upon their going in, the Pannel desired, first, That Capt. Murray would give his Opinion, which he accordingly did; and afterwards desired the Deponent might do the same, which he also did; and which was to this Purpose, 'That it was the Duty of every one to defend the City as long as they could; and if there was a Necessity for their surrendering, then they ought to take care, that the King's Arms should not fall into the Hands of the Rebels. And being interrogate, If he took any Notice of the Arms which belonged in Property to the Town? depones, He did not, for this Reason; That he knew, when the Town-Guard marched out that Day, as he thinks, the Officers would not accept of them to do Duty with, as knowing them to be altogether insufficient; and, for that Reason, they had a new Set delivered to them. And further, he gave Advice at the above Meeting, That, in case the Town was pushed, and obliged to surrender, and those who had the King's Arms had not Time nor Access to deliver them into the Castle, that then they should break them, rather than let them fall into the Hands of the Rebels. And depones, That the Pannel, upon hearing Capt. Murray's and the Deponent's Opinion, said to the Meeting, 'I want, Gentlemen, that you should also give me your Opinion; for it is by your Opinion I am to conduct myself: And if you come to a Resolution of defending the Town, I will go wherever the Danger is greatest, and defend it to the last.'

VI. David Baird, Merchant, and late one of the Bailies of Edinburgh, depones, That upon the Afternoon of Monday the 16th of September 1745, he was in the Goldsmiths-Hall with the Pannel, and a great many other Inhabitants of the Town of Edinburgh. That while he was there, Mr. Grosset came in with a Message from the Lord Advocate and Lord Justice-Clerk, making Offer of 40 or 50 Dragoons to the Pannel for the Defence of the Town, in case he thought fit to accept of them. The Pannel's An-

swer to this Proposal was, That he would neither desire nor give Orders for them; but, if they came, they should be welcome: For, if any Accident happened to the King's Troops, they, and not he, should be answerable for it. And the Deponent, upon hearing of the small Number that was proposed to be sent, said, What did 40 or 50 signify? If they sent the Whole, it would be something; but the sending such a small Number, could be to no other Purpose, than having their Throats cut, and the Houses and Shops plundered. That Mr. *Groft* insisted for an Answer in Writing, which the Pannel complied with, by giving him a Letter to the Lord Advocate and Lord Justice-Clerk. Depones, That, while the Deponent was in the Goldsmiths-Hall, he stood up, and spoke to the Pannel, and told, That he appeared there, not only for himself, but for several Hundreds of the Inhabitants, whose All was at Stake, and whose Wives and Children were in Tears; and demanded, that the Pannel would give the Inhabitants a Hearing before he came to any Resolution for defending the Town; which, after some little Time, was agreed to; and that the Inhabitants were to meet in the New Church Isle about Six o'Clock that Night; and that the Fire-bell should be rung for convocating the Meeting. That the Deponent having come to that Meeting, the Pannel said, That he was sorry for the Occasion of calling the Inhabitants together; but, as the Rebels were then come near the Town, he wanted to have their Opinion how he should behave, he himself being willing to hazard his Life and Fortune in the Defence of the Town. To which severals answered, That they would stand by his Lordship: But that, as the Dragoons had been seen running away, and the Inhabitants altogether dispirited, they thought it more advisable to make the best Terms they could; and all agreed, with an Exception of one or two, not to defend the Town. And, being interrogate, Whether the Meeting in the New Church Isle consisted of People well-affected to the Government, and of Rank and Substance in the Town? depones, That he thinks they were; and that Mr. *Clarkson* and Mr. *Keir*, Baxters, Mr. *Thomas Dundas*, Merchant, and several others, such as these, were there. And, while the Deponent was there, he saw Bailie *Stewart* come in, and deliver up the Keys of the *Netherbow* Port; and he was desired by the Pannel to stay; but he would not. That Sir *George Preston* came there, and told, That he and his Company had been delivering their Arms into the Castle; and that Mr. *Glen*, Minister, came there, and said, He was obliged to go away; and that a fourth Gentleman came there, and said, He was obliged to go and see to his own Safety.

VII. *Walter Hamilton of West-Port*, one of the Captain-Lieutenants of the City-guard of *Edinburgh*, depones, That, on *Sunday* the 15th *September* 1745, he marched out with the City-guard to sustain the two Regiments of Dragoons: And when the City-guard was marching betwixt *Colt* Bridge and *Bruce* Hill, he thinks, but is not positive, that there was some Stop; but does not remember by whom. However, this, upon Recollection, he remembers to have heard, That Orders were given by the Pannel to the City-guard to take their Directions and Orders from the Commanding Officer of his Majesty's Troops. Depones, That he had no particular Access to examine the Condition of the City-Arms; but he has heard, that they were of little Value, and unfit for Service: And this he has heard from the Soldiers in the Town-guard who are under the Deponent's Command. And further says, That when the Rebels made themselves Masters of the City-guard, the Soldiers had been so harassed with extraordinary Duty all the preceding Week, and by being under Arms for three Days before, amongst and with the Dragoons, that they were hardly fit to do any Duty.

VIII. *George Lindsay*, Depute-Town-Clerk of *Edinburgh*, depones, That he commonly attends the Magistrates as a Clerk. That he was present when Application was made to the Pannel and the Magistrates for putting the Town in a Posture of Defence; and was also present when particular Directions were given by the Pannel and the other Magistrates for carrying into Execution the general Scheme for defending the Town. And particularly knows, that Directions were given by the Pannel and the other Magistrates, that the Work should be carried on without Intermission Night and Day, *Sundays* not excepted; and Warrants were granted to impress Labourers and Carts: And when Complaints were made, that the Work was not going so speedily on as the Nature of the Case required, some of the Tradesmen were sent for by the Pannel, and challenged for not doing out the Work they had undertaken; and some of them having complained, that they wanted Labourers, fresh Warrants were signed for impressing them. Depones, That, about the latter End of *August* 1745, the Pannel signed several Letters to the neighbouring Ministers and Magistrates, and, as the Deponent thinks, about 12 or 14 in Number, desiring that they would send Notice, by Express on Horseback, when they saw any Body or Company of armed Men marching towards the City of *Edinburgh*. Depones, That the Deponent came into the Goldsmiths-Hall on the Forenoon of *Sunday* the 15th *September* 1745, where he saw Mr. *Hopewell* talking with the Pannel. That the Deponent understood, that Mr. *Hopewell* had come from General *Gues*, to acquaint the Pannel, that a Proposal had been made to him, that 250 of the Volunteers were to go to the *Colt* Bridge to support the Dragoons; and to desire the Pannel, that 50 of the Town-guard should go along with them. Depones, That the Pannel, at first hearing of this, doubted how far he could send the Guard out of the City; and said, That that Corps were more to be depended upon than the Trained-Bands. Upon which the Deponent told the Pannel, That, by the Act of Parliament constituting the Guard, he was allowed to send them a Mile from the City. And then Mr. *Bailie*, one of the Magistrates at that Time, said, That if the Volunteers were willing to go out to assist the Dragoons, the City-guard could not be better employed than to go along with them, as it might have the desired Effect of obstructing the Rebels Passage to *Edinburgh*; or Words to that Purpose. Upon which the Pannel said, 'You are in the right, Mr. *Bailie*: In place of 50, the whole Guard shall go, and so many of the new-raised Regiment as are levied.' And Orders were given, and they marched out accordingly. Depones, That, upon the 14th, the Pannel signed an Order for bringing into the Town all the Ladders, Ammunition and Arms that could be found in the Suburbs; and the same was given to an Officer, who brought in several Arms. Depones, That when Sir *Robert Dickson's* Volunteers came to Town, they were ordered to one of the Kirks; and

Bread and Ale was given to them by Order of some of the Magistrates. That when the Pannel came to the Goldsmiths-Hall, the Deponent acquainted him of it; who said, it was very well; and he hoped, they had got it soon enough. Depones, That, upon *Sunday*'s Evening, the Deponent understood, that the Pannel was in Mrs. *Clarke's*, with some of the Captains of the Volunteers, who were employed in making Dispositions for those who were to defend the City, in case of any Attack. That, about Twelve o'Clock, he came to the Goldsmiths-Hall, and said, he was to go the grand Round; and returned therefrom about Four o'Clock. Depones, That Mr. *Fowkes* came in to the Pannel, upon *Monday* the 16th in the Morning, and said to him, That as the Dragoons at *Certhorpe* had been under Arms all Night, they would greatly stand in need of some Meat; and desired it should be provided. That, in consequence thereof, some of the Magistrates sent to a Butcher to provide Beef, which was provided, and, by Order of the Magistrates, boiled in the different Taverns of the Town. Depones, That, upon *Monday* Evening, the Deponent was in the Goldsmiths-Hall, when Mr. *Griffith* and a Sergeant came from the Castle at different Times from General *Gues*, desiring the Pannel to give Orders for spiking the Cannon on the Walls. To which the Pannel answered, That he could give them no Orders; but that the General might give Orders for so doing, for there was Nobody to obstruct them.

IX. *John Yettis*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the Afternoon of *Monday* the 16th *September* 1745, as there was a great Stir in the Town, upon Account of the Dragoons going Eastward in great Haste, the Deponent and the Pannel went to see the *West* Port shut; which was accordingly done; and a Party of the City-Guard and Trained-Bands were posted there. That the Deponent went from the *West* Port to *Brislow* Port, and found it shut; and afterwards went to Goldsmiths-Hall. As he came from *Brislow* Port to Goldsmiths-Hall, the People on the Streets were calling after him, Why would the Magistrates pretend to defend the City, when the Dragoons had gone Eastward? He found in the Goldsmiths-Hall the Pannel, several of the Magistrates and Council, and a great Crowd of the Inhabitants, who were crying out against any Attempt to defend the Town, since the Dragoons had gone away and left them. That the Crowd and Preb was so great there, that it was resolved to remove to the New Church Isle; and, when they came there, the Deponent observed a very great Crowd of the Inhabitants and Burghesses; to whom the Pannel addressed himself, saying, That, as hitherto they had made a noble Stand for the Defence of the City, he hoped they would now give it up: And, as for himself, he should be the first Man that would mount the Walls, in case of Danger. That, nevertheless, the Deponent did not observe, that the Pannel's Words made any great Impression upon the Audience; for the Generality of them continued to declare their Sentiments against defending the Town; and a few only spoke to the contrary. And being interrogate, If the Deponent was acquainted with all, or a great many of the People he saw there? says, That he was not acquainted with them all; but that he knew a great many of them, whom he always looked upon as People well-affected; and some of them were People of good Credit and Substance in the City, and others of them not. Depones, That he knew there were two Deputations sent to the Camp of the Rebels; and he himself was one of the Deputies; and that the great Scope of the Deputations was, to gain Time, among other Things, with a View of consulting with the Inhabitants, what was proper to be done. That, as he returned with the first Deputation, he met with some one or other, whose Name he does not remember, who told him, That *Bailie Mansfield* had been dispatched after him, upon an Information laid before the Pannel and Magistrates, by Mr. *Groft*, That Sir *John Cope*, in all Appearance, would very soon land; and that *Bailie Mansfield*, if he had overtaken the Deputies, was to have stopped them. However, coming too late, the Deputies returned with an Answer; wherein, among other Things, there was this Condition, That the Pretender's Son was to be acknowledged as *Prince Regent*; and, when this Condition was mentioned, the Pannel declared, That it was such a Condition as he neither would nor could submit to. And depones, That, in his Opinion, no Man in Life could do more for the Defence of the City than the Pannel did.

X. *Hugh Hathorn*, Merchant, and late Dean of Guild of *Edinburgh*, a Witness formerly adduced in this Cause for the Pursuer, and now adduced and examined for the Pannel, depones, That, after the Pannel's Return from the New Church Isle to the Goldsmiths-Hall, in the Afternoon of *Monday* the 16th of *September*, the Letter from the Pretender's Son, being the first in the List of Writings subjoined to the Criminal Letters, was read publicly in the said Goldsmiths-Hall: And as it was now generally thought, there was little Hopes of defending the Town, after the Volunteers had delivered up their Arms; so there was little said there about it. Depones, That, about the same time, a Message was brought to the Pannel by *Robert Griffith*, desiring an Order from the Pannel for nailing up the Cannon that were mounted on the Town-walls: To which the Pannel answered, That he might nail them up if he pleased; and a Town-Officer should be sent with him, to shew him where they were. Depones, That, on the Evening of the said 16th of *September*, after Mr. *Groft* had brought Advice of Sir *John Cope's* being seen off *Dunbar*, he and *Provost Drummond* went away from Goldsmiths-Hall, in order, as they said, to bring back the Dragoons; but they did not return. Depones, That the two Deputations that were sent out to the Camp of the Rebels, were, in the Deponent's Apprehension, intended in order to procure a Delay, and to gain Time to put the People in a better way, who were then in a great Hurry and Confusion. And further depones, That the Pannel's Subscription for maintaining the *Edinburgh* Regiment was £. 20 per Month; and the Deponent does not know that any Person subscribed so much.

XI. Mr. *Robert Pringle*, Advocate, depones, That, upon *Sunday* the 15th of *September* 1745, he had been all Morning with the Volunteers in the College-yard, till about Ten or Eleven Forenoon, after the Churches were convened; and then they separated: And the Deponent and *Bailie Stewart* came up the High-Street, where they met Dean of Guild *Allan*, who informed them of a Measure that had been resolved on, That 250 Volunteers, with the Town-guard, and some other Troops, should march out with the Dragoons, to support them. That *Bailie Stewart* and the Deponent were

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were pretty much surpris'd with the Measure, believing that the Volunteers were not quite fit for such Service; and supposing that the Gentlemen who had concerted that Measure were at Gen. Gues's Lodging, Bailie Stewart and the Deponent resolv'd to go down there, and lay their Difficulties before them. That, in the *Connemore*, they met the Pannel and Provost Drummond coming up in a Coach together; and they stopp'd the Coach upon seeing the Deponent and Bailie Stewart: And very soon the intended Measure was spoken of; and Bailie Stewart and the Deponent began to tell them their Difficulties; and Provost Drummond said, 'Gentlemen, for God's sake! do not spoil a good Measure,' and desired them to come into the Coach; which they did; and persisted in representing the Difficulties in executing that Design; and the Pannel said, 'Gentlemen, This is no Measure or Proposal of mine, but proceeded from a Voluntary Offer of Provost Drummond's, which, he said, would be readily agreed to,' or Words to that Purpose: And this he repeated two or three Times in their way coming up to Town.

XII. *Walter Scot*, Merchant in *Leith*, depones, That, about two Days before the Rebels enter'd the City of *Edinburgh*, there came a Person to the Deponent at *Leith*, with a Letter from the Pannel, to be sent on board the Man of War lying in the Road, and desired that the Deponent would forward it. That it was a sealed Letter: but the Bearer of it told the Deponent, That the Purport of it was to get Gunners to serve the Cannon on the Town-Wall. Depones, That the Deponent forward'd the Letter, as he was desired; and the same Person who brought it to him, came to him afterwards, and told him, he had got an Answer to it; which, the Deponent thinks, was address'd to the Pannel. Depones, That, after the Return of the foresaid Letter, a second Message came to the Deponent, from the Pannel, desiring, that a Search might be made in *Leith* for Gunners to serve the said Cannon. That such a Search was made, but no Gunners found, except one *Macgill*, Commander of a Customhouse-boat; and he was sent up to Town.

XIII. *William Henderson*, Writer, a Witness formerly adduced in this Cause for the Pursuer, and now adduced and examined for the Pannel, depones, That, upon Sunday the 15th of September 1745, the Pannel concurred with Lord *Somerville*, in granting a Prefs-Warrant for pressing Men and Carts, to carry Materials for repairing the City-Walls. Depones, That the second Week of the said Month of September, the Pannel granted a Warrant for searching, seizing, and carrying into the Town, all such Arms and Ladders as should be found in the Suburbs adjoining to the Town. Depones, That, on Sunday Morning the 15th September, the Deponent was order'd by the Pannel, to go to the City-Guard, and get 24 Men of the Guard-Soldiers and *Edinburgh* Regiment, to assist *Baillie Bryden* in mounting the Cannon on the City-Walls. Depones, That, upon Sunday the 15th of September, the Pannel, at the Desire of Gen. *Gues*, upon being advis'd by him, that 250 Volunteers had agreed to go out with the Dragoons to *Corstorphin*, to sustain them, order'd out the whole Men of the City-Guard, and 50 Men of the *Edinburgh* Regiment, on the same Service. That, at Two o'Clock Afternoon, the Deponent heard Mr. *Forrest* and Bailie *Mansfield* report to the Provost, That they had deliver'd his Message to General *Gues*, who said, He was surpris'd that the Volunteers had not march'd out with the Dragoons; and, had he known that they would not, he should not have order'd *Hamilton's* Regiment to decamp from *Leith* to *Corstorphin*, but would have order'd *Gardiner's* to march from *Corstorphin* to the Links of *Leith*. Upon which the Pannel said, 'The Blame shall not lie at my Door;' and immediately sent the Deponent, with Orders for the City-Guard, and the 50 of the *Edinburgh* Regiment, instantly to join the Dragoons, and to take their Orders from the commanding Officer of the Dragoons. That the Deponent immediately went out, and found the City-Guard and *Edinburgh* Regiment in a Field betwixt the *Cole* Bridge and *Bruce-hill*, with their Arms ground'd; and the Deponent told them the Orders he had from the Pannel. Depones, That Capt. *Dalyell* then told the Deponent, That a Serjeant and 16 Men had been left at the Court of Guard; and that, if any thing should happen, it would be proper that they should be sent after them: And, upon the Deponent's reporting this to the Pannel, he immediately order'd the Serjeant and 16 Men to follow their Corps; and the Guard was supplied with 28 Constables. That, at the Deponent's Return from the *Cole* Bridge, which was about Five at Night, he found the Pannel in the Goldsmiths-Hall. That, betwixt Seven and Eight, the Deponent call'd at Lord Justice-Clerk's, and was there told, the Pannel was in that House. That, betwixt Nine and Ten, he sent for the Deponent to Mrs. *Clarke's*, to write out the Orders for the several Guards. That from thence the Pannel went to Goldsmiths-Hall, and, after Twelve at Night, went the Grand Round. Depones, That, upon Monday about Ten o'Clock, a Message came to the Provost, signifying, that the Dragoons wanted Provisions. Upon which the Pannel immediately sent for Mr. *Steedman* Vintner, and order'd him forthwith to provide as much Beef and Cheese as should be necessary for them. That, about Eleven o'Clock, Col. *Clayton* came to the Pannel, complaining, that no Victuals had been sent them. Upon which the Pannel immediately sign'd Prefs-warrants, for impressing Carts to carry out Provisions, and to go to the Fleish-market and Cheesemongers Shops, and take as much Cheese and Beef as was necessary, and get the Beef boiled in several Taverns; and recommended it to the Deponent to see these Orders executed: Which the Deponent accordingly did; and Bailie *Gavin Hamilton* went along with him. Depones, That, after Mr. *Groset* had, on Monday Evening, brought the News of Sir *John Cope's* being seen off *Dunbar*, and, as the Deponent thinks, about Seven o'Clock of that Evening, the Pannel sent the Deponent to the Guard at the *Netherbow* Port, which was then a Serjeant's Guard, Part of the City-Guard, with Orders to allow Nobody to go out or come in at the Port. That the Deponent went accordingly, and deliver'd his Orders to the Serjeant of the Guard, whose Name was *Riddel*.

XIV. *George Lauder*, Surgeon in *Edinburgh*, depones, That, on Monday Evening the 16th September 1745, about Seven or Eight of the Clock at Night, (he is sure it was not then quite dark,) the Provost, and a good many of the Town-Council, being then convened in the Council-Chamber, the Provost, now Pannel, said to them, Gentlemen, I think it would be proper to take Advice of the Officers of the Castle, or to let

the Officers of the Castle know the Situation we are in by the Letter we have received from the Rebels Camp, threatening military Execution in case we should put out of the Way any of our Arms or military Stores, and to see if they shall think proper to do any thing. Upon which one in the Company said, That the Deponent would be a proper Person to be sent with such a Message to Gen. *Preslon*, because of his Relation to him. Upon which the Pannel directed the Deponent to go to the Castle, and acquaint Generals *Preslon* or *Gues* of the Situation the Provost and Magistrates were in, in respect of the said threatening Letter, on account whereof they durst do nothing themselves with the Arms or military Stores; and to see whether these Generals would think proper to do any thing in it. That, when this Message was propos'd, and agreed to, there were present in the Council-Chamber, besides the Pannel and the Deponent, Mr. Treasurer *Forrest*, as the Deponent thinks, and Mr. *Orrock*, and several other Members of the Council, whose Names the Deponent cannot recollect, and Mr. *William Forbes* one of the Principal Clerks, and Mr. *Lindsay* Depute Clerk; and the Message was propos'd, and agreed to openly, and above-board. That the Deponent went immediately up to the Castle; and, in the Way, pass'd Ensign *Robertson*, and a Party of the Castle-Soldiers, standing a little above the Weigh-house. That, when he came to the Castle, the Deponent call'd first at General *Preslon*, but was told, that he was gone to bed; and from thence he went to General *Gues*, and began to deliver him his Message from the Provost and Council, of the hard Situation they were in, by reason of the foresaid threatening Letter, in case they should put out of the way any of their Arms or military Stores; and then the General cut him short, and said, What then? Do you intend to deliver up your Arms to the Rebels? No, General, answer'd the Deponent; had that been our Intention, I had not come here; but I am sent to acquaint you of the Terror the Inhabitants are in; and that we dare not do any thing ourselves, for fear of military Execution: and therefore, if any thing occurs to you, you may do it; or Words to that Purpose. The General answer'd, And what would you have me to do? Will your Provost give me a written Order to send a Party for the Arms? No, replied the Deponent; that is what neither he nor the Council can do; for that would be constructed the same thing as if they did it themselves. That the General appear'd to be in a Passion, and said, That is like the rest of your Provost's Conduct; I will send no Party, unless he send me a written Order. And then *Robert Griffith* came in, and told the General, that the Party with Ensign *Robertson* were in the Streets, waiting his Orders. Then, said he, recall the Party, for the Provost will give me no written Order; and, unless he give me one, I will send no Party. Depones, That he now also recollects another Expression he had to the General, to wit, That, tho' we dare give you no written Order; yet, if you will send a Party, I don't believe that any of those who are possess'd of the Arms will refuse to deliver them. That the Deponent returned from the Castle to the Council-Chamber, and report'd to the Pannel, and the other Persons present, openly, and above-board, the whole that had pass'd betwixt General *Gues* and him; and remembers, that the Pannel said, I hope you took care to hint to the General, that he might send a Party if he had a mind; or Words to that Purpose. And further depones, That Mr. *Griffith* first went away from the General, and the Deponent immediately follow'd him; and, just as the Deponent was coming away, the General said, What do you intend to do with your Cannon? The Deponent answer'd, 'I fear, General, they must run the same Fate with the rest.' And the General replied, I don't believe they are of much Use. And, being interrogate by the Pursuer, depones, That the Matters above deponed upon, happen'd, in point of Time, before the Message that Mr. *Groset* and Mr. *Coutts* were sent with to the Castle. And, being further interrogate, depones, He does not remember, whether there was any Conversation in the Council afterwards, when Mr. *Groset* and Provost Drummond were there, upon the Subject of the City-Arms.

XV. *Archibald Stewart*, Merchant in *Edinburgh*, depones, That he was Praeses of the Society of Constables in the Year 1745. That, on Sunday the 15th September, in the Evening, the Pannel sent the Deponent, with a signed Order, address'd to Mr. *Lyon* Store-keeper of the Castle, for Matches for the Use of the Cannon mounted on the City-Walls; by virtue of which he received from him two Coils of Matches; for which he granted his Receipt on the Back of the Order; which was left in Mr. *Lyon's* Hands; which Coils he forthwith brought down, and deliver'd into the Goldsmiths-Hall. That a very little while after this, by virtue of another signed Order from the Pannel, he search'd a waste House in the *Lawn-market*, belonging to one Mr. *Norvel*, for Arms and treasonable Papers, which were suspected to be in it; but which, after a careful Search, was found to be a Misinformation. That, upon Monday Afternoon, the 16th September, about Three o'Clock, he attend'd the Pannel from the Head of *Forrester's* Wynd to the *West* Port; at which Place he the Pannel visit'd the Barricadoes; and desired the Deponent to get up upon the Town-Wall, to look-out for one Hundred Dragoons, which he expect'd in Town, for the Defence of the City: which accordingly the Deponent did; and remain'd there for about a Quarter of an Hour; and when he came down, desired one of the Captains of the Guard to send up two of his Men to keep the same Look-out, that the Ports might be readily opened when the Dragoons appear'd; and thereafter attend'd the Pannel in his Return from the *West* Port, from whence he intended to go to *Bristow* Port: But, in his Way, he was accosted by Mr. *Thomas Dundas* younger of *Latham*; who desired to know of the Pannel, if he intended to persist in the Defence of the City? and said, That he did not ask this out of a vain Curiosity, but at the Desire of several substantial Inhabitants of the City, whose Lives and Fortunes were at Stake, and who, as well as himself, would take their Measures according to his Resolution. To which the Pannel replied, 'You know, Mr. *Dundas*, that, at the Desire of the principal Inhabitants of this City, I wrote to London for Arms to be put in the Hands of the Citizens for the Defence of the City; with what Grace then can I, without striking a Stroke, desist from defending it? No, Sir; I am determin'd I will not; and will take that Place on the Town-Walls which I possess at the Council-Table.' Soon after which the Pannel came up to Town.

Then the Pannel declared, that as he was of Opinion he had fully proved his Defences, he would not trouble the Court with any further Proof.

Saturday 31st October 1747, betwixt Five and Six o'Clock in the Morning.

The Lords Commissioners of Justiciary, ordain the Affize immediately to inclose in this Place, and to return their Verdict against Monday next, at Ten o'Clock Forenoon, in this Court-House; and ordain the haill fifteen Affizers to be then present, each under the Pain of Law, and the Pannel also to be present said Time, under the Pain of Law.

Curia Justiciaria S. D. N. Regis, tenta in nova Sessionis Domo Burgi de Edinburgh, secundo Die Mensis Novembris 1747. per honores Viri Magistros Alexandrum Frazer de Strichen, Patricium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, Commissionarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Lord Strichen, Præses.

Intra. ARCHIBALD Stewart of the City of Edinburgh, Merchant, and late Lord Provost of the said City, Pannel, indicted and accused as in the former Sederunt.

The Persons who passed upon the Affize of the Pannel returned their Verdict, in Presence of the said Lords; whereof the Tenor follows, viz. At Edinburgh, the Thirty-first Day of October one Thousand seven Hundred and Forty-seven Years, the Affize having inclosed, did make Choice of Sir Alexander Nisbet to be their Chancellor, and John Nisbet to be their Clerk; and having considered the criminal Libel, pursued at the Instance of William Grant of Prestongrange, Esq; his Majesty's Advocate, for his Majesty's Interest, against Archibald Stewart of the City of Edinburgh, Merchant, and late Lord Provost of the said City,

Nota, The Jury sat till Five o'Clock Saturday Evening.

Pannel, with the Lords Commissioners of Justiciary their Interlocutors thereon, and Writs produced, and Depositions of the Witnesses adduced for proving thereof, with the Proof adduced for the Pannel's Exculpation: they, nemini contradicente, find the Pannel Not Guilty. In Witness whereof, their said Chancellor and Clerk have, in their Names, subscribed these Presents, Place and Date foresaid.

Signed,

ALEX. NISBET, Ch.
JO. NISBET, Clk.

The Lords Commissioners of Justiciary, in respect of the foregoing Verdict of Affize, absolve the said Archibald Stewart simpliciter, and dismiss him from the Bar.

Signed,

ALEX. FRASER, J. P. De

The Lords taking into Consideration, that the fifteen Affizers, who had passed upon the Trial of Archibald Stewart, Esq; late Lord Provost of Edinburgh, had undergone a great Fatigue, by no less Attendance than Ninety-four Hours; and being of Opinion, that, on this Account, they should be exempted from being summoned as Affizers to pass upon Trials before this Court for some Time to come; they therefore recommend to, and appoint the Clerks of Court, that, when the Judges make up Lists of Affize, they put them in Mind not to insert any of the said Fifteen their Names, in any Roll or List of Affize for the Space of five Years from the Date of these Presents.

Signed,

ALEX. FRASER, J. P. De

Extracted from the Books of Adjournal of the High Court of Justiciary, by me John Davidson, Principal Clerk of the said Court.

Signed,

JO. DAVIDSON, Clk.

XLIV. The Trial of John Matthews, Printer, for High Treason, for Printing a Libel, entitled, *Ex ore tuo te judico, Vox Populi Vox Dei**, at the Sessions House, in the Old Bailey, October 30, 1719, before the Lord Chief Justice King, Lord Chief Baron Bury, the Judges Powis, Blencow, Price, Tracy, Eyre, Montagu, Fortescue, Page, and Dormer†.

AT the Sessions House, in the Old Bailey, the 14th October 1719, the Prisoner, John Matthews, was brought to the Bar, but on the Motion of the Prisoner's Counsel, and on producing an Affidavit of one Carroll, the Court adjourned to the 16th: When the Court met again, the Prisoner being brought to the Bar, Mr. Justice Tracy, and Mr. Baron Price, attending,

An Objection was made by the Prisoner's Counsel, that by the Statute of the 7th King William, the Prisoner, in the Cases of High Treason, is to have a Copy of the Pannel duly returned by the Sheriff, two Days, at least, before the Trial; and that in the Copy of the Pannel so delivered to the Prisoner, and returned by the Sheriffs of London, was inserted the Names, without the Addition of Parish, Ward, or Place of Abode. And the Question was, Whether this is a right Pannel, according to the Act of the 27th Eliz. Ch. 7. the Title of which Act is, that no Juror shall be returned without an Addition of his Dwelling-place, &c. And for that purpose the Act provides, that no Juror, whether living within or without a Liberty, shall be returned without an Addition of the Place of his Dwelling or Abode, or some other Addition, by which the Party named may be known †.

The Judges then present differed in their Opinion, and adjourned to another Day, to take the Opinion of the rest of their Brethren, to whom the said Judges that attended made their Report, and on the 30th of October, the Court met again, when Eleven Judges attended, (viz.) Lord Chief Justice King, Lord Chief Baron Bury, the Judges Powis, Blencow, Price, Tracy, Eyre, Montagu, Fortescue, Page, and Dormer, (Lord Chief Justice Pratt, absent) who all agreed, that the City of London was not within the Meaning of that Act, and that the Pannel was a good and legal Pannel; and the Trial ought to go on.—Accordingly the Jury were called over, and after a great many were challenged by the Prisoner,

The Jury sworn, were

Thomas Clarke,	Charles Fox,
Robert Thorp,	Nathaniel Michlethwaite,
Elias Turner,	John Thompson,
Richard West,	Morgan Atkinson,
William Smith,	Richard Guy,
Robert Smith,	William Kent.

Lord Chief Justice. Are they all sworn?

Clerk of Arraignment. Yes, my Lord.

Lord Chief Justice. Then read the Indictment.

* By a Gentleman, who was at Rome in September 1765, we are informed that the Pretender was declining in his Health very fast; grown Superannuated and Childish; was never visited, or seen by any body, but those immediately attending upon him. He died at Rome, January 1, 1766.—Thank God, Jacobitism is in a manner extinct, and all the hopes of the Pretender and his Adherents, at an end: so we shall close the Trials relating to the late unnatural Rebellion in 1745-6, with the Trial of one who suffered for asserting those weak Doctrines of Hereditary Right, and the Rights of the Pretender, &c. which have occasioned the Effusion of so much Blood and Treasure in these Kingdoms; and we hope his present most sacred Majesty, King George III. may enjoy a long, very long, peaceable and quiet Reign, over a free and happy People; and after him, a Succession of Princes sprung from his illustrious House.

† This Trial was taken in Short-hand, with leave of the Court, by Mr. J. Shaylor.

‡ The little Tract, entitled, "The Method of Trial of Commoners, in Cases of High Treason," publish'd in the Year 1709, by Order of the House of Lords, directeth, "that the Additions of Dwelling-places, and Professions of the Jurors, be inserted in the Copy of the Pannel;" But the Act doth not require that Exactness, and the Practice is otherwise. Foster's Reports, p. 230. But V. 7 An. c. 21.

The Indictment.
LONDON. ff. Jur' pro Dno. Rege sup' Sacram' suum p'sentant qd. Joh'es Matthews de London Typographus existens subdit' serenissimi Dni. Georgii modo Regis Magnæ Britannia Franc' & Hibernia, fidei Defensor. &c. timorem Dei in Co. suo non h'ens nec debet' ligant' sue ponderans sed instigatione Diabolica mot' & seduct' ut falsus Prodit' contra dict' Dnm. Regem nunc suprem. verum leg' et indubitat' Dnum. suum cordialem amorem ac veram & debit' obedient' fidelitat' & ligant' quas quilibet subditus dict' Dni. Regis erga ipsum Dnum. Regem gereret & de jure gerere tenetur penitus subtrahen. post vicesim' quintu' diem Martii Anno Dom. Milles. septingent' imo sexto scil't Decimo die Junii Anno regni dict' Dni. Regis nunc Quinto apud London videl't in paroch' sc'ti. Bothi extra Aldersgate in Warda de Aldersgate in London predict' in quodam falso & proditor. libello quem ipse predict' Joh'es Matthews ad-tunc & ibid. malitiose advisate & proditor' Impressit intitulat. Ex ore tuo te Judico, Vox Populi Vox Dei, de & concernen. persona in vita Jacobi sc'di nuper Regis Anglie &c. pretend' esse Princip' Wallie & post dict' nup. Regis decessum pretenden' esse & suscipien' sup' se stilum & tit' lum Regis Anglie per nomen Jacobi tertii ac de & concernen. Jure ad Coron' Magne Brittanie malitiose advisate directe & proditorie per prædict' Impression' declaravit manutenuit & affirmavit scil't in una parte inde in his Anglicanis verbis sequent' videl't From the Solemnity of the Chevalier's (personam in vita Jacobi secundi nup' Regis Anglie &c. pretend' esse Princip' Wallie et post dict' nup' Regis decessum pretenden' esse & suscipien' sup' se stilum & tit' lum Regis Anglie per nomen Jacobi tertii Innuendo) Birth, the moral Impossibility of putting an Impostor on the Nation (Regnum Magne Brittanie Innuendo) after the Manner pretended, and the Disappointment in the Attempt of proving him (dictam personam in vita Jacobi secundi nup' Regis Anglie &c. pretend' esse Princip' Wallie & post dict' nup' Regis decessum p'tenden' esse & suscipiens sup. se stilum et tit' lum Regis Anglie per nomen Jacobi tertii Innuendo) so, I (scil'psum Joh'em Matthews Innuendo) think it is Demonstration, if Hereditary Right be any Recommendation, he (dictam personam in vita Jacobi sc'di nup' Regis Anglie &c. p'tens' esse Princip' Wallie & post dict' nup. decessu' p'tenden. esse & suscipien' sup. se stilum & tit' lum Regis Anglie per nomen Jacobi tertii Innuendo) hath that (Jus hereditarium ad Coron. hujus Regni Innuendo) to plead in his Favour; and all Assertors of limited Monarchy must allow, that ought to be preferred, if the Person having it is endowed with other Qualities fit to govern. And the great Opinion all Courts have of this unfortunate Prince (dictam personam in vita Jacobi sc'di nup. Regis Anglie &c. pretenden' esse Princip' Wallie & post dict' nup. Regis

decessu'

decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Innuendo) *Virtus s'cra be* (dictam personam in vita Jacobi sc'di nup. Regis Anglie. pretens. esse Princip. Wallie & post dict. nup. Regis decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Innuendo) *only wants to be known by us* (popul. hujus regni Innuend') *to be admired; and that we* (popul. hujus rni' Innuen.) *only want the Enjoyment of him* (dictam personam in vita Jacobi sc'di nup. Regis Anglie &c. pretend. esse Princip. Wallie et post dict. nup. Regis decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Innuendo) *to make us happy.* Et in altera parte inde in his Anglicanis verbis Videlt. *I* (scipm' Joh'em Matthews Innuendo) *will conclude with three Remarks. First, That every Assertor of Hereditary Right* (Jus Hereditarium ad Coron. hujus Regni Innuendo) *must be a Jacobite* (Fautor personæ in vita Jacobi sc'di nup. Regis Anglie &c. p'tens. esse Princip. Wallie et post dict. nup. Regis decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Innuendo). *Secondly, Every Whig who makes Vox Populi his Rule of Government must be so* (Innuendo Jacobit. anglice, a Jacobite). *Thirdly, Every Assertor of limited Monarchy must be so* (Innuendo Jacobit. anglice, a Jacobite). *The Chevalier* (dictam personam in vita Jacobi sc'di nup. Regis Anglie &c. p'tend. esse Princip. Wallie & post dict. nup. Regis decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Innuendo) *being endowed with all princely Virtues; so that all Rights* (omnia Jur. ad Coron. hujus rni' Innuendo) *concur in him*, (dictam p'son. in vita Jacobi sc'di nup. Regis Anglie &c. p'tens esse Princip. Wallie & post dict. nup. Regis decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Innuendo) *contra Ligeanc' sue debet' contra pacem dict' D'ni Regis nunc Coron. et Dignitat. suas, necnon contra formam Statut. in hujusmodi casu nup. edit. & provis. Et. Jur. predict. sup. Sacram. suum predict' ulterius p'sentant qd. predict' Joh'es Matthews timor Dei in Corde suo non h'ens nec debet' Ligeanc' sue ponderans sed instigatione Diabolica mot' et seduct' ut falsus proditor contra dict' D'num Regem nunc supremum verum legalem et indubitat' D'num suum cordialem amorem et veram et debet' obedienc' fidelitat' & ligeanc' quas quilibet subditus dict' D'ni Regis nunc erga ip'm Dominum Regem gereret & de Jure gerere tenetur penitus subtrahens postea & post vicem. quantum diem Martii Anno Dni millimo septingentimo sexto scil't eodem Decimo die Junii Anno Quinto supradicto apud London predict' in paroch. & Warda predict' in quod'm altero Flo & proditorio libello Intitulat. Ex ore tuo te Judico, Vox Populi Vox Dei, quem ipse predict' Joh'es Matthews adtunc & ibid. malitiose advasate & proditorie impressit malitiose advasate directe & proditor. per Impression' ult. supradictam declaravit manutenuit & affirmavit qd. persona in vita Jacobi sc'di nup. Regis Anglie &c. pretens. esse Princip. Wallie & post dict. nup. Regis decessu p'tenden. esse & suscipien. sup. se stilum & tit'lum Regis Anglie per no'en Jacobi t'ii Jus habet ad Coronam Magn. Brittanie contra ligeanc' suam debet. contra pacem dict' D'ni Regis nup. Coron. et Dignitat. suas necnon contra formam Statut. in hujusmodi Casu nup. edit. & provis.*

The Cryer makes the usual Proclamation, O-yes, O-yes, O-yes! If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney General, or this Inquest, now to be taken, of the High-Treason of which the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance: and all Jurymen of London, that have appeared, and are not sworn, may depart the Court for this time.

Clerk of Arraigs. John Matthews, hold up your Hand. You of the Jury look upon the Prisoner, and hearken to his Cause: He stands indicted, by the Name of John Matthews, of London, Printer, for that he being a Subject of our Sovereign Lord George, now King of Great Britain, France, and Ireland, Defender of the Faith, &c. not having

Rights! He could not have any, supposing him King James's Son; (which is not admitted) for his Father, under whom he must claim, having broke his Coronation-Oath, trampled on the Rights and Liberties of his Subjects, turned Papist, and abdicated the Throne, was very justly set aside by Act of Parliament. This Matthews was a vain, weak, conceited young Fellow, buoy'd up by the Jacobites, and for small Lucre printed their treasonable Papers, and dispersed them among the ignorant common People—Persons of Sense despising their nonsensical Doctrine of Hereditary Right, &c. Such idle Stuff having been long since exploded, every one now seems striving who shall appear most zealous in asserting those Principles which brought about the GLORIOUS REVOLUTION and the HAPPY ESTABLISHMENT of the present Royal Family.—

Mich. 15 Ann. Bedford's Treatise of Hereditary Right was held to be a Libel, though it contained no Reflection upon any Part of the then Government. *Strange, Vol. II.*

p. 789. Mr. Bedford having been found guilty at Guildhall, London, Feb. 13, 1713, of writing, printing and publishing a scandalous and seditious Libel, intitled, *The Hereditary Right*, &c. the Court, May 4, in Easter Term, gave Judgment, "That he should be fined 1000 Marks, imprisoned for three Years without Bail or Mainprize, and upon his Delivery, to be bound in a Recognizance with four sufficient Sureties in the Sum of 5000*l.* for his Good Behaviour during Life; and that upon the next Friday he was to be brought up, and shewn to all the Courts sitting in Westminster-Hall, with a Paper in his Hat expressing the Crime and the Judgment, and was committed to the Custody of the Marshal."

Upon Friday Mr. Kettleby, (one of the Defendant's Counsel) moved the Court upon a Paper which was delivered in and read; it was under the Privy-Seal signed by her Majesty, and directed to the Lord Chief Justice, the Justices of the Court, the Sheriffs of London and Middlesex, and Marshal of the Queen's Bench, and imported a Recital of the Conviction and Judgment; and that Mr. Bedford had humbly represented to her Majesty by Petition, *That he was a Clergyman of the Church of England, and prayed, that the ignominious Part of the Sentence might be remitted; "These are therefore to require you, and every of you, not to put in Execution that Part of the Judgment which is, that he be brought to the Courts in Westminster-Hall, &c. and for so doing this shall be your, and every of your, sufficient Warrant."*

The Court immediately made a Rule to discharge the Marshal of his Attendance with him that Day, and said they would consider how the Judgment ought to be entered upon. *Gilbert's Cases, 297.*

This Mr. Bedford (formerly Rector of Wickering, in the Diocese of Peterborough, and Fellow of St. John's, Cambridge,) was a nonjuring Clergyman, and though convicted as above, was thought to have had little or no Hand in writing the Book, he not being esteemed equal to the Performance. It was supposed to have been wrote by Mr. Harbin, a Nonjuror, (a West-Country Gentleman) who had been formerly Chaplain in the old Lord Weymouth's Family. The Preface to it was said to be wrote by Mr. Downes, a Nonjuror, of Baliol College at Oxford. It is imagined they had the Perusal of Lord Hales's MSS. of the Pleas of the Crown, by the Passages they have taken from thence. Those obnoxious Passages were omitted by Mr. Emyn, when he published that Work, by the Advice of two great Men in the Law.—

Mr. Bedford, by not discovering the Author, &c. was a great Gainer in the End; for setting up a Boarding-house near Westminster School, for young Gentlemen, by the Help of the above Persons, and others of that Party, he got a considerable Fortune; which he left to his Son, Dr. Bedford, a Physician in London, who died a few Years ago.

† Only wants to be known by us to be admired. The more he was known in Scotland, in the Year 1715, the more he was despised; being a great Bigot to the Popish Religion, refusing to appear at any Place of Protestant Worship.—A great Coward, flying before the King's Troops, and making no Stand; that even the Chiefs in that Rebellion looked on him, at last, in a contemptible Light.—And further he says, *We only want the Enjoyment of him to make us happy.* What, would a Popish Bigot, and a Tool of France make us happy! would Popery and Slavery make English-men happy! We are now as happy under our present most gracious Sovereign King GEORGE III. as our Hearts can desire (and were so at that Time); and God forbid we should ever change our Happiness for Misery and Ruin; which must be the Case, if ever God, for our Sins, should scourge us with a Popish abjur'd Pretender.

limited

the Fear of God in his Heart, nor considering his due Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor, against our said Lord the now King, his supreme, true, lawful, and indubitable Lord, altogether withdrawing that Cordial Love and true and due Obedience, Fidelity and Allegiance which every Subject of our said Lord the King should bear, and, of right, ought to bear towards our said Lord the King, after the 25th Day of March in the Year of our Lord 1706, viz. the 10th Day of June in the 5th Year of the Reign of our now said Lord the King, at London in the Parish of St. Botolph without Aldersgate in the Ward of Aldersgate at London aforesaid, in a certain false and treasonable Libel, which he the said John Matthews then and there maliciously, advicedly, and traitorously printed, intitled *Ex ore tuo te judico, Vox Populi Vox Dei*, of and concerning the Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and, after the Decease of the said late King, pretending to be, and taking upon himself, the Stile and Title of King of England, by the Name of James the Third; and of and concerning his Right to the Crown of Great Britain, he did maliciously, advicedly, directly and traitorously, by the said Printing, declare, maintain and affirm, in one Part thereof, in these Words following, viz. *From the Solemnity of the Chevalier's* (meaning the Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself, the Stile and Title of King of England, by the Name of James the Third) *Birth, the moral Impossibility of putting an Impostor on the Nation* (meaning the Kingdom of Great Britain) *after the Manner pretended, and the Disappointment in the Attempt of proving him* (meaning the said Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King, pretending to be, and taking upon himself, the Stile and Title of King of England, by the Name of James the Third) *so, I* (meaning himself the said John Matthews) *think it is Demonstration, if Hereditary Right be any Recommendation, &c.* (meaning the said Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third) *has that* (meaning an hereditary Right to the Crown of this Kingdom) *to plead in his Favour; and all Assertors of limited Monarchy must allow that ought to be preferred, if the Person having it is endowed with other Qualities fit to govern. And the great Opinion all Courts have of this Prince's* (meaning the said Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third) *Virtues, shews be* (meaning the said Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third) *only wants to be known by us* (meaning the People of this Kingdom) *to be admired.* *And that we* (meaning the People of this Kingdom) *only want the Enjoyment of him* (meaning the said Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third) *to make us happy.* And in another Part thereof in these Words following, viz. *I* (meaning himself the said John Matthews) *will conclude with three Remarks. First, That every Assertor of Hereditary Right* (meaning Hereditary Right to the Crown of this Kingdom) *must be a Jacobite* (meaning a Favourer of the Person in the Life-time of King James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third). *2dly, That every Whig who makes Vox Populi his Rule of Government, must be so* (meaning a Jacobite). *3dly, Every Assertor of*

limited Monarchy must be so, (meaning a Jacobite); the Chevalier (meaning the Person in the Life-time of James the Second, late King of England, pretending to be Prince of Wales, and since the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third) being endowed with all Princely Virtues, so that all Rights (meaning all Rights to the Crown of this Kingdom) concur in him (meaning the said Person in the Life-time of James the Second, late King of England, &c. pretending to be Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third); against his due Allegiance, against the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and also against the Form of the Statute in that Case made and provided. And further, that the said John Matthews, the Fear of God in his Heart notwithstanding, nor his due Allegiance considering, but being moved and seduced by the Instigation of the Devil, as a false Traytor, against our said Lord the now King, his supreme, true, lawful, and indubitable Lord, altogether withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the now King, towards our said Lord the King should bear, and of right ought to bear, afterwards and after the 25th Day of March, in the Year of our Lord 1706, on to wit, the 10th Day of June, in the fifth Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, in a certain other false and traitorous Libel, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, which the said John Matthews, then and there maliciously, advisedly, and traitorously printed; and by the last aforesaid Printing, maliciously, advisedly, and traitorously did declare, maintain, and affirm, that the Person in the Life-time of James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, hath a Right to the Crown of Great Britain, against his due Allegiance, against the Peace of our said Lord the now King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.

How sayest thou, John Matthews, art thou Guilty of this Indictment whereof thou standest indicted, or Not Guilty? Prisoner. Not Guilty.

Chief of Arraignment. How wilt thou be tried?

Prisr. By God and my Country.

Off. of Ar. God send thee a good Deliverance.

Foreman of the Jury. My Lord, we humbly pray the Court may be kept quiet, or it will be impossible for us to hear the Evidence.

Lord Chief Justice. Officer, make Proclamation for Silence.

Crier. O yes, O yes! My Lords the King's Justices strictly charge and command all manner of Persons to keep Silence, upon Pain of Imprisonment.

L. C. J. Gentlemen of the King's Council, you may proceed.

Mr. Booth. [afterwards Sir Thomas Booth.] May it please your Lordship, and you Gentlemen of the Jury, I am Counsel in this Case for the King. The Prisoner at the Bar stands indicted of High-Treason, upon the Statute made in the 6th Year of the late Queen Anne's Reign, and it is for maliciously, advisedly, and directly, by Printing, declaring, and affirming, that the Pretender hath a Right and Title to the Crown of these Realms.

My Lord, the Indictment sets forth, that he being a Subject of our Sovereign Lord George, now King of Great Britain, France, and Ireland, not having the Fear of God in his Heart, nor considering his due Allegiance, but being moved and seduced by the Instigation of the Devil, as a false Traytor, against our said Lord the now King, his supreme, lawful, and indubitable Lord, altogether withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King should, and of right ought to bear towards our said Lord the King, after the 25th of March, in the Year of our Lord 1706, (to wit, the 10th Day of June, in the 5th Year of his present Majesty's Reign, at London, in the Parish of St. Botolph, without Aldersgate, in the Ward of Aldersgate, at London aforesaid, in a certain false and treasonable Libel, which he then and there maliciously, advisedly, and traitorously printed, entitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, of and concerning the Person in the Life-time of King James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, and of and concerning his Right to the Crown of Great Britain, he did maliciously, advisedly, directly, and traitorously, by the said Printing, declare, maintain, and affirm, in one Part thereof in these Words, "From the Solemnity of the Chevalier's (meaning the Pretender's) Birth, the moral Impossibility of putting an Impostor upon the Nation, (meaning the Kingdom of Great Britain), after the manner pretended, and the Disappointment in the Attempt of proving him so, I (meaning himself the said John Matthews) think its Demonstration, if Hereditary Right be any Recommendation, he (meaning the Pretender) hath that (meaning an Hereditary Right to the Crown of this Kingdom), to plead in his Favour; and all Assertors of limited Monarchy must allow, that ought to be preferred, if the Person having it is endowed with other Qualities fit to govern. And the great Opinion all Courts have of this Prince's (meaning the Pretender's) Virtues, shews he (meaning the Pretender) only wants to be known by us to be admired, and that we (meaning the People of England) only want the Enjoyment of him to make us happy."

My Lord, there is laid to be likewise in another Part of this Libel, that he did maliciously, advisedly, and traitorously, by the said Printing, declare, maintain, and affirm, in these Words following, viz. "I (meaning himself the said John Matthews) will conclude with these Remarks. First, That every Assertor of Hereditary Right (meaning Hereditary Right to the Crown of this Kingdom) must be a Jacobite (meaning a Favourer of the Pretender). 2dly, That every Whig who makes *Vox Populi* his Rule of Government, must be so (meaning a Jacobite). And, 3dly, Every Assertor of limited Monarchy must be so, (meaning a Jacobite), the Chevalier (meaning the Pretender) being endowed with all princely Virtues; so that all Rights (meaning all Rights to the Crown of this Kingdom) concur in

him (meaning the Pretender)." This is laid to be contrary to his Allegiance, against the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, and also against the Form of the Statute in that Case made and provided.

Gentlemen, the Indictment further sets forth, That the Defendant, as a false Traytor against our said Lord the now King, his supreme, lawful, and indubitable Lord, altogether withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the now King, towards our said Lord the King, should and of right ought to bear, afterwards and after the 25th of March, in the Year of our Lord 1706 (to wit), the same 10th Day of June, in the fifth Year aforesaid, at London, in the Parish and Ward aforesaid, in another false and traitorous Libel, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, which he the said John Matthews then and there maliciously, advisedly, and traitorously printed; and by the last aforesaid Printing, maliciously, advisedly, and traitorously did declare, maintain, and affirm, that the Pretender hath a Right to the Crown of Great Britain; and this is laid to be contrary to his Allegiance, against the Peace of our said Lord the now King, his Crown and Dignity, and also against the Form of the Statute in that Case made and provided.

To this, Gentlemen, the Prisoner hath pleaded Not Guilty; we on the Part of the Prosecution shall call our Witnesses to prove the Facts, and if we do, I don't doubt you will think it your Duty to find him Guilty.

Mr. Attorney General (Mr. Lechmere, afterwards Lord Lechmere). My Lord, and you Gentlemen of the Jury, The Indictment which hath been opened to you, is an Indictment against John Matthews, the Person at the Bar, for High-Treason. This Indictment is founded upon an Act of Parliament made in the 6th Year of the late Queen, the Title of it is, "An Act for the Security of her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant Line." This Act recites, there had been a former Act, made in the 4th Year of the Reign of her then present Majesty, in which it is mentioned, by reason of the Union of England and Scotland, it became necessary to make divers Alterations in that Act. The first Provision made by this Law is in these Words, that "If any Person or Persons shall maliciously, advisedly, and directly, by Writing or Printing, maintain and affirm, that our Sovereign Lady the Queen that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of Wales, who now styles himself King of Great Britain, or King of England, by the Name of James the Third, or King of Scotland by the Name of James the Eighth, hath any Right or Title to the Crown of these Realms; or that any Person or Persons hath or have any Right or Title to the same, otherwise than according to an Act of Parliament made in England, in the first Year of the Reign of their late Majesties King William and Queen Mary, of ever blessed and glorious Memory, intitled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown;" and one other Act made in England in the 12th Year of the Reign of his said late Majesty King William the Third, intitled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject;" and the Acts lately made in England and Scotland mutually for the Union of the two Kingdoms; or that the Kings or Queens of this Realm, with and by the Authority of Parliament, are not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown, and the Descent, Limitation, Inheritance and Government thereof; every such Person or Persons shall be guilty of High-Treason, and being thereof lawfully convicted shall be adjudged Traytors, and shall suffer Pains of Death, and Losses and Forfeitures as in Cases of High-Treason."

Gentlemen, the Facts that are enumerated in this Clause of the Statute I have read to you; at the Time when this Law was made, those Crimes, though Crimes of a very high Nature, yet were Crimes of a lower Degree, as Misdemeanours, &c. But for the Security of the Person of the late Queen and her Government, and for the securing of the Succession to the Crown in the Protestant Line, the Wisdom of Parliament thought it necessary, to deter People from such Crimes, to inflict the Punishment due for High-Treason. The Charge of this Indictment read to you, is one of those several Instances made High-Treason by this Act. The Substance of the Indictment is, that the Prisoner, the 10th of June last, did maliciously, advisedly, and directly, in a certain Libel, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, which he caused to be printed, he did by that Impression declare, maintain, and affirm, that the Person described by the Act of Parliament to be the pretended Prince of Wales, had a Right to the Crown of these Realms.

Gentlemen, the Words taken out of the Libel have been read to you, and stated to you upon the Opening of the Indictment, and I believe no Doubt or Question arises upon the proper Construction of those Words, but the Prisoner is Guilty of High-Treason. The Chevalier, the Name made use of to describe the Person, the Circumstance by which he is described, are of such notorious a kind, so well known, that it is impossible for any one not to understand them of the Person described in the Act of Parliament. The Law directs, that to involve any Person in the Crime of High-Treason, that the Writing with which he is charged, should be a direct declaring, maintaining, and affirming: this is what the Law prescribes. In the first Sett of Words, it is not a bare Assertion only, but the very Words are, that it is a Demonstration, that if Hereditary Right be any Recommendation, he hath that to plead in his favour. This is as strong an Instance, and as full and clear affirming as Words can invent. In the latter Part, by way of Conclusion from the Arguments of his Books, he there affirms, all Rights concur in this Person; all Right to the Crown of these Realms: it must be so understood, it is impossible to put any other Construction upon it. I conclude from the Premises, that all Rights to the Crown of this Kingdom concur in this Person. The Act of Parliament makes it Treason to affirm, that the Person therein described hath any Right to the Crown of these Realms: in the Beginning he affirms, that he hath an Hereditary Right; in the Conclusion there is a positive Affirmation, that not only that, but all other Rights concur in him.

Gentlemen, It being beyond all doubt, as I apprehend, that the Words set forth in the Libel amount to High-Treason, according to this Act of Parliament; it is therefore incumbent upon us that prosecute for the Crown, to shew that he is the Person that did print the Libel set forth in

in this Indictment; that he did it with Malice, maliciously, is one of the Circumstances the Act of Parliament requires; that he did not do it ignorantly, or inadvertently, but advisedly; as to that, our Evidence will be this: The Prisoner lived with his Mother in the City of London, who kept a Printing-house, whether he be an Apprentice or Partner is not material; he is an Inhabitant there, and belongs to that Printing-house; and lives with his Mother who keeps the Printing-house. The Government having on former Occasions had this young Man under their Notice for Practices of this Kind, the 6th of June last they received Information of the traitorous Libel set out in the Indictment that was dispersed much about that Time. Having received Information that the Prisoner was concerned in printing of it, a Warrant was issued for apprehending him; accordingly being taken, there was found in his Pocket one entire Libel, bearing the Title, and importing the Words set forth in the Indictment. In his Lodging-room there were found two Half-Sheets; the Libel contained one whole Sheet and no more. Besides that in his Pocket, in his Lodging-room were found two first Half-sheets of this Libel; there were likewise another entire Libel found in his Lodging-room; and eight or ten Half-sheets of the latter Part of the Libel, which were superfluous Parts of the Impression, as we believe.

My Lord, on the View of these Libels when they come to be looked on, on the View of the two Half-sheets, and on the Proof we shall give you concerning them, it will appear that these two Half-sheets of the first Part of the Libel, that they are the very Proof-sheets from which the Impression of this Libel was worked off. There are other Circumstances appearing in the Papers themselves, that to your Observation I do not doubt will appear for; but especially when it comes to be explained by Masters in the Art of Printing, who are better able to give an Account of them; then it will appear that these were the very Proof-sheets of the Impression after it was wrought off. My Lord, there is, in the Language of Printers, a right and wrong Imposing; one of these Proof-sheets appears to be wrong imposed, the other is right imposed; the Impression was varied, as will appear to you by the wrong Imposition of the first Half-sheet, which occasioned another Imposition rightly imposed, and from which the Impression of the Libel was wrought off.

Gentlemen, on these two Half-sheets there are the usual Mistakes and Corrections, such as the inverting Letters, and other such literal Mistakes usual in this Trade, and in working of printed Papers.

Gentlemen, the Types and Letters of these Proof-sheets will appear to you to be the very Types and Letters of this Printing-house, to which this young Man belonged; and, Gentlemen, upon those Proof-sheets, there is an Addition and Interlineation of the Word *fit*, which we shall prove to be the Hand-writing of the Prisoner himself.

Gentlemen, It is observable from the superfluous Half-sheets, in Point of Evidence, that arises from the Facts themselves as discovered in his Possession: If these Papers had come into his Possession as Libels dispersed, it is reasonable to imagine they would have been found not imperfect Sheets, a Part of this Libel, but entire and complete. It is usual and common, where they print off by Reams, there may be a Superfluity or overplus Sheets: they do not always hit the same Number of the same Impression. It frequently happens there may be a Superfluity of Sheets or Half-sheets; these, with other Circumstances, as will appear to you, do concur, and in themselves carry a very high Evidence, strong, if not violent Presumption, that he was the Printer of this Libel, or at least privy and concerned, or co-operated in the printing thereof; and that is the same; for if many are concerned in printing a treasonable Libel, they are all guilty of the Treason. But it will be incumbent on the Prisoner, if he can acquit himself from the Weight of this Evidence, which must fall upon him from these Circumstances of the Papers being found upon him, being found in his Possession in the very Printing-house; it will be incumbent on him to acquit himself, and to account for these Things, to shew how he came by them; if by any other Means than as by these Circumstances, we shall endeavour to prove. My Lord, these Circumstances appearing, on the finding the Libel on the Prisoner, on his being apprehended, being under Examination—whatever his Defence may be now, let him make the best he can by Law; I am for giving him the full Liberty the Law allows—but I mention it as a Proof, when under an Examination, and disposed to a Behaviour that might have prevented this Trial, very far from denying the printing of these Papers when they were produced; if my Instructions are true, what he said amounted to an Acknowledgment and Confession that he printed them. He endeavoured to excuse it from his Necessity; sometimes gave Overtures and Reasons to believe that he would discover the Person that put the Manuscript into his Hands, and set him to Work. But throughout his whole Examination at that Time, it will appear on that Occasion, if my Instructions are right, so far was he from denying himself to be the Printer, that he confessed he was the Printer of those Papers.

Gentlemen, I shall not rest it on this, though if made out, I apprehend is very full; but we have the very Persons to produce to you in Evidence who were employed by the Prisoner, paid by the Prisoner for the Printing of these very Libels we shall offer to you in Evidence: That about a Month or six Weeks before he was discovered, I apprehend this might be about the latter End of May, he, early in the Morning, about three or four o'Clock, (the exact Time I will not undertake to prove) called up the Persons I shall offer as Witnesses, told them he had an Impression to work off; one of them will prove they saw him compose the Press from the Manuscript; they remember the Circumstance of his making the wrong Imposition of the first Part of this Impression, and the having wrong imposed it (as the Phrase is): He went out, and, on his Return, he swore he had wrong imposed it, and he must impose it a second time; and accordingly he made the second Imposition, which is the Paper we have to produce; he directed them to work it off while the Prisoner stood by, and did the Office which Boys do, for Dispatch and Secrecy; he took the Papers from the Press; there were about a Thousand wrought off complete of the first and second Part of the Libel; and he paid them for it, and took the Impression into his own Possession; he paid them fourteen Shillings, Part to the Witness, and the other Part to the Apprentice. Gentlemen, if we prove this, there can no Doubt remain with you, but that it will prove him fully, and to your entire Satisfaction, that he is the Printer of these Papers; that he hath done it maliciously. The Act of

Parliament hath made that a Circumstance; but no other Proof is requisite by Law to be made, than by that which arises from the Nature of the Libel itself. A traitorous Libel, calculated to raise Sedition and Rebellion, imports Malice. A Libel pretending to condemn the Title of the Crown in his Majesty, and asserting it to be in the Pretender, carries Malice of the highest Nature: and if we shew he had the Direction of the Press, he composed it, afterwards corrected it, it cannot remain a Doubt with you as to the other Circumstance, but that it was done advisedly.

Gentlemen, I have stated to you the Circumstance of the Evidence, and I have done it without any Aggravation; I do not think it wants it; if the Evidence comes out as I have laid it before you, it will carry its own Force, and you will give it its due Weight. I am sorry for any one that falls under such an Accusation, but more especially for one so young; but, Gentlemen, Compassion is neither your Business or mine; that belongs to another Place, as the Case shall appear. I will call our Witnesses, and prove what I have opened to you; and if I do, you will do your Country Justice, as well as Justice to the King, to find him guilty.

Serjeant *Chebbins*. May it please your Lordship, and you Gentlemen that are sworn, I am Counsel of the same Side with the King.—*Mr. Attorney General* hath opened the Charge so very fully, that it will be unnecessary for me to spend Time in adding to it. But, Gentlemen, since this is a Prosecution on an Act of Parliament, and for aught I know this the first Instance of a Trial of one discovered and brought before you in Judgment upon this Act, it may be necessary for me to add a few Words in relation to it. And, Gentlemen, a Man cannot but be sensibly concerned in his Mind, that, after fourteen Years that this Act hath been in Force, the first Instance should be a young Boy of this Person's Age; I hope, notwithstanding, when you hear the Evidence laid before you, you will be sensible that the real Author is a Person of greater Maturity and Proficiency; and this poor Youth worked up to be an obstinate Instrument in the Hands of some greater Person; and God forbid that such People, by their Artfulness and Cunning, should get off, by making use of such as are more apt to move Compassion.

Gentlemen, you will consider, as you have this young Man in Judgment, so you have the Rights of the King of England, under whom we live; and that you will do fair and right between the King and his Subjects, is what we expect.

Gentlemen, this must be an Offence against an Act of Parliament, made in the fourth Year of the late Queen, and in the sixth Year, whereby it was declared, that if any Person or Persons shall, maliciously, advisedly, and directly, by Writing or Printings, maintain and affirm; that our Sovereign Lady the Queen that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of Wales, who stiled himself King of Great Britain, or King of England, by the Name of James the Third, or King of Scotland, by the Name of James the Eighth, hath any Right or Title to the Crown of these Realms, or that any other Person or Persons have or hath any Right or Title to the same, otherwise than according to an Act of Parliament, made in the first Year of the Reign of their late Majesties King William and Queen Mary, of ever blessed and glorious Memory, intituled, An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown; and one other Act, made in the twelfth Year of the Reign of his said late Majesty King William the Third, intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject; and the Acts lately made in England and Scotland mutually for the Union of the two Kingdoms; or that the Kings or Queens of this Realm, with and by the Authority of Parliament, are not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown, and the Descent, Limitation, Inheritance, and Government thereof: Every such Person or Persons shall be guilty of High-Treason, and being thereof lawfully convicted, shall be adjudged Traitors, and shall suffer Pains of Death, and all Losses and Forfeitures as in Cases of High-Treason. And the Offence here is the declaring, maintaining, and affirming, that the Pretender hath any Right or Title to the Crown of England; That, Gentlemen, give me Leave to say, is the Treason in this Act of Parliament; but, Gentlemen, as it stood on the Old Acts of Parliament, that That made the Treason must be proved by open Deeds, as we usually express it by Overt Acts.—This Treason is to be determined two Ways, that is, by Printing or Writing; it is Treason for any Person or Persons to declare, maintain, and affirm, that the Pretender hath any Right or Title to the Crown of these Realms; that Declaration must be made good by Printing or Writing; the Case before you is Printing; that Printing must have these Qualifications: It must be maliciously, it must be advisedly, and the Declaration must be directly.

Gentlemen, It is an Offence made up of these Gradations: He must do it maliciously; he must do it advisedly; he must do it directly; and that which is to be done so, is the maintaining and affirming that the Pretender hath a Right to the Crown of this Kingdom: If this be thus proved by Printing, then, Gentlemen, this is the Offence which is made High-Treason by this Act of Parliament. Gentlemen, it is necessary a little to open to you who is meant by the Chevalier, because you find by the Libel, he is called the Chevalier. Gentlemen, as it is known to you all, as here in England, he is called the Pretender to the Crown, very properly in many Acts of Parliament; so, on the Death of the late King James, he assumed the Title of James the Third King of England, and James the Eighth of Scotland. That being resented, justly resented by the Crown of England, to those Princes and States that seemed to favour it, they withdrew that Title, and he assumed the Name of the Chevalier de St. George. I believe it is as well known that the Pretender was meant by the Name of Chevalier, as any Prince whatsoever is known by his Title. As to the Person, we think it is very plain, the Person named the Chevalier in the Libel, to be the very same Person that pretended to be the Prince of Wales in the Life-time of King James the Second; and, after his Decease, that assumed to himself the Title of James the Third King of England, and the Eighth of Scotland. As this is the Person, so you will find a direct maintaining and affirming that he hath a Right to the Crown of these Realms; That will appear by the Libel. I would observe by the way, that this way of libelling, it well became the Legislature to guard against: because it is a sly, artful way of poisoning the Minds of People, and in such a Manner as is not easily discoverable. Here it is necessary first, to set out the Virtues of

the Person you are next, from the Consideration of these Virtues, necessarily moved with Pity and Compassion, that a Person of those Virtues should be kept out of his Right. He says, all Rights concur in him; who, he says, is a Person endowed with all princely Virtues. If he hath all Rights concur in him, and is a Person of those princely Virtues, is it not a pity, and doth it not move Compassion, that this Person is kept out of his Right? It is a natural Inference. Then who is the Person he is speaking of, the Person whose Birth was so very solemn, that it was impossible to prove him an Impostor: These are the Words of the Libel before you. And then, Gentlemen, which comes more to the Purpose, he particularly and positively affirms, that if Hereditary Right be any Recommendation, he hath that to plead in his Favour; this is in the first Part of the Libel. In the latter Part he makes three Remarks; in these three Remarks he sums up all the Right any Prince can have. He says, Hereditary Right, that is one; the Voice or Choice of the People, that is another; and a limited Monarchy the third; he says he hath all these Rights concur in him; he being endowed with all princely Virtues, therefore all these Rights concur in him. Gentlemen, it hath been rightly opened by Mr. Attorney-General, that the Offence is to declare, that he hath any Right; but he hath maintained all Rights whatsoever concur in him; he hath an Hereditary Right, he hath a Right by the Choice of the People, he hath a Right, as it is a limited Monarchy. This, Gentlemen, is the Declaration; and we think upon the reading it, you will be satisfied, and I dare say my Lords the Judges will direct you, that this is a direct declaring that he hath a Right to the Crown of these Realms.

Gentlemen, it must be proved it was done maliciously and advisedly; if we make out what Mr. Attorney-General hath opened, that it was done with this Deliberation, that he paid for it, that he directed it, that he was the Person who composed it, first took off the Sheets from the Press, which is usually done by a Boy, and they call that Boy the Devil; it is the Devil's Work, as you will hear by the Witnesses, but that was done by him for Haste, Expedition and Secrecy too. Gentlemen, there was, as it will appear by the Witnesses, a Thousand of each Part printed off; it is to be feared they were dispersed, and God knows what Mischief they may have done; a few were found upon him, it lies upon him to account how he came by them; we will call our Witnesses, &c.

Mr. Lutwiche. Call John Hutchins and Thomas Roberts, the Messengers that seized these Things upon him.

JOHN HUTCHINS and THOMAS ROBERTS sworn.

Mr. Ketelbey. My Lord, we pray in behalf of the Prisoner, that the Witnesses may be kept out of the Hearing of one another.

[Which was ordered accordingly.]

Prisoner. My Lord, I desire that the Witnesses may be kept out of the Hearing of one another.

Lord Chief Justice King. If there are any more of the Witnesses in Court, they must stay out till they are called.

JOHN HUTCHINS.

Mr. Attorney General. Shew him the Libel. Look upon the rest of the Half-sheets, Mr. Hutchins: you have the Libel in your Hands?

Hutchins. Yes.

Att. Gen. Have you looked upon them all?

Hutchins. Yes, Sir, upon most of them.

Att. Gen. Are not any of them marked that you know of?

Hutchins. Yes, Sir.

Att. Gen. How many are they that are marked by you?

Hutchins. They are all marked by me.

Att. Gen. Hold them in your Hand, look upon those Libels, you say they are marked by you; do you know any thing of those Libels, and where you had them?

Hutchins. Some I found in Mr. Matthews's Pocket; the rest I found in his Room.

Att. Gen. Let us know the Time when.

Hutchins. The 7th of July last.

Att. Gen. Where, Sir?

Hutchins. In his Pocket, and in his Room.

Att. Gen. Where?

Hutchins. At the Printing-house of his Mother in Little Britain.

Att. Gen. At his Mother's Printing-house? Which was found in his Pocket?

Hutchins. This, Sir.

Att. Gen. Is that an entire Libel that was found in his Pocket?

Hutchins. Those two make an entire Libel.

Att. Gen. Those were found in his Pocket?—Hutchins. Yes, Sir.

Att. Gen. Where were the rest found?—Hutchins. In his Room.

Att. Gen. Why call you it his Room?

Hutchins. In his Room where he lay, in his Bed-chamber.

Att. Gen. They were found in his Bed-chamber?

[Now point to us those that were found in his Bed-chamber.]

Hutchins. The two Half-sheets; two Proof-half-sheets.

Att. Gen. There is another.

Hutchins. Yes, Sir, that is one that was found in his Pocket.

Att. Gen. Sir, can you be positive those are the very Papers you found in his Pocket, and in his Room?

Hutchins. I am very positive.

Att. Gen. I think you say you marked them.—Hutchins. Yes.

Att. Gen. Did you look on those Marks?—Hutchins. Yes, Sir.

Att. Gen. Now look upon the rest of the Papers you have in your Hands, and let us know what they are.

Hutchins. These were taken out of his Room.

Att. Gen. Look upon those, that Bundle you have in your Hand.

Hutchins. These are more that were taken out of his Room.

Att. Gen. These are the imperfect superfluous Sheets; don't put them together, keep them distinct.

Hutchins. Sir, I shall.

Att. Gen. You were saying, they were found in his Room?

Hutchins. Yes, Sir, in his Room.

Att. Gen. Was there any Conversation between you and the Prisoner the Day he was in your Custody, or at any other Time, touching these Libels?

Hutchins. He owned they were all his.

Lord Chief Justice. How?

Hutchins. I asked him if they were his, he told me they were.

Att. Gen. That was at the time he was taken; afterwards had you any other Discourse with him at the time of shewing him his Papers?

Hutchins. He never denied them.

Mr. Lutwiche. Do you know of any thing that passed between you at the time of his Commitment?

Hutchins. I brought him to Newgate. When I came for him, I suppose, says he, I am going to Newgate, and that a Bill of High-Treason will be found against me? Yes, says I, that there is already.—I advised him to tell the Author, and it would be better for him. He said, I know I shall be hanged; but I have nothing to do, but let the Money fly, to get a good Jury, that's all. He said those that let him to work, were a Pack of Dogs, good for nothing, but over a Bottle of Wine, or a Pot of Beer.

Mr. Lutwiche. Repeat the first Words again.

Hutchins. He said that he knew he should be hanged, he had nothing to do, but to let the Money fly, to get a good Jury; they were a Pack of Dogs that let him to work, good for nothing, but over a Bottle of Wine, or a Pot of Beer.

Serjeant Cheshire. Who was with you at the time of the seizing of these Papers?—Hutchins. Mr. Roberts.

Mr. Hungerford. You say you took these Things at the Printing-house?

Hutchins. Yes, Sir.

Mr. Hungerford. In whose Name was the Printing-house kept?

Hutchins. It was kept by his Mother, or by his Brother.

Mr. Ketelbey. You are sure that these very Papers you deliver'd in, are the same numerical Papers you seized either in his Lodging-room, or in his Pocket?

Hutchins. These are the very same.

Mr. Ketelbey. From the Day that you seized them, have they been in your Custody, or do you only depend on the remembering of the Mark?

Hutchins. I depend on the remembering of the Mark.

Mr. Ketelbey. They have not been in your Custody ever since?

Hutchins. No, Sir.

Mr. Ketelbey. When did you mark those you found in the Room? at the same time you seized them?

Hutchins. I mark'd them after I went out of the Room, before I delivered them.

Mr. Ketelbey. Were they in your Custody constantly from the time of your first seizing them, till you mark'd them? Had Nobody an Opportunity of altering them?

Hutchins. Yes, they were.—Nobody, except the other Messenger, meddled with them.

Mr. Ketelbey. And can you take upon you to say, the other Messenger never altered them?

Hutchins. I am sure he never altered them; for he was never out of my Sight.

Prisoner. I desire to ask Mr. Hutchins, whether he took them out of my Pocket or in my Room, or no. I am sure Mr. Roberts took them, I see him. (Here the Prisoner behaved in a Passion.)

Lord Chief Justice. You shall have a fair Trial according to the Laws of England, and as you expect a fair Trial, therefore it is expected that you behave yourself as you ought.—Who took them out of his Pocket?

Hutchins. Mr. Roberts.

L. C. J. Where was you?—Hutchins. Standing at the Door.

Att. Gen. Did you see them taken out of his Pocket?—Hutchins. Yes.

Att. Gen. Had you them in your Hand?—Hutchins. Yes, Sir.

Att. Gen. Did you keep them in your Hand?—Hutchins. Yes.

Mr. Hungerford. How far was you from Mr. Roberts when he took them out of his Pocket?

Hutchins. I was at the Door.

Mr. Hungerford. Could you read them at that Distance?

Hutchins. No.

Prisoner. You took them on the Ground?

Hutchins. He took them out of your Pocket.—He laid your Coat down, and laid the Papers upon them.

Mr. Hungerford. What Posture was the Prisoner in, when you and Mr. Roberts came into the Room?

Hutchins. He was in Bed when Roberts came in, and just getting out of his Bed when I came in.

Mr. Hungerford. Had you any Candle?

Hutchins. It was Day-light, between Eight and Nine o'Clock in the Morning.

Prisoner. My Lord, I desire to know how many Papers were found in my Pocket?

Hutchins. Two or three.

Prisoner. I desire to know if all these Papers were taken in this Room?

Hutchins. Some, two or three were found in a Box in another Room?

Prisoner. Which of those Papers were taken in another Room?

Hutchins. I can't tell.

Mr. Ketelbey. Were all those Papers taken in the Room where he lodged?

Hutchins. Most of them where he lay.

Mr. Ketelbey. Where were the rest taken?

Hutchins. In the Box in another Room.

Att. Gen. Whose Room was that?

Hutchins. He said it belonged to him.

(The Papers shewn him.)

Mr. Ketelbey. Where were these Papers produced?

Hutchins. Most of them in his Room.

Att. Gen. Look upon them again, can't you tell which were found in his Pocket, which in the Room where he lodged, and which in the Room adjoining? Have you not marked them?

Hutchins. I can't tell which were taken in the other Room.

Att. Gen. Shew him the two Proof-sheets. Look upon them, and recollect and tell us, if you can with Certainty, whether these were found in his Pocket, in his Lodging-room, or where else?

Hutchins. Yes, Sir—These were both taken in his Room.

Attorney

Attorney General. In his Lodging-room?
Lord Chief Justice. Or in the Box in the other Room? I ask you, do you know certainly where these were taken?
Hutchins. I am not sure whether they were taken in the one Room, or the other.
Mr. Lutwidge. What was that Room you call the other Room?
Hutchins. He called that other Room his, and said all that was there was his.
Prisoner. What Room was I taken in?
Hutchins. In your Bed-chamber.
Mr. Hungerford. Is there a distinct Door to that other Room where the Box was?
Hutchins. There is a Room, and a distinct Door to it.
Mr. Hungerford. Did that Door open into the Room that was his Bed-chamber?
Hutchins. No.—It opened in his Bed-chamber; you go through his Bed-chamber to it.
Prisoner. Was you there when Mr. Roberts came to my Chamber, when I was in Bed?—**Hutchins.** No.
Mr. Hungerford. Was there no other Opening to the Room where the Box was?—**Hutchins.** No, Sir.
Lord Chief Justice. You say it was found in his Pocket; in his Coat-Pocket, or his Breeches-Pocket?
Hutchins. In his Coat-Pocket, My Lord.
Mr. Hungerford. Were there one, and the same Mark to the Papers you found in his Pocket, and the other Papers?
Hutchins. There were the two first Letters of my Name to those that were not perfect, and my whole Name to the perfect ones.
Mr. Hungerford. Is there not some of the Papers of the same Mark?
Hutchins. My Name is at length, not to all.
Mr. Hungerford. To any?—**Hutchins.** Yes, Sir.
Mr. Hungerford. Then if I take him right, there was the same Mark to some of the Papers taken out of his Pocket, and that were took out of his Room.
Lord Chief Justice. By which Mark do you distinguish between the Papers?
Hutchins. Some I mark'd with the same Mark.
Lord Chief Justice. How do you distinguish?
Hutchins. Because I mark'd those found in his Pocket, 'taken in his Pocket'; those taken in the Room, 'taken in the Room.'
Attorney General. Read the Words you have written.
Hutchins. Taken in Mr. Matthews's Room the 7th July.
Att. Gen. Whose Writing is that?—**Hutchins.** My own.
Att. Gen. Were those taken out of his Pocket, or in his Room?
Hutchins. In his Room.
Att. Gen. Do you distinguish between the Room he lay in, and the other Room?—**Hutchins.** No, I can't.
Att. Gen. Look upon those mark'd, 'taken out of his Pocket.'
Hutchins. Taken out of his Pocket?
Att. Gen. Read.
Hutchins. 'This taken out of his Pocket by me and Roberts.'
Att. Gen. Whose Hand-writing is that?
Hutchins. My own Name is my own Hand-writing, but the rest not.
Att. Gen. Are you positive that Paper was taken out of his Pocket?
Hutchins. Yes, I am positive.
Att. Gen. Keep that distinct.
Mr. Ketelbey. You say the Name at length is your Hand-writing, but the Words not?—**Hutchins.** No, Sir.
Mr. Ket. Who wrote them?
Hutchins. The other Messenger.
Mr. Ket. How long after?
Hutchins. Two or three Hours.
Prisoner. My Lord, I desire to know how far he carried them, before they were mark'd.
Hutchins. I carried them to the Cock-Pit.
Mr. Ket. Did the other Messenger carry none?
Hutchins. Yes, he carried some.
Lord Chief Justice. Were they taken out of the Room, before they were mark'd?—**Hutchins.** Yes, my Lord.

THOMAS ROBERTS.

Attorney General. Mr. Roberts, Was you present with Hutchins when any Papers were seized?
Roberts. I went into the Room before Hutchins was there. I secured his Sword.
Lord Chief Justice. Was his Sword in his Room?
Rob. Yes, my Lord. Then I secured his Coat, and secured his Papers.—Then came in Mr. Hutchins; so with that Mr. Hutchins turns round and goes into another Room, and brings two or three Papers, several Papers he found, some in one Place and some in another.—Now as he found them, he asked Mr. Matthews, Are these your Papers, do you own them? Yes, says he, I do.
Attorney General. Did you put a Mark on the Papers?
Rob. Yes.
Att. Gen. What is the Mark?
Rob. 'The 7th July 1719, taken out of Mr. Matthews's Pocket.'
Att. Gen. Have you put your Name to it?
Rob. Yes, this is my Name.
Att. Gen. When did you put your Mark?
Rob. The 7th July.
Att. Gen. What Time of the Day?
Rob. About Twelve o'Clock.
Att. Gen. How long after they were seized?
Rob. About two Hours.
Att. Gen. Where had the Papers been?
Rob. This Paper in Hutchins's Hand, and the rest in mine.
Att. Gen. Was Hutchins ever out of your Company from the time of taking them till you mark'd?
Rob. He was so far out of my Company, he was in one Coach, and I was in another; we had three or four Prisoners; one Coach could not carry us all.

Att. Gen. Can you be positive that the Paper you have in your Hand, was taken out of the individual Pocket of the Prisoner?
Rob. Yes, that I can.
Att. Gen. Shew him the rest of the Papers.—Whose Mark is that?
Rob. '7th July, taken out of Mr. Matthews's Pocket.'
Att. Gen. Is that your Hand-writing?
Rob. This is my Hand-writing.
Att. Gen. Where did you put your Hand-writing to it?
Rob. In Downing-Street.
Att. Gen. When?—**Rob.** About two Hours after we had seized them.
Att. Gen. In whose Custody had they been?
Rob. In Mr. Hutchins's.
Att. Gen. Are you positive that was taken out of his Pocket?
Rob. Yes, Sir, I am.
Att. Gen. Where was he when you took them out of his Pocket?
Rob. He was in Bed.
 (The first Proof-sheet shewn to him.)
Att. Gen. Look upon that, see what is written upon that.
Rob. 'Taken in Mr. Matthews's Room the 7th July, T. R. and J. Hutchins.'
Att. Gen. Do you remember the taking of that?
Rob. Yes, I do.
Att. Gen. Do you remember in what Room?
Rob. I can't remember in what Room, because there were several Papers.
Att. Gen. In how many Rooms did you find these Papers?
Rob. Most of them in one Room, some under the Bed, in the Bed-chamber where he lodged.
Att. Gen. Was there Papers in any other Room?
Rob. I can't well tell that, because I kept the Door, but several Papers were taken in the Bed-chamber.
Att. Gen. Are you certain that Paper mark'd was taken in his Bed-chamber Room?
Rob. That I am positive of.
 (The other Papers shewn him.)
Rob. 'Taken the 7th July in Mr. Matthews's Room, T. R. and J. Hutchins.'
Att. Gen. Where did you put the Mark, and when?
Rob. In Downing-Street, at the same time.
Att. Gen. Can you be positive they were found in his Room?
Rob. Yes, I can.
Mr. Ketelbey. When you say his Room, do you mean his Bed-chamber?
Rob. His Bed-chamber.
Mr. Bootle. Look upon the rest. Read the Marks writ upon them.
Rob. Only John Hutchins, and Thomas Roberts.
Mr. Bootle. Were they taken in the Room?
Rob. Yes, Sir.
Mr. Bootle. Look upon that last, look upon the Mark, (Roberts look'd on it) where was that taken?
Rob. All were taken in his Room.
Mr. Bootle. Was that in his Bed-chamber, or the other Room?
Rob. In his Bed-chamber.
Mr. Bootle. What did he say when you had seized his Papers?
Rob. When Mr. Hutchins had seized them, says he, Mr. Matthews, are these your Papers? Yes, says he, I own them to be my Papers.
Mr. Bootle. I ask you whether the Proof-sheet was not found in his Bed-chamber?—**Rob.** Yes, it was.
Att. Gen. You have told us what he said the time the Papers were found, was there any other Conversation between you and him? Did you hear him say any thing while he was in your Custody, going to Newgate?
Rob. When we brought him to Newgate?
Lord Chief Justice. How long was it after?
Rob. The 9th of September, my Lord.—When we came into his Room, he asked, Where are you going with me? Are you going to carry me to Newgate? Yes, says I.—Is there a Bill found against me? I told him Yes, of High-Treason. I know, says he, I deserve to be hanged, and that he had nothing in the World to do but to let his Money fly, to get a good Jury.
Att. Gen. Did he say any thing more?
Rob. Nothing more as I know of.
Mr. Bootle. Did he not speak of any Person that set him to Work?
Rob. Nothing, as I remember.
Mr. Ketelbey. Mr. Roberts,—As to those Papers you have produced, where were they writ upon?
Lord Chief Justice. That Question hath been asked, and answered several times.
Mr. Ketelbey. Were they all in your Custody from the time you seized them till they were mark'd?—**Rob.** I gave them to Mr. Hutchins again.
Mr. Ketelbey. The other Man in the other Coach?—**Rob.** Yes, Sir.

WILLIAM HARPER sworn.

Attorney General. William Harper, Do you know Mrs. Matthews's Printing-House?—**Harper.** Yes, Sir.
Att. Gen. Have you ever work'd there, how, and in what Capacity?
Harper. As an Apprentice.
Att. Gen. Are you now an Apprentice?
Harper. Yes, I was a Turn-over, I have been there two Years and a Half.
Att. Gen. Do you remember about the latter end of May, or the Beginning of June, when you was called up by the Prisoner to work off an Impression?—**Harper.** Yes, I remember it very well.
Att. Gen. Pray give an Account what he said, and when it was.
Harper. It was in the Morning about four o'Clock.
Att. Gen. In what Month was this?
Harper. The last was done on Saturday Morning the 6th Day of June.
Att. Gen. Tell us what he said when he called you up?
Harper. He asked me to get up, and told me if I did not get up, it would be too late to get it done.
Att. Gen. Do you know what he meant?
Harper. I heard him say, he had a Jobb to do.
Att. Gen. How long before?
Harper. I believe about a Day before, I can't remember how long, he said he had a Jobb to do.

Att. Gen.

Att. Gen. When he called you up, what did he say?
Harper. He desired I would get up and help him to work off that Jobb he had to do.
Att. Gen. What did you do?
Harper. I arose—he came twice to me, I believe he called twice.
Att. Gen. As soon as you got up, whither went you, and what did you do?
Harper. I went directly to the Press-room, and helped him and Mr. *Vezey* to work it off.
Att. Gen. Was the Prisoner there?—*Harper.* Yes.
Att. Gen. Do you remember the Composing the Press?
Harper. Yes, I do remember it.
Att. Gen. Was that Libel, (show him one of the Proof-sheets)---do you remember, was that composed---hold it in your Hand---was that composed by the Prisoner from the Manuscript?
Harper. I remember his composing Part of it, but not all, because I was not in the Room.
Att. Gen. Are you sure you saw him compose Part from the Manuscript?—*Harper.* Yes.
Att. Gen. Who had the Manuscript?
Harper. I laid it before him on the Case, and he composed the Press. I can't say as to all of it.
Att. Gen. Talk you, look upon the Paper, can you be positive whether that is the very Paper he composed from the Manuscript?
Harper. I believe it is.
Att. Gen. Why?
Harper. Because it was done after the same Manner as this is, and nothing was done in the House at that Time of such a Volume.
Att. Gen. Look upon the Paper. Is that right or wrong imposed?
Harper. This is wrong imposed.
Att. Gen. Do you remember any thing of this being wrong imposed?
Harper. I remember he came up and said, I have wrong transposed the Page, and must alter it.
Att. Gen. And was this after the Proof-sheets of one of them was wrought off?
Harper. It was after one was wrought off.
Att. Gen. Then afterwards did he impose a second right?
Harper. Yes, Sir, he did.
Att. Gen. Look upon that which is right imposed, which is in your Hand. Was that the Paper imposed afterwards right?
Harper. I can't say, this is the very next Paper that was pulled off. I do verily believe this Paper was pulled off at the same time.
Att. Gen. Is that right imposed, or wrong imposed, the second Paper?
Harper. This is right imposed.
Att. Gen. Do you remember after he said he had wrong imposed one, that there was another right imposed afterwards?
Harper. I can't remember the Words.
Att. Gen. I don't ask the Words.---Do you remember another that was right imposed?
Harper. I know there was.
Att. Gen. By whom?---*Harper.* By him.
Att. Gen. Look upon those two Papers in your Hand (other Papers given to him), whether are they Proof-sheets?
Harper. Yes, they are in the way of Printing what we call Proof-sheets.
Att. Gen. Why, what are the Marks?
Harper. You see wrong Letters, and here that mark'd out, and that mark'd in, in the Margin.
Att. Gen. Are those the usual Corrections?
Harper. As far as I have seen.
Att. Gen. Look upon one of those Papers, and see if you can find the Interlineation of any Word?
Mr. Bootle. In written Hand---look upon it. Do you see it---what Word is it?---*Harper.* The Word *fit*.
Mr. Bootle. Do you know whose Hand that is?
Harper. Truly I can't swear to the Hand.
Mr. Bootle. Have you seen the Prisoner write?
Harper. Some small Matter, but not much.
Mr. Bootle. Can you tell, or do you believe it to be his Hand-writing?
Harper. I can't swear it.
Mr. Bootle. Is it like his Hand-writing?---*Harper.* It is something like it.
Mr. Bootle. I ask you now as to the Types and Letters, do you know the Types and Letters belong to your Mistress's Printing-house?
Harper. Nobody can tell that.
Mr. Lutwyche. You say, you saw him compose, what Letters did he compose with?---*Harper.* Mrs. *Matthews's*.
Mr. Bootle. Those Letters he composed with at that Time, what Resemblance do they bear, compared with those Letters in your Hand?
Harper. I can't tell.
Mr. Bootle. Don't you remember the Letters he composed with at that Time?
Harper. Yes, Sir, the same Letter as this.
Att. Gen. I ask you as to that, whether the Letters that were composed with, when the Press was set, was the same Letter with that Impression in your Hand?---*Harper.* Yes, Sir.
Att. Gen. When he called you up, and set you to Work, whether did he assist you himself, or did any Body else?
Harper. He took them off of the Press.
Att. Gen. How many were present?---*Harper.* I don't remember any but us.
Att. Gen. Name who.---*Harper.* We Persons that were up.
Att. Gen. Who were those?
Harper. Mr. *John Matthews*, Mr. *Vezey* and I---
Att. Gen. How many were printed off?---*Harper.* Nigh a Thousand.
Att. Gen. Of the whole?
Harper. A Thousand of each of the two Half-sheets.
Att. Gen. After you had wrought off so many, about what Time had you finished?---*Harper.* I can't tell exactly.
Att. Gen. You need not be exact.
Harper. Between eight and nine a'Clock, as I take it.
Att. Gen. What became of them?---*Harper.* He sent them away, but whither I can't tell.

Att. Gen. How do you know that?
Harper. Because he came and bundled them up, and laid one flaid for them below.
Att. Gen. Was there any Money paid?
Harper. I can't say any thing to that.
Att. Gen. Look upon those two Proof-sheets you have in your Hand, and I ask you whether you can be positive, or to the best of your Belief, those were the very Papers that were printed off at that Time?
Harper. To the best of my Belief they were.
Mr. Lutwyche. Was there any other Paper printed in Quarto?
Harper. No.
Mr. Reeves. (Afterwards Lord Chief Justice of the Common Pleas) Did you ever know printed at that Printing-press, any Paper that bears this Title afterwards?---*Harper.* No.
Mr. Reeves. At the Time of the composing, or at any time while the Impression was working off, did you read any Part of it?
Harper. I read the Title.
Mr. Reeves. Is that the Title?---*Harper.* Yes, this is the Title.
Mr. Bootle. After the first Proof-sheet that was imposed wrong, did any body else appear there to rectify the Mistake besides himself?
Harper. Not as I see.
Mr. Bootle. You was asked the Question of the Word *fit*, do you know of any body there to make that Correction besides himself?---*Harper.* No.
Mr. Hungerford. In whose Name is this House carried on?
Harper. In the Name of Mrs. *Mary Matthews*.
Mr. Hungerford. What is the Prisoner at the Bar, Master or Apprentice?
Harper. I don't know, he always carried himself as Master.
Mr. Hungerford. You say you saw the Writing before they composed it; pray, Sir, do you know whose Hand-writing it was?
Harper. No, Sir.
Mr. Hungerford. Do you take it to be the Prisoner's?---*Harper.* No, I do not.
Mr. Ketelbey. Have you not in your Trade one particular Person called the Press-man?---*Harper.* Yes, several.
Mr. Ketelbey. Who were they?
Harper. One Mr. *Vezey*, another Mr. *Wiggins*.
Mr. Ketelbey. Who were the Composers?
Harper. There were several in the House.
Mr. Ketelbey. Who were they?
Harper. There was Mr. *Wiggins*, Mr. *Staples*, and several others.
Mr. Ketelbey. What is their Work?
Harper. They composed and made ready for the Press.
Mr. Ketelbey. That Room that is adjoining to the Prisoner's Room, who lay in that Room?---*Harper.* I lay in it.
Mr. Ketelbey. How many Doors are there to the Room?---*Harper.* But one.
Ketelbey. Doth it go through out of his Room?---*Harper.* Yes.
Att. Gen. The Room that adjoins to the Room wherein the Prisoner lay, had you any Papers there?
Harper. I had one that was found in my Pocket.
Att. Gen. Was that all?---*Harper.* Yes.
Att. Gen. Was there any the Prisoner had there?
Harper. I can't be positive.
Att. Gen. Had you any more than that one in your Pocket that belonged to you?---*Harper.* No, Sir.

LAWRENCE VEZEY, sworn.
Att. Gen. Have you at any Time belonged to Mrs. *Matthews's* Printing-house?---*Vezev.* Yes, Sir.
Att. Gen. Where is it?
Vezev. In Little Britain, in Pelican Court.
Att. Gen. Do you remember whether, about June last, you was sent for, or called upon, by the Prisoner to come to work?
Vezev. No, I was not called for to come to work; but on Wednesday the third Day of June last, I went to work, as usual, in the Morning, between four and five o'Clock. When I came into the Court, the Apprentice lies backward, I called out, *William!* The Apprentice opened his Window up Two-pair-of-Stairs; says he, Old Gentleman, the Door is open. I went up into the Press-room. Mr. *John Matthews* came up; says he, Old Gentleman, I have a Jobb for you to do. Says I, Is the Work in haste? Yes, it must be done soon. Then came up *William Harper*; I asked him what it was. Says he, I don't know, he hath got a Jobb to do. About Nine o'Clock I went to Market, when my Companion went to Breakfast; in the mean time, there was a Form composed in Quarto, called *Vox Populi Van Dei*, I can't say who composed it; then *John Matthews* was gone out of the Room. When I came back from Market, and my Companion had breakfasted, I went to work again, as usual; and Mr. *John Matthews* came up, and said, Damn it, I have transposed the Pages; I saw no Proof-sheet; but he takes out the Form, and lays it on the Press, and puts it into Order.
Att. Gen. What do you call that, Imposing it right?
Vezev. Yes, Imposing it right.
Att. Gen. Did you see what it was?
Vezev. Yes, it was the Quarto, *Vox Populi*, I remember it very well, I laid it on, and he pulled it away himself.
Att. Gen. This was before the Impression was wrought off?
Vezev. Yes, Sir, after it was right imposed, he pulled off a Proof, and took it all away together.
Att. Gen. What did he pull away, a Proof that was right imposed?
Vezev. Yes.
L. C. J. Was that of the Libel?
Vezev. Yes, my Lord, he had got it off the Press, and corrected it.
Att. Gen. What, the Form of the Quarto, of *Vox Populi*?
Vezev. Yes. So having made it ready a Morning or two afterwards, *Harper* and I went to work, and worked off the Impression, and the Prisoner took it off.
Att. Gen. Do you remember how many were wrought off?
Vezev. A Thousand, a Ream.
Att. Gen. A Thousand of what?
Vezev. A Thousand of the first Half-sheet, and of the second.
Att. Gen. Did he give you any Money for this?
Vezev. After the Jobb was done, I had fourteen Shillings for *William Harper's* Share and mine.
Att. Gen. The Apprentice, had he any Money?

Vezey. Yes, he had as much as I; I had let *Harper* have the Money before, so I kept it.

Att. Gen. Now shew him the Libel;—what came of the Libel after the Impression was wrought off?

Vezey. He came up, and brought a great Hair-bag, and carried them away.

Att. Gen. Shew him the Proof-sheets: pray look upon them two, and tell us whether they are Proof-sheets?

Vezey. Yes, they are marked as Proof-sheets.

Att. Gen. Upon the Marks and View of the Paper, do you believe them Proof-sheets?—*Vezey.* Yes, I do.

Att. Gen. Do you remember the Letter?

Vezey. I remember such a Sort of a Letter, to the best of my Knowledge; I believe we had no other thing done in the House of the same kind before, or since.

Att. Gen. Look on those two Papers; is any thing wrong imposed?

Vezey. Yes, my Lord, this is wrong imposed.

Att. Gen. Do you know the Hand-writing of the Prisoner?—*Vezey.* No.

Att. Gen. But you see him correct it?—*Vezey.* Yes.

Att. Gen. Do you remember, or can you by inspecting these Papers, recollect any of the Corrections he made?—*Vezey.* No, I can't.

Att. Gen. Did you look on the Paper that time it was worked off?

Vezey. Yes, I did, because the Title stood next to me; I took notice of *Vox Populi*, that is all; I never read the Paper.

Att. Gen. Do you believe those to be Proof-sheets of that Libel?

Vezey. Yes, my Lord, I believe them to be two Proof-sheets.

Att. Gen. Do you believe That a Paper wrought from the Impression?

Vezey. Yes, my Lord, I believe That to be one of them.

Att. Gen. Shew him another.—*Vezey.* Yes, I believe them to be some of the same Papers, to the best of my Knowledge.

Mr. Ketelbey. You say you believe these Papers shewn you, to be the Papers wrought off from that Impression?—*Vezey.* Yes, Sir.

Mr. Ketelbey. Have you any Reason for your Belief, only as you see the Title?—*Vezey.* Yes, I have Reason to believe it, because no Quarto or any thing was done of the same Form.

Mr. Ketelbey. Upon your Oath, was that the Title *Vox Populi Vox Dei*?

Vezey. That was the only Time I see it, it was *Latin*, I did not understand it.

Mr. Ketelbey. Did you look upon the whole Title-page?

Vezey. I remember nothing but *Vox Populi Vox Dei*.

Mr. Ketelbey. Was there any more beside?

Vezey. Yes, there was the Head in *Latin*, and the Flower over it.

Att. Gen. Do you believe that very Paper to be one wrought off at that time?

Vezey. Yes, I do; and here is the *Latin*, I only read *Vox Populi Vox Dei*.

Mr. Reeves. I think you say there is a Flower, look upon that Flower, and see whether it be a Flower of the same kind?

Vezey. I believe it was like this Flower.

Mr. Ketelbey. Now you have the Paper in your Hand, pray read the other Line next to you if you can.—*Vezey.* From the Solemnity of the—

Mr. Ketelbey. The Line above it.

Vezey. *Ex ore tuo te judico.*

Mr. Hungerford. Do you remember any Part of the Title of the Book but *Vox Populi Vox Dei*?—*Vezey.* No, my Lord.

Mr. Ketelbey. Had you any Discourse with *Mr. George Matthews* about this Matter, your giving Evidence on this Occasion?

Vezey. No, my Lord, I never see *Mr. George Matthews* since the Prisoner hath been in Custody; I was brought up lately from *St. Albans*.

Mr. Hungerford. Are you in Custody now?

Vezey. Yes, my Lord.

JOHN DARBY and JAMES ROBERTS, sworn.

Att. Gen. My Lord, these are Master-Printers; and we call these Gentlemen in Confirmation of the Evidence which hath been given; they will account for the Proof-sheets, that unless it be upon Proof-sheets no such Marks appear.

JOHN DARBY.
[The Sheets shewn him.]

Att. Gen. Sir, you are a Printer, and much versed in Printing, do you know what these are?—*Mr. Darby.* What they are, as how?

Att. Gen. In the way of Printing, are they Proof-sheets?

Darby. This may be taken either as a Proof-sheet, or a revised Sheet; a Proof-sheet is that which is first pulled after the Form is composed, and which is read by a Corrector; and what Faults are made by the Compositor are marked on the Side, and this appears to be of that Nature.

Att. Gen. What is a revised Sheet?

Darby. A revised Sheet is after a Proof is corrected, another Sheet is pulled and compared with that we call the Proof, to see whether the Faults are corrected; if not, they are marked a second Time.

Att. Gen. But it is either a Proof-sheet or revised Sheet?

Darby. Yes, it certainly is one or t'other.

Att. Gen. Your Reason?

Darby. Because there are several Marks on the Side.

Att. Gen. Is that according to the Custom?—*Darby.* Yes.

Att. Gen. Look upon them, are they both right imposed; how are they in that respect? Look upon the first, are they both the same?

Darby. No, Sir, I think not; this former doth not seem to be rightly imposed; for here the first Page is out of its proper Place, that is for certain.

Lord Chief Justice. That is what you called wrong imposed?

Darby. Wrong imposed, my Lord.

Att. Gen. Look on the other.

Darby. This seems to be right imposed.

Att. Gen. Are they imposed alike?—*Darby.* Certainly not.

Att. Gen. I ask you as to both these, I don't confine the Question to one only, whether they are Proof or revised Sheets?

Darby. I take them to be one or t'other, by their not appearing to me

to be both Proof-sheets; by the one being wholly imposed wrong, and the other afterwards transposed and made right.

Att. Gen. In the Course of Printing, whether is it not usual, where the Impression is more than half a Sheet, that there may be a Superfluity of Sheets of one more than the other?

Darby. It is very common, if a Book consists of several Sheets, it is almost impossible the Number should be exactly even, sometimes it may happen.

Mr. Reeves. Look on the Corrections made on those Proof-sheets; give an Account if they are made in the usual Manner.

Darby. So far as I have observed, the Corrections are the same, they are made in the common way of correcting.

Att. Gen. Sir, you are asked whether the Corrections are in the usual Manner of correcting Proof-sheets?

Darby. They are, they are not all, a Colon is marked in one, and not in another, but a Comma; that is not material, and where it is as instead of in, that is a plain Mistake, but they are generally marked in both as they ought to be.

JAMES ROBERTS, sworn.

Att. Gen. Mr. Roberts, are you a Master-Printer?

Mr. Roberts. Yes, Sir.

Att. Gen. Look upon these and tell us, in your Judgment, in the way of Printing, what these are; Proof-sheets or revised Sheets?

Roberts. They may be either Proof-sheets or revised Sheets; they are Sheets corrected after the Form is composed, but whether first or second, one or t'other, I can't say, because the Faults are marked in the Side; and that is always done, it is the usual way.

Att. Gen. Look upon the Imposing of those two Papers.

Roberts. This is wrong imposed, this Side-page ought to be here.

Att. Gen. Look upon the other.—*Roberts.* This is right imposed.

Att. Gen. You speak as to both of them, by the Manner of their Correction, both of them to be Proof-sheets or revised Sheets?

Roberts. Most certainly they are one or t'other.

Att. Gen. I think now, my Lord, we are intitled to read the Libel; put in That that was found in his Pocket, if you please.

Mr. Hungerford. My Lord, the Act of Parliament is, If any shall declare, affirm and maintain, by Writing or Printing, &c. that is the Offence pretended to be made out by this Indictment. Now I most humbly submit to your Lordship, whether any Part of this Evidence comes up to make out this Fact?

L. C. J. The Question now is, whether the Libel is to be read? Have you any Objection to it?

Mr. Hungerford. Surely, my Lord; unless it be a Proof by way of Evidence, that makes out this Offence charged in the Indictment, it is not proper.

Mr. Ketelbey. They may perhaps give Evidence, what they call a co-operating Evidence.

L. C. J. Read that found in his Pocket.

Clerk. *Ex ore tuo te judico. Vox Populi Vox Dei.* To all true Lovers of Liberty, *Vox Populi Vox Dei.* From the Solemnity of the Chevalier's Birth, the moral Impossibility of putting an Impostor on the Nation after the Manner pretended, and the Disappointment in the Attempt of proving him so, I think it is Demonstration, if Hereditary Right be any Recommendation, he hath that to plead in his Favour; and all Assertors of limited Monarchy must allow, that ought to be preferred, if the Person having it is endowed with other Qualities fit to govern; and the great Opinion all Courts have of this unfortunate Prince's Virtues, shews he only wants to be known by us, to be admired; and we only want the Enjoyment of him, to make us happy. I will conclude with these Remarks: first, That every Assertor of Hereditary Right must be a Jacobite; secondly, That every Whig who makes *Vox Populi* his Rule of Government, must be so; and, thirdly, Every Assertor of limited Monarchy must be so: the Chevalier being endowed with all princely Virtues, so that all Rights concur in him.

Mr. Hungerford. Read on.

Clerk. I hope some Patriot will rouse up the People to shake off this arbitrary Government, and animate them with the Saying of the noble Roman, who defended the Capitol,

Livy: quousque tandem, &c.

How long will you be ignorant of your Strength? Count your Numbers: sure you ought to fight with more Resolution for Liberty than your Oppressors do for Dominion.

Count your Numbers.

Att. Gen. My Lord, I did not oppose the Gentlemen reading this Part of the Libel, but since they have made it a Part of the Evidence, it is my Duty to observe what the Spirit of this Patriot was; it is a direct Alarm to the People to rouse up, and throw off this arbitrary Government; the Malice plainly appears in this latter Part of the Libel; I hope some Patriot will rouse up the People to shake off this arbitrary Government, and animate them with the Saying of the noble Roman, who defended the Capitol, How long will you be ignorant of your Strength? Count your Numbers: sure you ought to fight with more Resolution for Liberty than your Oppressors do for Dominion—Count your Numbers.—A more dangerous Attempt to alarm and rouse up the People against the Government, can't well be.

Mr. Hungerford. Mr. Attorney is going on with a Clause that is not in the Indictment; he is well acquainted with the Nature of Proceedings, and that it is not regular.

Att. Gen. I don't mention them as Words set forth in the Indictment; but sure I may make use of another Part of the Libel to explain this.

Mr. Reeves. We humbly apprehend, it is necessary for us to produce not only these Papers taken in his Pocket, but these Proof-sheets taken at the same time.

Att. Gen. The other is the eight or ten superfluous Sheets, Part of the Libel as proved by the first Witness; there are eight or ten Half-

* Count your Numbers!—Thank God, the Number of Jacobites were at that time but small; but now, we have so GLORIOUS A KING on the Throne, (one of the most justly admired, and best belayed Princes, that ever adorned one) whose chiefest Happiness is to reign in the Hearts of his People, there is scarce such a thing as a Jacobite to be found.

heets which were found in his Possession, I insist upon that as a Circumstance, to shew that he is the Printer of this Libel.

Serjeant Cheshire. Mr. Darby told your Lordship how it could be accounted for.

Attorney General. I desire the Jury may have a View of them.

(They were all accordingly given to the Jury, and being taken back again.)

Att. Gen. The Jury shall have them again by and bye.

Mr. DELAFAY sworn.

Att. Gen. Sir, pray look upon those Papers.—Have you looked upon these printed Papers?

Mr. Delafay. I have, Sir.

Att. Gen. Was you ever present, and where, when the Prisoner was examined touching these Papers? If you was, what passed?

Dela. He was examined before Mr. Buckley and me, at the Secretary's Office.

Att. Gen. Touching what?

Dela. Touching these Papers.—The first Question I asked him, whether he owned them?—He did own them; the Examination was taken in Writing, and signed by us both. I desire it may be read.

Att. Gen. Were the Papers there, had he them before him at the Time of that or any other Examination?

Dela. They were before him on the Table at that Time.

Att. Gen. Had he the Sight and Perusal of them at that Time?

Dela. He owned them to be taken from him.

Att. Gen. Did he say any thing relating to these Papers, how he came by them; whether did he deny before you that they were printed by him?

Dela. I can't justly remember; I desire the Examination may be read.—I remember in general he was very shy of owning any Thing; this Paper contains what he said.

Att. Gen. That Paper can't be made use of.

Serj. Cheshire. Did you enquire concerning the Author of these Papers?

Dela. I can't remember I did.

Att. Gen. Was you present at any Examination at any other Place?

Dela. He appeared afterwards before my Lords Justices, and was examined.—He was told, that he was charged, with two other Persons then named, (I don't remember their Names) with printing such a Paper; he answered, *So it seems.*—He was asked, how came you to busy yourself concerning it? *My Lords,* says he, *it was Necessity; his Brother did not give him his Allowance.*—He was asked about the Author.—That he refused to tell. Some Time after that he writ a Letter to me, desiring to be brought before the Lords Justices again, intimating some Discoveries; then he told them a Story that a Gentleman from the Secretary's Office had told him, if he could procure himself to be brought before the Lords Justices, the Secretaries would be kind to him.—By the whole of his Discourse, it was taken for granted he printed it, but he would not discover the Author.

Serj. Cheshire. Repeat then his Words before my Lords Justices.

Dela. He said that his Brother had promised to make him an Allowance, and did not; Necessity, Want of Money, made him do this.

Serj. Cheshire. I think you say he was charged with printing the Libel? The Answer he gave was, *So it seems.* Upon this there was a farther Question, How came you to do a Thing of this Nature? He did not directly say, I did not do it, but he excused himself upon not having received Money from his Friends, intimating that it was Necessity put him upon it.

Att. Gen. Is that the Letter you received from him?

Dela. Yes.—I will tell you how I came to know I received it from him. He did not disown it.

Att. Gen. Was it read to him as his Letter?—*Dela.* Yes.

Att. Gen. Did he deny it?—*Dela.* No.

Att. Gen. Did you enter into any Expofulation about it?

Dela. I told him, when you writ this Letter you was of another Mind. Truly, he said, he did not know the Author, and he could not discover him.

Mr. Boote. Did he describe any Person that came to him?

Dela. He said, a Person in a Tye-wig came to him, he apprehended him to come from the Secretary's Office.

Att. Gen. A Letter directed to an Under-Secretary of State relating to Mr. Matthews, desiring to be brought up before the Lords Justices; when there, he is asked about the Letter; he says he did write it, hoping he should find Favour from the Secretaries.

Lord Chief Justice. Pray give an Account when the Letter was read to him, what Answer he made. Did he acknowledge That to be his Letter?

Dela. I can't directly say he did; but I told him, When you writ that Letter, you seemed to be of another Mind. He was asked what was the Occasion of his telling us of making Discoveries; this is trifling with us; when you writ that Letter, you seemed of another Mind.

Lord Chief Justice. What did he say to that?

Dela. He said, I can't discover the Author.

Mr. Hungerford. Now, in your Lordships Judgment, whether any thing mentioned proves that Letter to be his?—Pray, Sir, repeat what you said.

Dela. When he was brought before the Lords Justices, on my receiving that Letter, when he was brought in, he was told, he had written a Letter to me.

Mr. Hungerford. What did he say to that?

Dela. He told them a Person whom he apprehended came from the Secretary's Office, a Gentleman in a Tye-wig, had been with him, and told him, if he could procure himself to be brought to the Lords Justices, on his Submission the Secretaries would be kind to him.

Att. Gen. My Lord, here is a Letter sent in the Name of this Man, desiring to be brought up, and he is brought up; the Letter is read to him, he is asked the Occasion of his sending it, and he gives an Answer; tells you, that which he says was the Occasion, a Gentleman, that he apprehended came from the Secretary's Office, and told him, if he could procure himself to be brought up to the Lords Justices, the Secretaries would be kind to him. These are his Words; is it necessary a Man in direct

Terms should confess, It is my Hand-writing? But these are probable strong Circumstances of his acknowledging it, I think.

Mr. BUCKLEY sworn. Was you present when this young Man was examined? or had you any Discourse about this Libel?

Mr. Buckley. I desire to see the Examination. I find on the 7th of July, the Messenger that brought in the Papers laid them down; says he, These were found in his Pocket, and these in his Room; he laid them down on Mr. Delafay's Table; I asked him if the Papers were taken in his Possession? he said they were; he was also asked how he came by them.

Att. Gen. Did he say any thing in direct Answer or Excuse?

Buckley. No.—I told him, you are charged with being concerned in printing these Papers, which is a great Crime.—He made no Answer, but took Snuff.

Att. Gen. Do you know any thing more fell from the Mouth of the Prisoner touching these Libels?

Buckley. No, my Lord.

Mr. Hungerford. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case with the Prisoner at the Bar, who (as the Counsel for the King observe) is a Boy, a Youth, and an Apprentice; I thank them for that Observation; that is an Age which is usually exempt from Malice and Design, and without proving both being in the Prisoner at the Bar, he must be acquitted of the Offence in the Indictment. Malice and Design are commonly the Temper of advanced Years, and not of Apprentice Boys. The Accusation against the Prisoner is founded on an Act of Parliament, made in the 4th Year of the late Queen, and re-enacted on the Union in the 6th Year of her Reign; the Crime made High-Treason by that Act of Parliament, so far as I remember, (for it being dark I cannot read) is, that if any Person or Persons shall maliciously, advisedly, and directly, by Writing or Printing, maintain and affirm, that our Sovereign Lady the Queen that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of Wales, who now stiles himself King of Great Britain, hath any Right or Title to the Crown of these Realms; or that any other Person or Persons hath or have any Right or Title to the same, otherwise than according to an Act of Parliament of the first of King William and Queen Mary, and an Act of the twelfth of King William, every such Person or Persons shall be guilty of High-Treason.

This is the Crime the Act of Parliament makes to be High-Treason; the Evidence to support this Indictment, and that lays this Offence to the Prisoner's Charge, are six Witnesses, two Messengers, the Apprentice, the Journeyman, and two Gentlemen of the Secretary's Office, Mr. Delafay, and Mr. Buckley.

I shall, my Lord, on the behalf of the Prisoner at the Bar, humbly offer to your Lordship, and the Gentlemen of the Jury, some general, and likewise some particular Considerations, which I hope will plainly shew him, the Prisoner, to be an innocent Man, and that there is no just Ground for the heavy Charge he now lies under. In the general, my Lord, as to the Act of Parliament upon which this Indictment is founded, I humbly offer it to your Lordship's Consideration, whether it was calculated for such a Case as the Prisoner's is supposed to be.

The Words of the Act which describe the Offence are—I just now repeated them; and the next Paragraph in the Act gives Direction for proclaiming the next in Succession of the House of Hanover, immediately upon the Queen's Death; and it makes it High-Treason in the Privy Counsellors and others who should neglect their Duty in that Matter; and we all know that the Matter under the Consideration of the Parliament at that Time was, that since upon the Queen's Death, the next Successor was like to be beyond Sea, to secure that the Protestant Succession should take place (as now, God be praised, to all our Comforts, it hath), for this Reason it is, that upon the Queen's Death a Regency is appointed, the proclaiming the Protestant Succession secured by a Law which makes it Treason in all Persons of all Degrees who neglect doing it; for this Reason likewise, I humbly presume it is, that denying the Title of any of the Successors in the Protestant Line, is not made Treason as denying the Queen's is; for can any Man think why otherwise denying his present Majesty's Title to the Crown when he is in Possession, should be a less Offence than denying the Queen's, when she was alive? The only Reason which occurs to me for this Difference is (I speak it with all Submission), that the Parliament did look upon it, that when the Protestant Succession had taken place, that Act had attained its End, and was in effect to determine; for surely as to the Nature of the Thing, he who oppugns his present most gracious Majesty's Title, is as great a Criminal as he who should oppugn the Queen's, or the Title of former Kings or Queens of this Realm, and yet such oppugning or denying the King's Title to the Crown is not (as I think it at least) made Treason by this Act. But supposing (though not admitting) that the Act of Parliament was intended to operate upon such a Case as the Prisoner's is supposed to be, yet the Witnesses do not prove that the Prisoner did maliciously, advisedly, and directly, by Writing or Printing, affirm or maintain, that our Sovereign Lady the Queen is not the lawful and rightful Queen of these Realms, or that the pretended Prince of Wales hath any Right or Title to the Crown of these Realms. And yet further, if it should be supposed that the Prisoner did affirm and maintain the Words in the Indictment, yet with humble Submission the Words don't amount to an Affirmation that the Pretender hath any Right or Title to the Crown of this Realm, which is the Offence he is charged with.—The Criminal described by this Act must maliciously, advisedly, and directly, maintain and affirm; what he doth must be malicious: surely his Youth, and the Inoffensiveness of his Carriage, and Course of his Life hitherto, will make the Imputation of Malice groundless; besides, there is no Malice proved. The Word *advisedly*, which must likewise be an Ingredient in this Offence, is mentioned in Opposition to a rash and inconsiderate Act; and in this Case the Proof is so far from charging the Prisoner with having done it advisedly, that he doth not appear so much as to have read it. And it is not pretended that he was the Author, Contriver, or Publisher of it. The Word *directly*, is likewise inserted in the Act, in Opposition to

Inauendoes

Innuendoes or forced Constructions.—As to the Evidence, the two first Witnesses, they manifestly contradict one another. Each of them contend for the Honour of picking the Boy's Pocket.—*Hutchins* swears he took the Papers out of the Prisoner's Pocket; and *Roberts*, that he took them out of his Pocket, and *Hutchins* only peeped in at the Door. And as to the Papers found in the Room next to the Bed-chamber, it doth not appear who put them there; and since every probable thing is to be presumed in favour of a Man's Life, the Messenger may be as well presumed to put them there as the Prisoner. And it must be remarked too, that the Papers sworn to be taken out of his Pocket, are not taken upon the Prisoner's Person, but said to be found in his Coat Pocket lying in the Room; and it is no necessary Inference that the Prisoner did put them there, some other Person may have done that. As to what one of these two Witnesses (the Messengers) swears, about a Discourse betwixt the Prisoner and him in the Coach, as he brought him to *Newgate*, relating to the Prisoner's getting to be acquitted, by Bribing the Jury; it is so improbable, that I can hardly think any one can believe it; that Evidence seems rather to be calculated to inflame the present Jury than to relate a Truth; but the present Jury are too wise to be imposed upon, especially in the Case of a Man's Life; upon the whole, these two Witnesses have contradicted each other upon their Oaths, and little or no Credit is to be given to them.

The next Witnesses are *Harper* the Apprentice, and *Pezey* the Journeyman, and by the Notes I have taken of their Evidence, it doth not amount to make out a criminal Charge upon the Prisoner. The Prisoner is not thereby made the Author, Contriver, Printer, or Publisher, of this Libel. One of the Witnesses indeed says, that he was called up to assist the Prisoner to do a Jobb, and that the Prisoner did overlook some of the Proof-sheets; but it doth not appear that he over-looked all the Proof-sheets, or that the Sheets he did look over, were those supposed to be criminal.

We are, my Lord, in the Case of a new Law, upon which none hath been yet tried, I think none accused, till the unfortunate young Man at the Bar; and we hope we are intitled to a favourable Construction of any inadvertent Thing the Prisoner may have done; surely to co-operate in some little Part of Printing a Side or Part of this Libel, cannot be Treason. Printing itself is but a Mechanical Art, and one may print a whole Volume, and not know one Jot of the Contents, Drift, or Tendency of the Book; and in the present Case, the Prisoner is not the Master Printer; he is but an Apprentice, and the Trade is carried on by his Mother, and elder Brother. And I hope it will always, in an English Judicature, be deemed a severe Construction of a Law, that a Man should be judged guilty of a capital Offence, for a Fact in committing of which he did not know that he sinned or offended against his own Life.—As to what the Gentlemen, *Mr. Delafay* and *Mr. Buckley*, say, they say nothing which can affect the Prisoner; they could not prove the Letter for which they were called, tho' *Mr. Attorney* seemed to press them hard upon that Head; what *Mr. Delafay* says makes for the Prisoner. He says, the Prisoner told him, that what he had done was done out of Want and Necessity; how then can it be said to be done maliciously, advisedly, and directly? without which it cannot be the Offence contended for. And now, my Lord, having remarked upon the Evidence, all that my Memory or Notes could enable me, I humbly crave leave to insist, that the Words laid in the Indictment do not amount to any affirming, or maintaining, that the Pretender hath any Right or Title to the Crown of this Realm. I neither have, nor ever had, this filly as well as wicked Libel; and I have therefore taken the Words as they are laid in the Indictment, omitting the Innuendoes only, and I have compared them with the Book, when read by the King's Counsel, in the Course of their Evidence; and they are these: *From the Solemnity of the Chevalier's Birth, the moral Impossibility of putting an Impostor on the Nation, after the manner pretended, and the Disappointment in the Attempt of proving him so; I think it is Demonstration, if Hereditary Right be any Recommendation, he hath that to plead in his favour.* Is there in that Paragraph any affirming, and maintaining, that the Pretender hath a Right to the Crown of these Realms? The Words are, if Hereditary Right be any Recommendation, he hath that to plead in his favour; the Sentence begins with an *if*, and is no Affirmation at all, and but a loose way of talking, as we call it, with *ifs* and *ands*; it can never amount to an Affirmation that the Pretender hath a Right to the Crown of these Realms.—The Libel goes on and says, *that all Assertors of limited Monarchy must allow that ought to be preferred, if the Person having it is endowed with other Qualities fit to govern; and the great Opinion all Courts have of this unfortunate Prince's Virtues, shews he only wants to be known by us to be admired, and that we only want the Enjoyment of him to make us happy.* Surely, my Lord, this Part of the Libel, tho' assisted with several unnatural Innuendoes, neither affirms, nor maintains any thing at all.

The other Words are these: *I will conclude with these Remarks. First, That every Assertor of Hereditary Right must be a Jacobite. Secondly, Every Whig, who makes Vox Populi his Rule of Government, must be so. Thirdly, Every Assertor of limited Monarchy must be so.—The Chevalier being endowed with all Princely Virtues, so that all Rights concur in him.* This, my Lord, I think is the only Paragraph in which the Word Right is mentioned; and yet, with humble Submission, it doth not amount to an affirming, that the Pretender hath a Right to the Crown of this Realm. The Author seems to please himself with mixing of Companies, he puts Whig and Jacobite together, and so let them continue; for my Part, I believe there will be no High-Treason in that; surely the Words that all Princely Virtues concur in him, gives no Colour for the Inference: he may paint or describe him with the Perfections of an Angel, if he pleases; but if he doth not affirm, and maintain, that he hath a Right to the Crown of this Realm, it is not Treason. I say, affirm and maintain, for the Words are in the Conjunctive, so that a bare Assertion, or Affirmation, that the Pretender hath a Right, is not sufficient, unless he support such Assertion by Reason or Argument; and for my Part, I think there is not one Word of Argument in the whole Book.

Your Lordship observes how many Innuendoes this Indictment is supported with, and how foreign and unnatural some of them are, even the chief of them; *Chevalier*, Innuendo the Person lately called the Prince of *Wales*, &c. is, with humble Submission, in a Case of Life and Death,

not to be tolerated because of the Uncertainty, there being more Knights than one, and more Orders of Knighthood than one in all Kingdoms and Countries. It is said by all the Judges in *Griffith's Case*, third *Adversum*, fol. 202, that an Indictment is the Declaration of the King against the Life of a Subject, and ought therefore to set forth a sufficient Certainty of the Facts, which shall not be supplied by Arguments or any Intendment whatsoever. This, my Lord, was the Opinion of the Judges; and I will be bold to say, let any one read over this Indictment without the Innuendoes, and they can make nothing of it as to the present Accusation. Upon the Revolution, the highest Court of Justice in the Kingdom, the House of Peers did brand this Practice of Innuendoes, which were but too familiar in the preceding Reigns. It is in the Case of *Sir Samuel Barnardiston*, which being quoted in *Dr. Sacheverell's Trial*, *Mr. Attorney* can be no Stranger to it. *Sir Samuel* was accused for a Paragraph of a Letter that was intercepted at the Post-house; the Offence was described or ascertained by five or six Innuendoes in the Information, upon which *Sir Samuel* was convicted and fined; and the Record being removed by Writ of Error before the House of Lords, the Lords reversed the Judgment; and the Reason assigned for the Reversal is, that Innuendoes, or supposed and forced Constructions, ought not to be allowed, but that all Accusations ought to be plain.

I must therefore humbly submit it to your Lordship, whether this Liberty of supporting Accusations by Innuendoes, ought to receive any Countenance from a Court of Justice, or from a Jury of substantial Freeholders of the City of *London*; sure it is hard that any Subject should be made guilty of a capital Offence by a laboured or forced Construction of doubtful Words; we therefore, upon the whole, humbly hope that the Prisoner will be acquitted.

Mr. Kettleby. May it please your Lordship, and you Gentlemen of the Jury, I am likewise assigned Counsel for the Prisoner at the Bar; and indeed, my Lord, I must own, that from the time I first saw this Indictment, I have been somewhat at a loss to know upon what Statute it was grounded; what Act of Parliament had made the Facts therein charged to be High Treason. But since *Mr. Attorney* hath been pleased to insist upon the Sixth of the Queen, Chapter the 7th, as the Foundation of this Indictment, I shall beg leave to consider that Statute, and submit it to your Lordship's Determination, supposing this Fact as laid in the Indictment to be true, whether it amounts to High-Treason within that Statute or not.

My Lord, I would observe, that this Statute is introductive of a new Law, penal in the highest degree, making that High-Treason which was never High-Treason before, but was an Offence of a lower Species; and the Prisoner is the first Instance, the first Precedent against whom this Act has been endeavoured to be put in execution.

That Clause of the Act which makes it High-Treason to deny the Power and Authority of the Parliament to limit the Succession of the Crown, does not, as I take it, at all relate to the present Question; and therefore, I shall only trouble your Lordship with some Observations upon the other three Cases which the Statute has made High-Treason. To each of these the Act hath annexed, that it must be by Writing or Printing directly; I beg leave to lay what Weight I can upon this Word directly: the Words of the Act are, That if any Person or Persons shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of these Realms; or that the pretended Prince of *Wales*, who now styles himself King of *Great Britain*, or King of *England*, by the Name of *James* the Third, or King of *Scotland*, by the Name of *James* the Eighth, hath any Right or Title to the Crown of these Realms; or that any other Person or Persons hath or have any Right or Title to the same, except the Persons to whom it is limited by the several Acts of Parliament, every such Person or Persons shall be guilty of High-Treason. The Word directly goes to all these three Cases; there must be a direct Affirmation of the Truth of one of these three Propositions, or else it cannot be High-Treason within this Statute. I desire to know if, in the Libel that hath been read to you, there is any such Expression as the Crown of these Realms, the Pretender, King *James* the Third, the Prince of *Wales*, or any other of the Periphrases or Descriptions mentioned in the Statute; I admit there is something said in the Libel about the Chevalier, but who this Chevalier is, or who is meant by that Name, I will not take upon me to determine. But sure I am there is no such Word in the Statute; it is a general, a common Appellation, a meer *individuum vagum*, and without some particular Addition, some explanatory Restriction, cannot properly be applicable to one Man more than another; how then the Prisoner came to be charged with affirming directly, that the Pretender had a Right to the Crown of these Realms, when there is no such Word in the whole Book, when the Statute expressly confines the Offence to such particular Propositions in the Words there set down, without saying to that or the like Effect, I cannot conceive.

The Reason why we desired to have the whole Book read, was to see whether there were any such Words there; and we had no other Way of being satisfied in that Point, since *Mr. Attorney*, upon the Application of our Solicitor, was pleased to deny us an Opportunity of seeing the Libel; and by the Tenor of the Indictment, the Gentlemen who drew it, were conscious, or at least seemed to be, that there is no direct Affirmation of this Nature in the Libel. If they were not of this Opinion, why have they put in their Innuendoes? If the sense had been plain, full and direct, what Occasion was there for propping and supporting it with auxiliary Clauses and Explanations? They have inserted one Innuendo: If hereditary Right be any Recommendation, he hath that, *Jus hereditarium ad coronam hujus regni*, Innuendo; and in another Place, All Rights concur in him, Innuendo all Rights to the Crown of these Realms; is there any thing of the Crown of these Realms preceding? All Rights concur in him; Rights to what? Is it directly affirmed, or doth it necessarily follow, it must be Right to the Crown of these Realms? Are not these most strange and strained Innuendoes? It may as well be understood to be a Right to any Part of *Africa*, or any thing else, as to the Crown of these Realms.

In my Lord *Coke's* fourth Report, Folio 17, *adversus Rutlech*, it is resolved, That an Innuendo cannot alter the Matter or Sense of the Words themselves,

themselves, nor extend the general Words by an Imagination of an Intent, which is not apparent by the preceding Words to which the Innuendo refers, and in effect it stands in the Place of a *Prodiſt*. I shall mention but one other Case, which several of your Lordships well remember when it was in Agitation, and some of the Gentlemen of the other Side were concerned as Counsel in it. It was *Misbaillmas* the 9th of King William, the King against *Gripe* (Lord Raymond's Reports, Vol. I. p. 256.) an Information for Perjury; and laid, that the Defendant swore that Mr. *Stroud* was not at *Newbam*, Innuendo *Newbam* in *Devonshire*. The Court, in giving Judgment, laid it down as a Rule, that no Innuendo could supply the Defect of a sufficient Certainty; and that the only Use of it was to denote some Person or Thing before-mentioned.

My Lord, I could offer several other Cases which explain the Doctrine of Innuendoes; and would shew the Absurdity of the Innuendoes in this Indictment; but I shall not trouble your Lordship with them at present, relying upon the Cases already cited; and therefore we humbly insist upon it, that the Prisoner is not guilty of directly affirming that the Pretender hath any Right or Title to the Crown of these Realms; neither is he, as we apprehend, within the reach of either of the other two Clauses; the first relates only to the Queen, her late glorious Majesty, now dead; whether the whole Act was temporary, and determined upon the Demise of the late Queen, and the establishing the Succession in the House of *Hanover*, I shall not at present debate, submitting that Point to your Lordship's Determination, upon the Weight of what Mr. *Hungerford* hath offered on that Head; but this I think I may humbly insist upon, that this first Clause at least was temporary; and since the Statute expresses it in Words of the present Tense, Whoever shall affirm, that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of these Realms, no Person at this Time, by the Efficacy of this Clause, can be guilty of High-Treason.

As to the third Clause, Whoever shall affirm, that any other Person or Persons hath or have any Right or Title to the Crown of these Realms, otherwise than according to an Act of Parliament made First *Gulielmi & Mariae*, intituled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and one other Act, made the Twelfth *Gulielmi Tertii*, intituled, *An Act for the Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, and the several Acts made for the Union of the Two Kingdoms, &c. surely it will not be contended, that the Prisoner is guilty of the Offence charged in this Clause; for then this Indictment can never maintain the Charge; proper Clauses of those several Statutes should, in such Case, have been set forth in the Indictment, and proper Averments to bring the Prisoner's Case within this Clause.

I must admit, that if it was done advisedly and directly, the Law will imply it to be maliciously; I shall therefore only beg Leave to add one further Observation upon one other single Word of this Statute, and that is upon the Word *advisedly*. Whoever shall advisedly maintain, affirm, &c. Advisedly here must necessarily import, not only a competent Capacity, but the actual Exercise of that Power of thinking, and, in some Degree, Maturity of Judgment and due Premeditation; it stands in Contradistinction to a rash, heedless, and inconsiderate Act. Some of the Gentlemen of the other Side have been pleased, with a laudable and generous Compassion, to take Notice of the Prisoner's Youth; can a Boy of Seventeen be said advisedly to maintain an Assertion contrary to one of the three recited Clauses, when the Matter is so far from being plain and clear to much older Heads; and at the most is so dubious, that your Lordship, in your great Justice, hath permitted it to be debated for several Hours, and perhaps the Debate may hold some Hours longer, Whether the Paragraphs of the Libel, set forth in the Indictment, are a direct Affirmation of what is made criminal by either of those Clauses in the Statute? I hope the Gentlemen of the Jury will likewise have a compassionate Regard to the tender Years and Unadvisedness of the Prisoner.

My Lord, the next thing we are to submit to your Lordship's Consideration is, whether the Evidence that hath been given be sufficient to convict the Prisoner of the Fact, supposing it to be High-Treason. Upon a Trial for High-Treason, the greatest Crime, the Strength ought to be adequate, in some measure, to the Nature of the Offence; for a Person that is indicted for High-Treason to be found guilty upon dubious Evidence, strained Constructions, Implications, or far-fetched Innuendoes, never was yet thought just, nor will be by your Lordship.

My Lord *Coke*, in his third *Institutes*, fol. 12, hath laid down the Rule of Evidence, in Cases of High-Treason, where he comments upon the Words of the Statute of the Twenty-fifth of *Edward the Third*, *proveably*, that is, upon direct and manifest Proof, not upon conjectural Presumptions or Inferences, or Strains of Wit, but upon good and sufficient Proof; and several Statutes have provided, that there shall be, at least, two credible Witnesses to every Species of Treason, and each Overt Act laid in the Indictment.

Whether the Evidence, that hath been offered in this Case, comes up to my Lord *Coke's* Rule, or be sufficient to convict the Prisoner of the Crimes laid to his Charge, I must submit to your Lordship's Judgment, when I have made some few general Remarks, without repeating or going into the Particulars thereof. They have examined the two Messengers, the two Servants in the House, two Gentlemen belonging to the Secretary's Office, and some Master-Printers.

What the Printers have said, in relation to the Method of printing, composing, correcting and imposing right or wrong, we have no Reason to controvert, not apprehending that the Prisoner is the least affected thereby.

As to those worthy Gentlemen, Mr. *Delafay* and Mr. *Buckley*, they delivered their Evidence with such a tender Regard to Truth, without stretching one Tittle beyond what they certainly remembered to be exact matter of Fact, that I should do an Injury to myself as well as to them, if I suspected in the least of the Reality of what they said; but the utmost that can be collected from their Evidence, as I apprehend, amounts only to some youthful Imprudences in the Person's Behaviour upon his Examination, and not to any Confession of the Fact charged upon him in the Indictment.

I appeal to your Lordship's Observation, whether *John Hutchins* and *Thomas Roberts*, the two Messengers, did not directly contradict one another; and *Hutchins*, that was first examined, directly contradicted himself? *Hutchins* swore he found two of the Libels, now produced, in the Prisoner's Pocket, and some more in his Bed-chamber; but upon his being

cross-examined, he acknowledged that *Roberts* went first into his Room, and took them out of the Prisoner's Pocket; and when he said him strictly to the Room where the other Libels were taken, he could not be sure whether it was in the Prisoner's Room, or in the inner Room, where the Apprentice lay. *Hutchins* swore, they were never out of each other's Company, till they came to the Secretary's Office; and *Roberts* owned that he and *Hutchins* went in two different Coaches from the Prisoner's House.

William Harper the Apprentice, and *Laurence Vezey* the Journeyman, were next examined, and said indeed the Prisoner corrected one of the Sheets that was wrong imposed; and *Vezey* said, he took off the Proof-sheet; but is this Printing? Is correcting, or right imposing a Proof-sheet, the Overt Act that is made High-Treason by this Statute? Mr. *Attorney* is pleased to call it, Co-operating; but, my Lord, there are several preparatory Acts in this Art, the distinct Offices and Employments of different Persons, before it can be properly called Printing, and in the Course of our Evidence, we shall endeavour to explain its previous Parts and Gradations; and if it had been unquestionably proved that the Prisoner had a hand in preparing Sheets for the Press, yet we hope your Lordship will not construe that to be Co-operating, much less Printing; the most that can be made of it is, that he caused it to be printed; but causing or procuring such a Libel to be printed is not, as we apprehend, the Offence laid in the Indictment; it must be nothing less than actual Printing. In other Indictments for publishing Libels, you say, *publicavit et publicari causavit*, and thereby you are let in to give Evidence of either. But in a penal Law, and especially in Cases of High-Treason, your Lordship will in the strictest Manner construe that only to be the Offence, which the express Words of the Act of Parliament have made so, and not extend or give any equitable Latitude to it. However, if your Lordship should be of Opinion, that this Part of the King's Evidence any ways affects the Prisoner upon this Indictment, we shall, according to our Instructions, be able to produce a great Number of Witnesses to contradict what these Witnesses have sworn, and to give such an Account of *Vezey*, that if we had no other Answer to his Evidence, his own Character would cut him down, and utterly deprive him of any Credit with your Lordship and the Jury.

We will call our Witnesses, and hope the Prisoner's Case will appear to be such, that we shall have your Lordship's Directions for his Acquittance.

WALTER HUTCHINSON, and GEORGE MATTHEWS, sworn.

Mr. *Hungerford*. Mr. *Matthews*, Pray give my Lord and the Jury an account what you heard Mr. *Harper* and Mr. *Vezey* declare concerning this Accusation.

Mr. *Matthews*. All I can give an account of is this. About the 5th or 6th of June, the 6th particularly, it being my own Birth-day, I came to my Mother's House about Eleven o'Clock in the Morning, the Time I generally do, because I do not live in the House; a Person met me coming along in the Blue-coat Hospital, and told me there was something Printing in our House, in my Mother's House, and desired I would search the House; upon this I was very uneasy, and directly went home and made all the Search I could; the Persons they gave me Information of were *Vezey* and *Harper*, the Apprentice and Journeyman.

Lord Chief Justice. Who gave you this Information?

Matthews. A young Woman that met me.

L. C. J. What was her Name?

Matthews. It was my own Sister; she told me she was afraid there was something doing in our House, because they were up earlier than usual. I made a strict Enquiry, and could find nothing at all that was doing. Upon this, having a great Suspicion, I took *Vezey* into my Closet, and asked him, Have you printed any thing? Nothing, he told me, of any particular Title had been printed, but something had been printed; and being done at an unreasonable Time, gave me a Suspicion it was contrary to my Orders and Directions. Mr. *Vezey*, says I, hath there been any thing printed in this House concerning or against the Government? No, there hath not. You know, says I, Mr. *Vezey*, that as my Brother happened to be under Misfortunes before, and through the Favour of the Government shewn to him he was discharged; therefore when he came into the House again, I publicly gave Orders, that if ever they found he did, or talk'd any thing against the Government, they would come and give me Information, that I might take a proper Method to prevent it. Upon this *Vezey* owned I had given that publick Notice; but also, when my Brother came home—

Mr. *Ketelbey*. I believe, Mr. *Matthews*, you are going foreign to the Matter; I would have you go on with the thing in Question, and come to the Matter in hand.

Matthews. Upon that, my Lord, I ordered a Lock to be put upon the Press-room Door.

Mr. *Ketelbey*. When was this done? now?

Matthews. No---a Twelvemonth ago---I ordered a Lock, the Key of which Lock was always in the Custody of the Press-man, never any thing was done then. But now to speak to the Matter I am to speak of---After this Information, I took *Vezey* into the Closet, and tax'd him with it; he there told me, and made a great many Imprecations, that he knew nothing of any thing done directly or indirectly, in my Mother's Printing-house, against the Government; and then *Harper* I interrogated, and he did publicly in the Printing-house, first in the Closet, then publicly in the whole House, declare the same. I asked them publicly, severally and both together, whether they knew any thing printed in the House directly or indirectly, against the Government, or no? They declared, they knew nothing directly or indirectly printed against the Government.

Mr. *Ketelbey*. How old is your Brother?

Matthews. I cannot exactly tell---I was twenty-four Years of Age last June, and my Brother I take it is six Years younger than I.

Mr. *Ketelbey*. Is he an Apprentice still?

Matthews. My Brother is an Apprentice still, he was bound in September 1715.---He hath three Years yet to serve.

Mr. *Ketelbey*. Who is the Owner of the Printing-press?

Matthews. My Mother; but I have the Direction of it, and some small Concern in it.

Mr. *Ketelbey*. What Servants are employed under you? Put them in Order and Degree, as I think they are in the same Nature as in other Businesses.

Matthews.

Matthews. There is the Master or Mistress, and a Journeyman, the eldest — is generally looked upon to be the Head in that Way of Business.

Mr. Ketelbey. What Office hath he?

Matthews. That is as it happens. — The Composers; the Pressmen, they are ignorant, silly Fellows, only made use of to take off the Sheets. These are the Horses, as they call them.

Mr. Ketelbey. The Composers, who are those?

Matthews. They are Men generally better learnt.

Mr. Ketelbey. Who was the Head Composer in your House?

Matthews. Mr. Thomas Wiggins.

Mr. Ketelbey. Who were the other?

Matthews. Mr. Thomas Wiggins, Mr. Robert Staples, and John Smith.

Mr. Ketelbey. What Share had your Brother in the House?

Matthews. My Brother had no manner of Share or Right in the Printing-house.

Mr. Ketelbey. I think there is another busy Officer, what is he?

Matthews. They generally have Boys, and sometimes Men to be Runners, and Messengers to the Press. The Devil is generally the Boy, and sometimes they dirty his Face, and by a metaphorical way of speaking, they call him the Devil.

Mr. Ketelbey. I pray, what Character generally speaking is Harper of?

Matthews. I desire to be excused.

Att. Gen. Shew Mr. George Matthews that Paper. Look upon the Name subscribed. Do you see it? — *Matthews.* I do.

Att. Gen. Whose Hand-writing is that? — *Matthews.* To give a direct and positive Answer to that is very difficult, you yourself must judge.

Att. Gen. Give me an Answer. I ask you, Whether you know who writ that Name, John Matthews? — *Matthews.* No, I cannot take upon me to swear that, because I did not see John Matthews write it.

Att. Gen. You are acquainted with your Brother's Hand-writing?

Matthews. I cannot say I am.

Att. Gen. Consider, can you say you are acquainted with your Brother's Hand-writing, or you are not? Do you believe it to be his Hand-writing? — *Matthews.* I cannot directly say as to believing it, but I am not able to swear it.

Att. Gen. Have you never seen him write?

Matthews. I cannot say but I have.

Att. Gen. You have frequently seen him write. — I ask you (mine is a direct Question), Do you, or do you not, believe the Name John Matthews to be your Brother's Hand-writing, upon the Oath you have taken?

Matthews. Really I declare upon the Oath I have taken — according to the best of my Knowledge, I positively declare, I cannot take upon me directly to swear it is his Hand.

Att. Gen. I ask you, upon your Oath, do you, or do you not, believe it to be his Hand-writing?

Matthews. I answered you the Question before, very plain.

Att. Gen. That is no Answer to my Question, Whether you believe it, or not believe it? — *Matthews.* Really, I cannot be positive.

Att. Gen. Why do you trifle with the Court? Cannot you say, whether you believe it, or not believe it?

Matthews. I say, if you please to give me leave to introduce what I have to say, I believe it is something like it.

Att. Gen. You are to give an Answer, as well for the King as your Brother: Do you believe That to be his Hand-writing? or do you not believe it to be your Brother's Hand-writing?

L. C. J. Come, you must give an Answer, whether you do, or do not believe it. — *Matthews.* At the Time of this Paper being writ I did believe it; I cannot say but I do believe it now.

Att. Gen. I think you say, when this Paper was first writ, you believed it was; and you now believe it to be your Brother's Hand-writing. — When I asked you whether you believed it or not, your Answer was, you believe it is something like it. I ask you, do you now believe it to be your Brother's Hand-writing or not, upon your Oath?

Matthews. I do not know what Answer to make.

Att. Gen. Cannot you say Ay, or No?

L. C. J. Let the Consequence be what it will, you must give a direct Answer to the Question; the Question is not, whether it is your Brother's Hand-writing; but whether you believe it to be his Hand-writing?

Matthews. I have some reason to believe it.

Att. Gen. Don't let me mistake you, I think you say you do believe it? Do you believe it is not your Brother's Hand-writing?

Matthews. Give me leave, let me state the Question; what you ask me is, Whether I believe it is my Brother's Hand-writing? I do believe it.

Att. Gen. Then I ask you now as to the Substance and Body of the Paper. Do you believe That to be your Brother's Hand-writing, or not?

Matthews. No, it is not, it is my Hand-writing.

Att. Gen. You believe the Name to be your Brother's, and the Substance is yours? — *Matthews.* Yes.

Att. Gen. Was you present when the Name John Matthews was subscribed? — *Matthews.* No, I was not.

Att. Gen. I ask you, whether you did not carry this Letter to Mr. Secretary Craggs? — *Matthews.* Yes, I did.

Att. Gen. Did you not declare you brought it from your Brother?

Matthews. Yes, I did.

Att. Gen. Did you not then say, it was subscribed by your Brother?

Matthews. No, I did not.

Att. Gen. Then who sent you with this Paper, to Mr. Secretary Craggs?

Matthews. I might say I came from my Brother. I went first of all to the Secretary's Office, it was, I think, on a Thursday, or a Tuesday, and the Regency was broke up; and upon this I asked, Where Mr. Secretary Craggs was? Somebody said he was gone to dine at my Lord St. John's, at Battersea. I went there, and desired to speak with Mr. Craggs. He sent out Word, he would wait on me when he had dined; and he came

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out to me in the Garden. I told him, Sir, I have gotten a Paper from my Brother.

Att. Gen. Did you not bring this Paper from your Brother?

Matthews. How bring it from him?

Att. Gen. Did your Brother ever see it or read it?

Matthews. I cannot say my Brother read it, because I never saw him read it. — Give me leave, my Brother was in Newgate, and lock'd up there; to say I see him read or sign the Paper, I cannot.

Att. Gen. Did you not receive it from your Brother?

Matthews. I received it from him as I took it; there was a Paper brought to me, something of this kind contained in it.

Att. Gen. What Paper are you speaking of? I ask you as to that Paper; Did you receive that Paper from your Brother, or did you not?

Matthews. I tell you, Sir, it was put thro' the Grate at Newgate.

Att. Gen. By whom? — *Matthews.* By my Brother.

Att. Gen. Into whose Hands?

Matthews. It was put into my Hands.

Att. Gen. That very Paper in your Hand was put into your Hands thro' the Grate, by your Brother?

Matthews. I believe it was so. I will tell you, if necessary I should, any thing of that kind. — When we had read the Paper —

Mr. Hungerford. Prove it — you have not proved it.

Serj. Cheshire. Mr. Matthews, I ask you if you have ever had any Talk with your Brother about the Matters he was charged withal?

Matthews. What, about this Libel? I remember I have had some Discourse with him about it.

Serj. Cheshire. By the Oath you have taken, did he never own to you he assisted in printing of it?

Matthews. I never troubled myself one way, nor the other.

Att. Gen. Let me not mistake one Passage. At the Time your Brother delivered this Paper to you out of the Grate at Newgate, did he not desire you to carry it to the Secretary of State?

Matthews. If you would give me leave —

Att. Gen. What did he say to you at that Time?

Matthews. I cannot remember any particular Words.

Mr. Hungerford. I did not observe that he said the Letter was put thro' the Grate by his Brother into his Hand. — Do you say your Brother gave it you thro' the Grate?

Matthews. If I might have the Liberty of telling the Connexion of Circumstances —

Att. Gen. I have not done with him, you break in upon us; I think you own the Body, the Substance of this Paper, is your Hand writing?

Matthews. Yes, Sir.

Att. Gen. How long was it after you writ the Substance of this Paper, before the Time your Brother put it into your Hands out of Newgate?

Matthews. I writ it in my Mother's House; from thence I went to Newgate; I asked for my Brother, he was locked up, and there was the Man called Mr. Matthews, and he came down; it was very dark, I could not see my Hand. I put the Paper thro', and he gave it me again, I believe in seven or eight Minutes Time.

L. C. J. Did you give it him?

Matthews. I put it thro' the Grate.

Att. Gen. Did you put it down in Writing of your own Head? or by whose Instructions?

Matthews. The Paper was brought to me by a Messenger; the Words to this Effect, that I will recollect, if I can. The Copy of the Paper intitled so and so, *Ex ore tuo te judico, Vox Populi Vox Dei*, &c. The Papers entituled by that Title were given to me by one John Broderick; one of them he gave me in Cock-pit-alley, Drury-lane; and the other he gave me at the Black-boy, somewhere by Drury-lane. Now in my Account as it seemed a very confused Paper, I drew it in a Hurry, with a little sort of Address, that I thought civil and handsome. Please to let me see the Paper.

Att. Gen. Ay, see the Paper. You say a Paper was brought to you, wherein John Broderick is mentioned to you as the Author of this Libel; that the Papers were given your Brother by one John Broderick.

Matthews. This Message was brought to me in Writing.

Att. Gen. By whom? — *Matthews.* By one Mr. Plunkett.

Att. Gen. Whether did you form this Paper upon that?

Matthews. I tell you, I did form it so far as this; something, — I made an Addition to it. — It was the current Opinion my Brother was the Printer of it.

Mr. Bootle. I would ask you this, you say you had Intimation that the Copy from which this Libel was printed, was delivered by one Broderick; to whom was it delivered?

Matthews. I took it to be delivered to my Brother.

Att. Gen. My Lord, I am in your Lordship's Direction, whether it is not a proper Time to desire this Paper to be read; with great Submission, this arises upon the Evidence of Mr. George Matthews; he pretends to have added something by way of Explanation. — I desire this Paper, which he hath sufficiently proved to be his Brother's Paper, and subscribed by him, may be read.

L. C. J. You don't oppose the Reading of it?

Mr. Hungerford. Yes, my Lord, we do: if this Paper is read at all, it must be read to make out the Indictment: it is a Paper, as by what appears, is neither writ nor subscribed by him. — The Gentleman says he guesses at it, and he says he doth not know that his Brother ever subscribed or underwrit such a Paper: so that it stands as a meer Cypher, and is no Manner of Evidence, therefore we hope it shall not be read.

Mr. Ketelbey. My Lord, we humbly conceive, there is not sufficient Evidence for the Reading of this Paper. As to the Body, he writ it; as to the Subscribing of it, he is not well acquainted with his Brother's Hand-writing, and cannot say he writ it. Then, my Lord, as to the

Business, of having the Paper from his Hands; he brought it to Newgate, he cannot be positive he delivered it into his Brother's Hands, or that he had it from his Brother. Therefore we must submit it to your Lordship, whether they have produced any Evidence sufficient to entitle them to read this Paper.

Attorney General. Notwithstanding this Objection, I humbly insist, that we are certainly entitled to the Reading of this Paper, on the Evidence given by this *Mr. George Matthews*. I beg leave to open the Paper. The Paper amounts to a Confession of the Prisoner.

Mr. Hungerford, and Mr. Ketelby. We pray, we may have your Lordship's Judgment.

Lord Chief Justice. The Question now is, whether this Paper must be read?

Att. Gen. My Lord, let the Contents of this Paper be what it will, and a Paper proved in the manner as this is, we are to be sure entitled to read it; what hath been sworn, I dare say they cannot, as I humbly apprehend, controvert: Here is one Brother swears to the Hand-writing of another: That speaks itself. Nobody can doubt who he swears it to, who believes it to be his Hand-writing; this alone entitles us to the Reading of this Paper, the Evidence of so near a Relation, who is, and must be acquainted with his Hand-writing, who swears positively to it. In all the Course of Experience I have seen, there cannot be a fuller Evidence to entitle us to read this Paper, than hath been given; there are other Circumstances carry it so far, no Doubt can remain with your Lordship. This Paper is not only subscribed by *John Matthews*, but dictated by *John Matthews*; how much less doth what he swears amount to? He says, he received a Paper from one *Mr. Plunkett*, who came from his Brother; he formed this Paper by that, something he added; afterwards he delivered the Paper so formed into the Hands of his Brother; the Brother had it in his Custody, after it was so delivered, six or eight Minutes, and it can't be supposed but he should read it in that Time, and afterwards delivered it to him again with his own Hand, with Directions to carry it to the Secretary of State; this makes it as much his Paper as if he had written the whole Paper himself; the whole Paper had his Approbation, and it was made with a Design to carry it to the Secretary of State; with these Circumstances, which are the Truth of the Fact, I insist upon it, with great Submission to the Judgment of the Court, that we are entitled to read it.

Lord Chief Justice. I take it, it is a common Case. Suppose a Trial between Party and Party, the common Method of proving a Man's Hand is, a Person is called who hath seen the Party write. He is asked, whether do you believe it to be his Hand-writing, or no? Nothing more is expected, than that he hath seen him write, and believes it to be his Hand-writing. *Mr. Matthews* swears he hath seen him write, and he believes it to be his Hand-writing. He goes on further and swears, he received a Message brought to him by *Plunkett*; upon which he went to Newgate, his Brother was called down to him, he delivered him the Paper, and in six or eight Minutes he came to him again, and delivered it him with his own Name to it, which he believes to be his Hand-writing.

Judge Tracey. We must have never an end of things, at this rate.

Lord Chief Justice. I think the Paper ought to be read; if my Brothers are of another Opinion, they will tell you so.

(Then the Paper was read.)

Clerk of Arraignment. Signed *John Matthews*—"I *John Matthews*, now in the Masters-side of Newgate, being heartily sorry for the Crimes I have been guilty of against his most sacred Majesty King George, and his Administration; and from a thorough Conviction of my Errors, an unfeigned Contrition for them, and out of a Desire to serve his Majesty, do hereby make the following Declaration and Confession, (viz.) That the Papers, (entitled, *Ex ore tuo te judico, Vox Populi Vox Dei*; to all true Lovers of Liberty, *Vox Populi Vox Dei*) were both given to me, by one *John Broderick*, as also the Money for printing them.

"And further I do declare, that the said *John Broderick* took the foul Proofs of the Papers aforesaid from me, in order to correct them; and when they were printed, fetched them away.

"And further I do declare, that the Place where the aforesaid *John Broderick* gave the Copy of the Paper, entitled, To all true Lovers of Liberty, &c. was in Cock-pit-alley; and he the aforesaid *John Broderick* gave me the Copy of the other, entitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, &c. at the Black-boy, in Stanhope-street, both near Drury-lane; the Place of his Abode, to the best of my Knowledge, is in Shire-lane.

"Of all and every the Premises herein contained, I am ready to make Oath, when called thereto by the Government. I had three Guineas June the 6th, and seven more the 19th, of the aforesaid *Broderick*."

Prisoner. I ask my Brother whether he can distinguish my Hand from another?

Lord Chief Justice. He hath sworn already that he believes it to be your Hand.

Mr. Hungerford. I am not displeased that this Paper comes to light. Here is a Witness bound to do Service to a Brother in Prison. Moved with Compassion, he forms a Paper of this Nature, not by any Instructions from the Prisoner at the Bar.

Att. Gen. My Lord, I hope they are not at Liberty to go on in this manner.

Mr. Hungerford. The Instruction is handed from *Plunkett*, not immediately from his Brother. There is nothing in this matter brings an Offence home against the Prisoner at the Bar, within the Statute.—Please to call *Walter Hutchinson*, and *Thomas Tove*.

THOMAS TOVE sworn.

Mr. Hungerford. *Mr. Tove*, what Account do you give of *Mr. Vezey*? How long have you known him?

Tove. About a Year and Half.

Mr. Hungerford. What Character can you give of him?

Tove. I can give him no Character at all, good or bad.

Mr. Hungerford. Hath he the Character of an honest Man?

Tove. No.—Not about his Printing.

Lord Chief Justice. What Reputation and Character hath he among his Neighbours?

Tove. I know none of his Neighbours, I am little acquainted with any but he himself, and I have not known him above a Year and a Half.

Mr. Mott, and WILLIAM BODEN, sworn.

Mr. Ketelby. *Mr. Mott*, how long have you known *Vezey*?

Mott. I was never in his Company but once.

Mr. Ketelby. What do you know about his Character? this general Character.—*Mott.* I know nothing of his general Character.

Mr. Ketelby. *Boden*, Do you know *Vezey*?—*Boden.* Yes.

Mr. Ketelby. What have you heard him declare?

Boden. I came here last Monday was Se'nnight to hear this Trial; he was got here, and he told me he was an Evidence in this Cause, and that after the Publishing of the Book, he bethought himself that he should get into some Danger; so he went to the Mother of this *Matthews*, and told her, if she would give him Money, he would keep out of the way; accordingly he went to *St. Albans*, and staid there nine Days; but no Money coming, he could not stay out of the way, but must come to his Business.

Mr. Ketelby. I don't know why we should trouble your Lordship with any more Witnesses; I shall therefore only beg leave to observe from the Purport of that Paper, which hath now been read, whether there is any thing contained therein, that could prove the Confession of this Fact, that is now criminally objected to him?—There are some Particulars he confesses in this Paper, he received a Copy, and delivered Copies back; but what we insist on in behalf of the Prisoner is, that nothing in this Paper amounts to charge him with High-Treason, nor can properly be made use of against him on this Indictment.

Mr. Hungerford. The Offence he is charged with is, that he maliciously, advisedly, and directly, did maintain and affirm, that the Pretender had a Right to the Crown of these Realms. Now, my Lord, with humble Submission, this Paper, be it what it will, take it in the utmost Latitude, cannot be construed to come up to this Indictment. As it stood before we called our Witness, it could not be read; but we are so unfortunate, by plowing with our Heifer, they've got it to be read; but then there is no Confession of a Treason, or that he printed this Libel; there is a Story told that he received it of somebody, but there is nothing at all of the Confession of the Offence, and therefore we stand, with respect to the Prisoner at the Bar, in the same Circumstances we were in antecedent to the Reading of that Paper; and as to the Libel, it doth not contain such a Treason as the Act of Parliament requires, and they have laid in the Indictment.

Att. Gen. My Lord, before I reply, I desire to call a Witness, or two to support the Credit of the Evidence we have given.

ROBERT BENTLEY sworn.

Att. Gen. *Mr. Bentley*, Do you know *Lawrence Vezey*?

Bentley. Yes, Sir, I have known him some time.

Att. Gen. How long?

Bentley. About six or seven Years, I don't see him perhaps once in a Twelve-month.

Att. Gen. Are you acquainted with his Character?

Bentley. I don't know but he works honestly for his living.

ROBERT PROCTER sworn.

Att. Gen. Do you know *Mr. Vezey*?—*Procter.* Yes, Sir.

Att. Gen. How long have you known him?—*Procter.* Four or five Years.

Att. Gen. What is his Character?

Procter. I never heard any thing ill of him.

Att. Gen. Hath he the Character of an honest Man?

Procter. I never heard nothing but that he is an honest Man.

Att. Gen. My Lord, I won't trouble your Lordship to call any more Witnesses to support the Credit of *Vezey*; it would have been necessary if they had affected him, but I think the little Imputation thrown upon him is sufficiently answered.

My Lord, I am sure I ought to have a principal Regard to your Lordship, considering how much Time hath been already spent, and some Consideration to myself, therefore shall trouble your Lordship as little as may be by way of Reply.

My Lord, as to the Evidence that hath been offered on the behalf of the Crown: My Lord, I must say, that even no Occasion hath been given, in my Opinion, by any Observation I have heard made by the Counsel for the Prisoner, to make any Answer by way of Reply, had nothing been misrecited. But I shall leave that to your Lordship's stating to the Jury, which I am sure your Lordship will do with the utmost Justice, and more I neither ask nor desire.

As to this supplemental Evidence I have offered, I must beg leave to answer, that they would have it that nothing collected from this Paper in particular amounts to the Offence, much less confirms what I have offered to prove, that he was the Printer of this Libel.

I think it impossible for any that hath heard and considers this Evidence, to understand this Paper any otherwise than a Confession by the Defendant, that he printed this Libel; that is the Fact to be tried; what else is the amount of those Words? I *John Matthews*, out of a Desire to serve his Majesty, do hereby make the following Declaration and Confession, That the Papers, intitled, *Ex ore tuo te judico, Vox Populi Vox Dei*, were both given to me by one *John Broderick*, as also the Money for printing them; certainly this is a Confession that they were delivered to him; the Papers from whence the Impression was taken, that is the Manuscript, that is delivered to him by *John Broderick*, in order to have it printed, and at the time he gave him Money for the printing them; doth not this necessarily imply, that he received the Papers and the Money, either to print it himself, or procure them to be printed? Is not this a necessary Implication without any forced Construction? And in the Conclusion he says, I had three Guineas given me the Day the Impression was wrought off, seven more the 19th, of the aforesaid *Broderick*. The very Day it was wrought off, the very Day that he paid fourteen Shillings to the Men that assisted him, he confesses that he had three Guineas from *John Broderick*.

My

My Lord, if this doth not amount to a Confession that he received a Paper in order to have it printed, that he did actually print this Paper, it must amount to that or to nothing. But take it in Conjunction with the rest of the Evidence given, when he shall confess that he received the Papers so entitled from Broderick, with the Money for printing them; when it is proved that this very Libel is so entitled, as described in this Paper; that he directed the printing that Libel with the same Title; that he paid for printing it the very same Day, he says in his Confession, he received Three Guineas from John Broderick. Whatever Import this may have, taken separately, in Concurrence with what hath been offered in Evidence, it must amount to an absolute and direct Confession, that he was the Printer of this Libel in Judgment before your Lordship. — I shall say no more in Answer to this Paper.

The Evidence of George Matthews is so far from being doubtful, that it is confirmed by the Evidence given by the Witnesses for the Crown. Mr. Matthews had heard, by his Sister, that something was done that very Day against the Government; he went directly to the Printing-House, called for Vezey and Harper, examines them first in his Closet, then afterwards makes a Declaration in publick, intimating (as it comes out) this very Man had received Information, that something of that Nature was doing.

What is to be inferred from the rest of his Evidence, because Vezey and Harper did not think fit to own they were concerned in printing it, therefore it is to be inferred the Fact is not so? So far from any such Conclusion, Vezey doth not pretend to know any more of the Paper than Part of the Title, therefore he might justly answer the Question; when the Man tells you, upon his Oath, he read nothing but Part of the Title, therefore so much of the Evidence given by him, goes in Confirmation of what Vezey swears; nothing he hath sworn throws any Imputation, nor carries any Inconsistency with what Vezey says.

I shall trouble your Lordship no further as to the Evidence.

There are some Things of which I am obliged to take Notice: My Lord, I think both the Gentlemen of the other Side insinuate as if this was a temporary Act. Mr. Hungerford would not say, that the Law, on which this Prosecution is founded, is a temporary Law; but the Insinuation came from him, and is followed by Mr. Ketelbey, as if that Branch of the Statute, on which this Prosecution is founded, had not, at this Time, an Existence. Mr. Hungerford says, it was calculated not to be determined with the Demise of the Queen, but if it operated so far as to bring the King to the Throne, it had its Effect. My Lord, there is not the least Colour or Foundation arising from the Words or Nature of the Act of Parliament for such an Objection. —

There are four distinct Provisions: The first is the Person of the Queen; that if any Person or Persons shall, maliciously, advisedly, and directly maintain and affirm, that our Sovereign Lady the Queen, that now is, is not the lawful or rightful Queen of these Realms, &c. The whole Tenour following relates to the Title on which the Settlement of the Crown is founded; and it is penned, not in Words personally, but in Words that carry a Perpetuity. That Branch on which the Prosecution is founded, is in these Words: Or that the pretended Prince of Wales, who now styles himself King of Great Britain, or King of England, by the Name of James the Third, or King of Scotland, by the Name of James the Eighth, hath any Right or Title to the Crown of these Realms. This the Law hath provided against, and made it High-Treason, and it is fit it should be so. The next Provision was for securing the Succession: Or that any other Person or Persons hath or have any Right or Title to the same, otherwise than according to an Act of Parliament, made in England, in the first Year of the Reign of their late Majesties King William and Queen Mary, of ever blessed and glorious Memory, intituled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and one other Act made in the twelfth Year of his said late Majesty, King William the Third, intituled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*; and the Acts lately made in England and Scotland mutually for the Union of the two Kingdoms. It is plain by the Connection, Or that any other Person or Persons, &c. which shews that the Provision here was intended to go along with the Settlement, much less to determine with the happy Accession of his Majesty to the Crown, that Minute of Time which placed his Majesty on the Throne. So the fourth Part: Or whosoever shall deny the Right or Power of Parliament, to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown, and the Descent, Limitation, Inheritance, and Government thereof. This is one Foundation of his Majesty's Title to the Crown; this is a Principle will remain as long as the Government itself.

My Lord, I would not have said so much, if it had not been from the Nature of the Objection. This is a Law, say they, that hath not been put in Execution since it was made; in the Course of fourteen Years Time, there hath been Nobody found guilty on it, not one Prosecution. There is no Instance of any Law necessary to be enforced but as far as Justice will admit, no such Insinuation as this should pass in the World, for the Encouragement of People to offend; but it must do it in an effectual Manner, if they are persuaded that the Law is not in Being. My Lord, a great deal hath been said on the Learning and Doctrine of Innuendoes; there hath not been a solemn Case of the Learning of Innuendoes as was thought material, but hath been quoted, as though some Occasion was given for it by this Prosecution. The Gentlemen have thought themselves intitled to draw in all that hath been said on this Head, tho' there is not the least Foundation, on this Prosecution, to take any Notice of any Thing that hath, in former Times, been condemned on the Account of Innuendoes; the Office of an Innuendo is no more than to explain, no more than a Predict; but if in an express Averment in the Body of the Indictment, the Innuendo is put there to explain that Averment; in such a Case, there never was a Time or Instance that any Hardship was imputed to make an Innuendo, nor any ill Consequence; now, my Lord, there are two Averments, that he the Prisoner by printing the Libel in the Indictment *do concern* the Person described by the Statute to be the Prince of Wales, and of and concerning the Crown of these Realms; the Innuendoes following relate to these two Facts expressly averred: Will these Gentlemen say, this is making a wrong Use of an Innuendo? No, it is not; this Use of Innuendoes hath been justified by the same Authority that condemns them.

It lies upon this, and what the Jury are to try, is, whether upon the Evidence, they are not necessary and fully proved by the Libel itself. As to the first, who is this Chevalier, how then comes it by an Innuendo? I believe, my Lord, it won't be pretended in any Case (the Case of any Civil Action), that the Person to be found guilty of High-Treason on this Act of Parliament, cannot be convicted unless he made use of the same Terms, the same Words, as are in the Act of Parliament. My Lords, there is no Colour, no Pretence to say it; if there be such a Description of the Person in the Libel, that the Jury on their Oaths, who are to consider on it, cannot but necessarily believe, cannot otherwise believe but to be the Person, that is sufficient.

That this is so is most apparent, from the Solemnity of the Chevalier's Birth, the moral Impossibility of putting an Impostor on the Nation, and the Disappointment in the Attempt of proving him so, I think is Demonstration, &c. If this doth not mean the Pretender, I would be glad if they had told us, who it is. Is it not notorious, that these are Circumstances that relate to the Person pretending to a Right to the Crown of these Realms? That thus to describe him doth not amount to a sufficient Description; Nobody that reads it can doubt, though the Name used in the Act of Parliament is not followed; it goes on, *And the great Opinion all Courts have of this unfortunate Prince's Virtues, shews he only wants to be known by us to be admired, that we only want the Enjoyment of him to make us happy.* What other Prince is it? Who is it? Can it be suggested to be any body else here meant but the Pretender? What is the Conclusion of the Libel? The maintaining that such and such Persons are Jacobites, and an Innuendo to that, that was not objected to; but if the Subject of this Libel be true, that he hath an hereditary Right, a Right by the Voice of the People, and as it is a limited Monarchy, then they must own his Title; The Title of whom? Of the Person that styles himself King James the Third. That plainly shews who it is that is meant in the former Part of the Libel; and that this hath relation to the Crown of these Realms. I must say, it can relate to nothing else; the Business is to prove the Right: Whether it be hereditary, by the Voice of the People, or a limited Monarchy. The Conclusion of the Libel is to admonish the People to throw off this arbitrary Government, and not be ignorant of their Strength; these are Averments the Jury are to enquire into, and the Innuendoes are not strained, but plain, and such as arise on the reading of the Libel; and such as the Gentlemen themselves have not been able to invent any other Construction for. They say, here is no direct Averment. Mr. Hungerford hath endeavoured to make some Difference between maintaining and affirming; he is proving Arguments and drawing Conclusions; is this maintaining and affirming? Here is maintaining by Arguments, by Proof, by such as the Libel says amounts to a Demonstration: Say they, here is no positive affirming? What is the first Part of the Libel? If hereditary Right be any Recommendation, he has that to plead in his Favour. Mr. Hungerford says the Sentence begins with an *If*, and is no Affirmation at all; and he says it cannot amount to an Affirmation, that the Pretender hath a Right to the Crown of these Realms; but I apprehend the necessary Sense must be, he hath that, he hath such a Right to plead in his Favour. The Assertion is, *If hereditary Right be any Recommendation, he hath that to plead in his Favour*; so here is more than a plain Assertion, he hath that to plead to convince others, that he hath this Right.

My Lord, if that won't do, what is the Conclusion? *The Chevalier being endowed with all princely Virtues, so that all Rights concur in him*; Is not that an affirming, the strongest Way of affirming by Conclusions from Premises? So that all Rights concur in him, as well all other Rights as a Right to the Crown; they would have it relate to princely Virtues; that all Rights, that is, all princely Virtues concur in him.

My Lord, it is impossible there can be more full, direct, positive affirming of such a Right in this Libel, than both these Assertions import.

My Lord, I don't remember any Thing else I think necessary to trouble your Lordship with. My Lord, I say, these are all, at least the most material Objections that have been made by the Gentlemen of the other Side, to the Proof we have given in order to bring this Crime within the Act of Parliament. Whether this Act was temporary, and determined upon the Death of the late Queen, and the Establishment of the Succession in the House of Hanover, I am willing to go into that Question now, if your Lordship and the Court think fit to give your Opinion: if not, I am sure the Gentlemen that speak after me, will supply any Thing that I have omitted. —

My Lord, I apprehend this is a conclusive Evidence against the Prisoner, as to the Fact charged, that he by printing, maliciously, advisedly, and directly maintained and affirmed, that the Pretender hath a Right to the Crown of these Realms; not in the very express Words of the Act of Parliament, no more was it necessary to make use of the Word *Pretender*, but in Terms that amounted to that, and can bear no other Construction than that he hath maintained and affirmed, that the Pretender hath a Right to the Crown of these Realms.

Mr. Serjeant Cheshire. My Lord, I beg Leave to make some few Observations on what the Gentlemen on the other Side have said; and the first Objection that they make is, that this is a Prosecution on a Law, which is determined on the Demise of the late Queen, and by his Majesty's happy Accession to the Throne, and the Government taking place in the House of Hanover; the Reason of the Act hath taken Effect, and therefore the Act ceases. For my Part, I think it was very becoming Mr. Attorney General to take notice of it; but to dwell on that Matter, as if it deserved an Answer, I think will be unbecoming me. What would be the Consequence, but to let any villainous Libeller be at Liberty to treat his Majesty as an Usurper? To call out on the People, how long will they be ignorant of their Strength? To suppose this, is to suppose the Act of Parliament so very weak, that it doth not become me any farther to debate it. — Therefore I forbear to pursue it any farther.

There seems to be three other Things I beg Leave to take Notice of: They say we have not proved the Charge, there is an Inconsistency in the Evidence, and the Facts are not proved. I submit to your Lordship, if possible, if the Evidence that hath been given in this Case won't serve, what Evidence can? Can it be expected when a Man is guilty of High-Treason, if he prints such a Libel, will call Witnesses to it, tell them the Contents of it? It is not to be expected, but in a clandestine Way to be stolen into People's Pockets, and read in Corners, and to expect stronger Evidence, is to expect an Evidence of which

the Nature of the thing is not capable; if there is the least Weakness in the Evidence, they have taken care to supply it. As to the calling *George Matthews* for a Witness, if I had been a Friend to the Prisoner, I should have reckoned myself very unhappy in so doing; can it be otherwise, than that natural Inclination should prevail upon him to be very tender in this Point? But this Man hath given the strongest Evidence, that if we had not half the Evidence, that would have supplied it; doth he not come to the very Day? "The 6th of June, my Birth-day, I met my 'Sister.' First he was met by a Woman, she had a great Suspicion of it; and it was he, that is the Brother, was to deliver the Brother. "My Sister bid me take care, there was something doing in our House, against the Government; I myself, upon Examination, had great Reason to suspect it." If this was known in the Family, if the Sister told of it, the Brother examines into it; doth this weaken the King's Evidence, or doth it not strengthen it? Then what he hath written and his Brother hath signed, that hath determined it, in the Prisoner's owning and confessing it; and what he would verify with his Oath, if required.

But supposing (say they) this Charge is believed to be true, yet the Evidence doth not come up to a Charge of printing. If I took Mr. *Hungerford* right, he said, a Charge of printing must not be on the Man that actually serves as an Instrument in the Art of Printing; will you say this Man is guilty? Yes, every one of them. But surely that Man will be so that rises out of his Bed to call these Persons up early, and tells them he hath a Jobb to do, and takes upon him the Office of the black Boy for Expedition, and corrects it with his Pen, bags it up and sends it away. Is not this Man guilty? I would not have every Composer in this case be guilty of printing, if it could be supposed that a Composer did not know what it was, which it would be hard to suppose, because they are Men of Letters; but sure the Man that from the Original Manuscript set it in the Form, corrects it; it is once wrong, and he makes it right; doth of the one Part one Thousand, of the other Part one Thousand; bears such a Share in the Printing as is within this Act of Parliament, or else you will have no Offender upon it.

My Lord, in relation to this Indictment, they say there must be a direct Charge, that he maintained and affirmed that the Pretender hath a Right and Title to the Crown of England; they say true; and if there be that Term used, by which it is commonly allowed is meant and understood the Pretender, we asked no forced Constructions or strained Explanation and unnatural Innuendoes, God forbid we should; we hope and expect, in Justice, there will be the same Construction of those Words as is usually given to them, when used in Speech in all other Cases.

I think that what they went upon here, is *hereditary Right*; and Right to the Crown of this Kingdom is not mentioned in this Libel; there is an Innuendo (*Innuendo, jus hereditarium ad coronam hujus regni*); be pleased to consider what the Nature of this Thing is; I don't know what the Use of Speech is, but to be understood.

I don't doubt but every body takes the Chevalier and the Pretender to be the same Person; then this Person, this Chevalier, whose Birth was so solemn that it was a moral Impossibility of putting an Impostor on the Nation, and hath personal Virtues and Endowments, that we only want an Opportunity to know him to admire him, and only want the Enjoyment of him to make us happy; Now what one Person in the World can make the People of England happy but the King?

But please to consider, when they speak of Right, the Subject-matter must needs be a Right and Title to the Government and Crown of England. Say they, in three Remarks, whether it be hereditary Right, the Voice of the People, what Right the Voice of the People gives; and the third Remark is, limited Monarchy; what can that be applied to, but a Kingdom, when it is affirmed that the Pretender hath all these Rights? That, Gentlemen, I do rely upon, is an express affirming and attelling, that he hath all these Rights, and consequently a Right to the Crown of these Realms.

Mr. *Lutwyche*. My Lord, I shall trouble your Lordship with saying but very little: The Prisoner hath been so unfortunate, by his Defence, to strengthen and confirm our Evidence. I shall only mention two or three Things insisted upon by the Gentlemen of the other Side, by way of Objection; the one was, and particularly by Mr. *Hungerford*, that it is not every mechanical Writing or Printing which is an Offence against this Act of Parliament: The Person, says he, is a Servant, an Apprentice, employed in this Trade of Printing, and is not as a Printer within this Act of Parliament: Surely a Printer may be within this Act of Parliament: But I must submit it, on the Nature of the Case, it doth not appear he acted as a Servant, but as a Master; acted so throughout the whole Affair; paid the other People their Wages; received the Copy himself, and undertook the whole Business, transacting it all. This is what the Evidence prove, that he assisted in every Act of printing; therefore, as to the Art of Printing, if that is an Excuse because it is a Trade, and so not within this Act of Parliament, if the Printer won't discover the Author, Nobody can be convicted on this Act. As to the Case of the Innuendoes, we must submit that to your Lordship, whether there is not a positive Assertion, which the Jury are to try, whether the printing *do concern* the Person mentioned in the Indictment, is not printing *de & concern* the Pretender; this being left to the Jury, you have a fair and equal Trial, whether this Person in the Indictment, is intended by him or no. I don't know how any Indictment can be framed, unless a Man takes this Method; it is impossible that any Libel should be formed so, to have every Word of the Act of Parliament in it: Then it is proper to bring it in, in this usual Method, by Innuendoes; I take it, without these Innuendoes; and if he hath printed *de & concern* a Right to the Crown of these Realms; and that is brought in by an Innuendo a Right to the Crown of these Realms; and that Matter being found by the Jury, that this Paper is printed *de & concern* such a Right, that Matter of Fact being so found, and we apprehend there is sufficient Evidence for it, nothing so positively asserted; where is there any forced Constructions occasioned by the Innuendoes? as to say, when all Rights concur in him, is to say he hath a Right to those Virtues; that is very unintelligible to me, and seems to be a strained

Construction indeed: We submit it to your Lordship on the whole Matter, whether we have not plainly proved the Prisoner at the Bar to be guilty of this Indictment; the rest of the Matters we must submit to your Lordship's Direction.

Lord Chief Justice. One thing I must mention to you, whether or no this Clause of the Act of Parliament is in force? You say, the Act is temporary, and determined upon the Demise of the late Queen, and the Establishment of the Succession in the House of Hanover.

Mr. *Hungerford*. I did not say it was temporary, I did submit it whether it was calculated for such a Case as the Prisoner's is supposed to be.

Lord Chief Justice. If one Part is calculated for the Queen during her Life, so the other Part is calculated for the Pretender as long as he lives; there is as much reason to calculate the one for the Life of the Pretender, as the other for the Life of the Queen: If you think there is any Doubt in it, I must desire the Opinion of my Brethren.

Mr. *Hungerford*, and Mr. *Ketley*. No, my Lord, we had never any such Thought of it, nor don't insist upon it.

Lord Chief Justice King. Gentlemen of the Jury, this hath been a long Evidence; I will endeavour to state the Matter as well as I can. I hope I shall not mistake; if I do, my Brothers will set me right.

Gentlemen, This is an Indictment upon a Statute made in the Time of the late Queen. It is an Act intituled, *An Act for the Security of her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant Line*. By that Act it is enacted, "That if any Person or Persons from and after the 25th Day of March 1706, should maliciously, advisedly, and directly, by Writing or Printing, maintain and affirm, that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of these Realms; or that the pretended Prince of Wales, who now styles himself King of Great Britain, or King of England, by the Name of James the IIId, or King of Scotland by the Name of James the VIIth, hath any Right or Title to the Crown of these Realms; or that any other Person or Persons hath or have any Right or Title to the same, otherwise than according to an Act of Parliament made in England, in the first Year of the Reign of their late Majesties King William and Queen Mary, of ever blessed and glorious Memory, intituled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and one other Act made in England in the 12th Year of the Reign of his said late Majesty King William the IIIrd, intituled, *An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject*; and the Acts lately made in England and Scotland mutually for the Union of the two Kingdoms; or that the Kings or Queens of the Realm with and by the Authority of Parliament are not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown, and the Descent, Limitation, Inheritance, and Government thereof; every such Person or Persons shall be guilty of High-Treason, and being thereof lawfully convicted, shall be adjudged Traytors, and shall suffer Pains of Death, and all Losses and Forfeitures as in Cases of High-Treason."

I mention only that Branch of the Statute, because the Indictment is only on that Branch.

Gentlemen, this Indictment sets forth, That the Prisoner at the Bar, that he, as a false Traytor to our Sovereign Lord the King, after this 25th March 1706, to wit, the 10th Day of June in the 5th Year of the Reign of our now Lord the King, at London, in the Parish of St. Botolph without Aldersgate, in a certain false and treasonable Libel, which he the said John Matthews then and there maliciously, advisedly and traitorously printed, intituled, *Ex ore tuo te judies, Vox Populi Vox Dei*, of and concerning the Person in the Life-time of King James the Second, late King of England, &c. pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself, the Stile and Title of King of England, by the Name of James the Third, and of and concerning his Right to the Crown of Great Britain, he did maliciously, advisedly, directly and traitorously declare, maintain and affirm, in one Part thereof, in these Words, *That from the Solemnity of the Chevalier's (meaning the Pretender's) Birth, the moral Impossibility of putting an Impostor upon the Nation after the manner pretended, and the Disappointment in the Attempt of proving him so, I think it's Demonstration, if Hereditary Right be any Recommendation, he has that to plead in his Favour; and all Assertors of limited Monarchy must allow, that ought to be preferred, if the Person having it is endowed with other Qualities fit to govern; and the great Opinion all Courts have of this Prince's Virtues shews, he only wants to be known by us to be admired; and we only want the Enjoyment of him to make us happy; and in another Part thereof, in these Words, I (meaning himself the said John Matthews) will conclude with three Remark. First, That every Assertor of Hereditary Right must be a Jacobite. Secondly, That every Whig that makes Vox Populi his Rule of Government must be so. Thirdly, Every Assertor of limited Monarchy must be so; the Chevalier (meaning the Pretender) being endowed with all princely Virtues, so that all Rights concur in him.* There is another part of the Indictment generally, that he, the said John Matthews, the same Day and Year, at London aforesaid, in the Parish and Ward aforesaid, in the same Libel, maliciously, advisedly and traitorously did declare, maintain and affirm, that the Person in the Life-time of James the Second, late King of England, pretending to be the Prince of Wales, and after the Decease of the said late King pretending to be, and taking upon himself the Stile and Title of King of England by the Name of James the Third, hath a Right to the Crown of Great Britain.

This is the Indictment wherewith the Prisoner is charged: Now whether he be guilty or no, that you are to inquire on the Evidence that hath been given. In order to make out this Charge, the first Witness that is called was John Hutchins; the Substance of his Evidence was, That in the Morning he came to the Printing-house of his Mother Mrs. Matthews; he says, one Thomas Roberts went with him; that the Prisoner at the Bar was in Bed; that Thomas Roberts seized his Pockets, and he saw him take out two Papers, which he delivered to him; he says, there were other Papers in the same Room, and likewise in another Room, and he went into that Room, and in a Box there he found other Papers; some were found in the Room where he lay, others in another Room, but which were in the one

and which in the other, that he can't positively say; they were found in the one or in the other; and he asked the Prisoner at the Bar, whether they were his?—He says, he owned them all to be his. He says, within two Hours after he put his Mark upon them, and he is sure these are the self-same Papers. Afterwards, when he was sent to *Newgate*, a pretty while afterwards he says to him, You must go to *Newgate*. What, says he, must I go to *Newgate*? Upon that he advised him to tell who was the Author of the Libel. The Answer he made was, I know I shall be hanged; I have nothing to do but let my Money fly to get a good Jury.—This is the Substance of that Evidence, both upon the Examination and the Cross-examination. The next Witness is *Thomas Roberts*; he swears he was with *Hutchins*; and he says, he went into the Room before *Hutchins*, and he secured the Sword which laid upon the Coat, and then he secured the Pockets, and *Hutchins* went into another Room and brought out some Papers: He says, afterwards they took up the other People, the Prisoners: They could not go all in one Coach; he went in one, and *Hutchins* in another. Then you have it from him that they marked them; and he is positive they are those Papers that were found upon him. As for these Papers, what they are, I will give you an Account when the Papers come to be read. He was asked about the Papers taken out of his Pocket; he says he gave them to *Hutchins*: As for those two Libels taken out of his Pocket, he swears positively when he came into the Room he was in Bed, and he took them out of his Pocket. He was asked as to the Proof-sheets, and the several Papers produced, and he swears to them all. He says, the 9th September afterwards, when they had Orders to carry him to *Newgate*, when he came into his Room, the Prisoner asked him if he was going to *Newgate*? Says he, Is there a Bill found against me? He told him there was a Bill found against him of High-Treason. He said he deserved to be hanged, and he had nothing to do but to let the Money fly to get a good Jury; but as for those who set him to Work, they were ungrateful Dogs, and good for nothing except over a Bottle of Wine or a Pot of Beer.—These are the Witnesses that prove the finding of these Libels and the other Papers in the Custody of the Prisoner, and the Prisoner's owning them.

The next Witnesses were to prove the Printing of them. There are two Witnesses called, *William Harper* and *Lawrence Vezey*. *William Harper* is an Apprentice to Mrs. *Matthews*. He says, on a Saturday Morning, which was the 6th of June, about four o'Clock in the Morning, the Prisoner called him up; he knew he called him up for printing this Paper, because, he said, the Day before he heard him say he had a Jobb to do: When he came up, he found *Lawrence Vezey* there, and he saw the Prisoner, and he helped the Prisoner and *Vezey* to work off this Libel. He remembers the Composing Part of the Paper, and he saw the Prisoner at the Bar compose Part of the Paper now produced, and the Manuscript did lie before him; and that he composed Part of it, but whether all he cannot tell; but says, he composed Part, the Manuscript lying before him; and he believes the Papers now produced are the same.

There is likewise another Paper produced, which is wrong imposed: Now the wrong imposed Paper was found upon him. He says, there was a Sheet wrong imposed, and the Prisoner at the Bar came up and told him he had transposed the Pages, and he must alter it; afterwards it was right imposed; he saw it when it was wrong, and afterwards when it was right imposed, and the Prisoner at the Bar did it; he says, that as they printed them, the Prisoner at the Bar took them off the Press, and there was nigh a Thousand printed, and they had done about eight or nine o'Clock in the Morning; and then the Prisoner bundled them up, and carried them out of the Printing-Room, and said one staid for them. He says, to the best of his Belief, the Paper now produced was printed off at that Time; he knows no other Paper printed then; he says, he at that Time read the Title, and that is all.

Gentlemen, He was asked upon his Cross-examination, whose this Printing-House was? He says, it is Mrs. *Matthews*'s; but the Prisoner, who is her Son, always carries himself as Master; and he doth not know whose Hand-writing this Manuscript is.

Then there is another, the next Witness, *Lawrence Vezey*; he swears, That he belonged to Mrs. *Matthews*'s Printing-House; he came there in June last, in order to go to Work: When he was in the Court-Yard, he called out, *William*, who was the Apprentice; who opened his Window and told him the Door was open: Upon that he went into the Press-Room, and while he was there his Master the Prisoner came up and told him, he had a Jobb to do; that he afterwards went to Market; that in the mean time, when he came back, there was a Form composed of *Vox Populi Vox Dei*; who composed it he can't tell; but the Prisoner told him, he had transposed the Pages, and he took it out of the Form, and lays it on the Stone, and transposed it right. He laid it on the Press, and the Prisoner pulled it off himself, the Proof that was right.—That a Morning or two afterwards he came again, and then they worked off the Impression, and they printed about a Thousand of each; and after the Jobb was done, he received fourteen Shillings for *Harper*'s Share and his own; *Harper* owed him Money, and so he kept all upon his own Account. The Proof-sheets are produced, and he upon the View of them says, they are the same. He says, one of the Papers is wrong imposed; he never read the Book; but, on his Cross-examination, he says, there is a Line at the Top, and a Flower over that. He was asked, whether he knew *George Matthews*? He says he doth, but he never saw him since he was taken and carried up by the Messengers.

There are two other Witnesses called to give their Opinion of Printing: You hear from both of them, that these are the Proof-sheets, or revised Sheets, which are in effect the same; and that appears from the Amendments upon them; and one of them is right imposed, and the other of them is wrong imposed. Having made this Way for the Reading this Libel, and the Papers found in his Pocket, they are produced; and the Libel that was found in his Pocket hath been read, and I believe they will consent on both Sides, that you shall have the Libel with you, when you go out to consider of your Verdict. There are two of them produced, and in those Libels all these Words as laid in the Indictment are there; the Beginning of the Libel is laid in the Indictment, and the latter Part: There is a Clause in the latter End not laid in the Indictment. There are likewise produced two Proof-sheets, of which, all the Witnesses say, there

is a Sheet right imposed, and a Sheet wrong imposed, which they think to be the same the Prisoner worked off: Then there are eight or ten superfluous Half-sheets. Mr. *Darby* says, it is impossible to make the Half-sheets agree, so as that there must be superfluous Half-sheets. In these Libels there are contained all these Words that are in the Indictment.

Now to fix this Fact on the Prisoner, they have produced Mr. *Delafay* and Mr. *Buckley*. Mr. *Delafay*, he says, that these Papers now produced are the Papers which the Messengers swore they took upon him; and when he was examined touching these Papers, he owned them to be his, and the Papers then lay before him on a Table, and he owned that these Papers were taken from him; and as to answering any other Questions, he was shy. Afterwards he was brought before the Lords Justices; the Brother gives you an Account how that happened. When he was brought before the Lords Justices he was told, that he was charged, with two other Persons then named, with printing such a Paper; the Answer he gave was, *So it seems*. He was asked, how he came to be concerned in such a Business? He said, it was Necessity. He was asked, who was the Author? but he would not tell. This was the first Time. He says some time afterwards, upon a Letter received from the Prisoner, he was brought before the Lords Justices again; he told them a foolish Story, but would not tell who was the Author: On the Evidence of Mr. *Delafay*, I did not think it Ground sufficient to read the Letter, though it was afterwards sufficiently proved by an Evidence he called himself.—Mr. *Buckley*, all he says is, that he was present at the first Examination; he says, when the Messengers brought these Papers, and laid them down on Mr. *Delafay*'s Table, he asked him whether these Papers were his? He said they were. I asked him how he came by them? He refused to tell me. He says he told him, You are charged with printing these Papers, which is a great Crime; he made no Answer, but took Snuff. This is the Substance of the Evidence given for the King against the Prisoner at the Bar. Now, on the other Side, what is insisted on by him and the Counsel for him are several Things; some Points in Law, and several Points of Fact. The first is, that this Law was temporary; that is over, and is so plain they did not think fit to insist upon it. The other is, that supposing the Matter contained in the Indictment to be proved upon him, it is not High-Treason within this Act of Parliament; that it is not to be supported against him, but by these Innuendoes.

Now, Gentlemen, as to that, I do agree with what the Counsel for the Prisoner say, that by an Innuendo you shall not put a Meaning upon a Man which is not his. This is not the Case: The Case here is a positive Charge, that the Book he wrote relates to the pretended Prince of Wales; and the Matter of Fact you are to try is, whether it is so or no.

Now as to that the Objection is, you can't understand what is meant by the Chevalier to relate to him, from the Solemnity of the Chevalier's Birth, and the other Things which follow.

I take it as to that, we are to understand it as all Mankind do. You are to consider, whether that Book is written concerning the pretended Prince of Wales, and his Right to the Crown; therefore the first Consideration is, whether this Libel is written concerning the Pretender, and his Right and Title to the Crown of England, then all these Innuendoes signify nothing; for the Innuendo relates to a Thing that is proved. Now, Gentlemen, it is not said, nor the Counsel for the Prisoner don't any way shew who else it is applicable to, or whose Right it is concerning.

That is the Matter of Fact you are to consider: Is it possible for Men of common Understanding and Sense to imagine, that this Right is concerning any body else but the Pretender? If so, then the Defendant will be acquitted.

Therefore the first Part of your Consideration will be, whether this Libel relates to the Pretender, and his Title to the Crown of England; as to the Words themselves, they do not appear in the Indictment; the Treason is, to affirm that the Pretender hath any Right whatsoever to the Crown of these Realms; and therefore, as to the affirming that, say they, it doth not appear in the Indictment.

Then the next Consideration will be, whether or no the Prisoner at the Bar hath printed it. It is Printing, and declaring by Printing, that the Pretender hath a Right to the Crown of these Realms.—They say, Printing is a mechanical Art; but if nobody else appears to you to be the Printer, and if People will use dangerous Arts, they must use them lawfully, how mechanical soever; or if he caused it to be printed, that makes no Odds.

The first Witness they call is *George Matthews*. Brother to the Prisoner at the Bar. He says, he remembers very well, the more exact because it was his Birth-day, as he was going to his Mother's House, his Sister met him, and told him something was printing in his Mother's House; that he examined *Vezey* and *Harper* both in his Closet privately, and publicly before the rest of the People, and asked them, whether they or his Brother had printed any Libel against the Government? They told him, No, they had not; this is what they told him. He says, his Brother is a young Man, that you see he is; he was an Apprentice to his Mother. Then he gives you an Account of the Manner of their Printing.

He was cross-examined concerning this Letter, which Mr. *Delafay* did speak to, but could not prove: He says, he went Home and drew a Letter, and after he had drawn it, he made some Amendments of his own. It was the common Vogue that his Brother was the Printer. Upon this he went to *Newgate* to carry this to his Brother; his Brother came to the Grate, and he gave it to him thro' the Grate, and in six or eight Minutes Time he brought it, and delivered it to him again, with his Name signed to it; and he believes this is his Brother's Hand-writing: That proves the Letter to be his, and makes it Evidence. The Letter being read, the Purport of the Letter is this: "I *John Matthews*, being heartily sorry for the Crime I have been guilty of against his most Sacred Majesty King *George*, and his Administration, and from a thorough Conviction of my Errors, and unfeigned Contrition for them:" There he professes his hearty Sorrow for his Errors and Offence; then it follows, "I do hereby make the following Declaration and Confession, that the Libel now in Question was given me by one *John Broderick*, as also the Money for printing of it; and further I declare, that the said *John Broderick* took the soul Proofs of the Paper aforesaid from me

in order to correct them; and when they were printed fetched them up. This Mr. George Matthews, though produced as an Evidence for the Prisoner at the Bar, they now make use of him as a further Evidence, that the Prisoner at the Bar was the Printer of this Libel, as he acknowledges that he received it from Broderick, and received of him Money for printing it; he acknowledges likewise, that he had three Guineas the Day he printed it, and seven Guineas afterwards of the said Broderick. Then as to Vexey's Character—they call Thomas Towie: he hath known him a Year and a half, and can give him no Character good or bad. Then they call Mr. Mott; he says, he never was but once in his Company, he knows nothing of his Character. Then they call William Boden; he says, last Monday was Se'nnight he saw Vexey, and he told him he was an Evidence in this Cause, and he had been with the Mother of the Prisoner at the Bar, and told her, if she would give him Money he would keep out of the way; that he went to St. Albans, and staid there nine Days, and no Money coming, he came in, and was a Witness on the other Side. By way of Reply, they call two Witnesses to support Vexey's Character, Robert Bentley and Robert Prosser: They believe him to be an honest Man, and never heard any Ill of him.

This is the Substance of the Evidence that hath been given on both Sides. Gentlemen, you are upon this to consider, whether the Prisoner at the Bar hath maliciously, advisedly, and directly declared, maintained, and affirmed, by Printing, that the Pretender hath a Right to the Crown of Great Britain.

The Words in the Indictment seem very sufficient, supposing it relates to that Matter, that he hath a Right, and all Rights do concur in him.

Now, in the first Place, you are to consider, whether, by the Words contained in the Libel, is meant the Pretender, and that he hath a Right to the Crown of England: you are to consider, it is not necessary to have the same Name in the Indictment as in the Act of Parliament; but you are to consider, whether the Person in the Libel, that is called the *Chevalier*, and is the Person spoken of in the Libel, and the Person called the Pretender in the Act of Parliament, be not the same; and the Person commonly called the Pretender; and whether that Libel doth declare, that he hath a Right and Title to the Crown of England. This is the first thing for your Consideration.

In the next place, supposing that to be so, the next Thing is, whether he hath done it maliciously and advisedly. The Fact implies Malice; and the doing of a Thing advisedly, is doing it with thinking. The Witnesses say, for several Days they were desired to assist him.

Upon the whole, if it shall appear to you, that the Prisoner at the Bar hath printed this Libel, or caused it to be printed; and that by this Libel, he hath maliciously, advisedly and directly maintained and affirmed, that the Pretender hath any Right or Title to the Crown of these Realms; then he is guilty of the Indictment, otherwise you must acquit him.

[The Jury withdrew, and after a short Stay, returned Holm and said, we are now ready and brought in the Prisoner GUILTY.]

Attorney General. My Lord, I humbly pray the Judgment of the Court against the Prisoner at the Bar.

Mr. Hungerford. My Lord, I humbly hope that your Lordship will not proceed to give Judgment upon this Indictment, but that Judgment shall be arrested.

If it shall appear to your Lordship, that the Offence made High-Treason by this Act is not described in the Indictment with such a Certainty as the Law doth require, then in consequence there is no Offence; and if so, there can be no Offender. I take it to be a Rule in Law, that where a Latin Word hath several Meanings, or doth denote several Things, and in the Indictment or Declaration it is intended that it shall import one single Sense or Meaning only; in order to restrain it to that single Meaning, it must be assisted with an *Anglicè*; this was the Rule the Judges went by in the case of *Hexam* and *Coniers*, four *Jacobi secundi*, 3 *Modern*, Folio 238. where an Ejectment was brought *de uno Tenemento*. This was adjudged naught, though after a Verdict; because the Word *Tenementum* signified several Things, in truth every thing that can be held, as Titles, Advowson, an Office, an House, and under that Head, any Sort of Houses, a Brew-house, &c.

And now, to apply this to the present Case: The Thing made Treason by the Act is Writing or Printing; the Charge upon the unfortunate Youth at the Bar is, that he *impressit* such a Libel; which Word, with humble Submission, doth not necessarily import Printing, unless explained by an *Anglicè*, for the Word *impressit* may signify several Things besides Printing; as Sealing, Stamping, and is usually made use of to signify these things. If I were to say that such a one stamped a Book, I should say he *impressit Libellum*; and the common Language of Attorneys in their Bills, where they charge the Stamp-duty is, *pro Impressione regali*, &c. And as to the original Meaning of the Word, it could never be taken to express Printing: The Romans had no Printing; and where they had not the Thing, they could not have the Appellation proper for it; for Things were before Words, which are but the Signs of them: wherefore I humbly hope, that Judgment will be arrested in this Case, and the rather, for the Reason that was given by the Judges in *Griffith's Case*, that an Indictment being a Declaration at the Suit of the King, against the Life of a Subject, ought to set forth a sufficient Certainty of the Fact.

Mr. Ketelby. My Lord, the last Service we can do for our unfortunate Client is, to move in Arrest of Judgment; and if the Words inserted in the Indictment to set forth the Substance, the very Gift of the Treason, are uncertain, and do not sufficiently denote the Offence intended to be charged; this is the proper Time, as we apprehend, to take advantage of that Defect.

My Lord, this Word *impressit* is an equivocal Word, of different Significations, imports several Senses in *English*; and though we should admit that it likewise signifies to print, yet if it equally signifies other Things, if no Latin Word be added to it to restrain, nor any *Anglicè* to explain the Sense of it, we hope your Lordship will not proceed to Judgment upon this Indictment; and in this Case more especially, since Printing is essential to the Offence of which the Prisoner is found Guilty; and some of the Significations of this Word *impressit* are criminal, and others not criminal within this Act of Parliament: And for this I shall only cite the com-

mon known Case of an Action of Trover *de uno Pullo* without any Latin Adjective or *Anglicè*; there the Declaration has been held to be naught, for the Uncertainty, even after a Verdict; and we apprehend the Objection will hold much stronger in an Indictment for High-Treason, and that an *Anglicè*, or some other proper Latin Word, ought to have been annexed, to pin down the Word *impressit* to that Sense only, which the Act of Parliament hath made criminal.

But, my Lord, I shall beg leave to go a little further, and to observe upon the Word *imprimis*, that it doth not, nor can signify Printing at all: *Imprimis* is a classical Word, and as such cannot properly signify Printing, which is a modern Invention, never known in the World till many hundred Years after the Word *Imprimis* had obtained its just and determinate Sense; but if they will have a Latin Word for Printing, without the Assistance of an *Anglicè*, it must be by such Phrases as will import that, and that only; such as the best modern *Latinists* have made use of to express their Sentiments, when they treat of that Subject.

This is what we have to offer to your Lordship against the Word *Impressit*, and hope it will be thought sufficient to arrest the Judgment.

Attorney General. My Lord, I do not know how this Motion comes to be made now, after the Opinion given by your Lordship. If this be any thing, it is improper Latin; that is, it is not a Word proper to denote what is intended to be expressed in this Indictment; that is the Meaning of this Objection, which should have been made before Plea pleaded and Evidence given, and not moved in arrest of Judgment, according to the Statute for regulating of Trials in Cases of High-Treason: That if the Word *impressit* or *impressione* is not a proper Word to denote Printing, which is the Amount of this Objection, they are not entitled to take Advantage of this as improper Latin now after Plea pleaded and Issue joined. What I shall say (still denying they are right in Time, but to satisfy the Gentlemen and Mankind) in answer to this Objection, is, if it had been made before Plea pleaded, there is not the least Colour in it, whatsoever Signification the Word may have, taken abstractedly; if it be a classical Word, and was before the Invention of Printing, which was but four or five hundred Years ago, I believe Nobody that is acquainted with the Latin Language, but will allow that the Usage of two or three hundred Years will give a Sanction and Signification to any Word, though it hath been applied to a Fact not at that Time used; therefore *imprimatur liber* is as much known of all Men of Literature, all Bodies of Literature, to mean that that Book shall be printed, as any Latin Word whatsoever is known what it means. Let them look into any Books licensed by any of the Universities, what is it but *imprimatur* by the Archbishop? what is it but *imprimatur* by the Secretaries of State, or any other Person? Is there any other Word made use of but *imprimatur*, when any Trial hath been printed by the Authority of your Lordships the Judges, the Word is used there; look into a Law-book, have they not seen it signed with the Word *imprimatur* under the Authority of all your Lordships the Judges? What can give more Sanction than the Opinion of all the Judges to the proper Use of this Word? What other Word is there for the denoting of Printing? Why, my Lord, *imprimatur libellum*, it is the joining of it to *libellum*, diversifies it from any other Meaning, however indefinite, or, as they say, equivocal, the Word is; it is according to the Subject-matter to which it is applied: If to a Book, it is to be applied to the printing of that Book. Is this the first Time this Word *impressit* was ever used in an Indictment? I appeal to every Record, whether ever any other Word was used, or *Anglicè* put to it, but the Subject-matter it was applied to? I say still, they are in the right to do every good Office to serve their Client; but they have mistaken their Season; they are excluded by the Words of the Act of Parliament, and the Opinion of your Lordship. But still I insist, this is the constant Opinion of the Use and Application of this Word, by Men of the Law, without making Use of any *Anglicè*, by all Men of Literature and Bodies of Literature; if all these Experiences can give a Sanction to the Use of that Word, we have that to justify us in making use of the Word here.

Serjeant Cheshire. I perceive the Gentlemen don't say this is an improper Latin Word, because they know then this is not a proper Time to offer it in arrest of Judgment: But, be that as it will, I beg leave to insist upon it that it is a proper Latin Word, and properly applied; and I would beg leave to consider, whether Words that may be capable of several Significations, when applied to Particulars, may not be understood what they mean, without any *Anglicè*? If I mistake not, *Liber*, that very Word may be capable of four Significations: It signifies *Bacchus*, it signifies *free*, it signifies a Book, and it signifies the Bark of a Tree. Now, *imprimere hunc librum*, would any body think this improper without saying *imprimere hunc librum, anglicè* this Book? Therefore, admitting *impressit* could be capable of other Significations to many Purposes, yet when it is *impressit libellum*, it must be understood to be Printing; as when it is *imprimere hunc librum*, they should say they don't mean a Book, but *impressit* the Bark of a Tree—I think this Objection is so contemptible, that it ought not to have a further Answer.

Mr. Lutwch. My Lord, as to the Time, I only beg leave to mention the Clause in the Act of Parliament; that gives him the Liberty of having Counsel, and Copy of the Indictment, and several other Privileges; therefore, as this Law hath given him these Privileges, which they had not before, it comes in by way of Proviso, and takes away this Part of the Advantage they had before, that they shall not take Advantage of any Miswriting, Mis-spelling, false or improper Latin, after Plea pleaded and Evidence given: So that they are out of Time, as they have had the Advantage of this Act of Parliament, if it depended singly on that Matter. As to the Notion of the Word *impressit* being improper, I believe somebody would have lit on this Objection before, if any thing in it; for it hath been the constant Method to use this Word *impressit*, to signify printed, without an *Anglicè*, or any thing like it. I believe the Precedents are all so. We apprehend it is a very vain Objection, and no Weight in it; and therefore we hope no Regard will be had to it.

Mr. Reeves. I must agree, that when *imprimis* was a Latin Word, it was long before Printing was; but when Printing came to be in use, that Latin Words we see have been improved; and tho' they have signified other things, yet when they come to be applied to particular Circumstances, are improved thereby. Every body knows what that is, when it determines the

the Signification of the Word according to the Subject-matter. Nothing is more plain than to determine it not to signify any thing but Printing; to say *per prædictam impressionem*, he declared and affirmed by Printing; no other Sense can be put on the Word but by Printing; and since it hath gained that use, no other Word is made use of either in legal Proceedings or otherwise; and what other Word can be applicable to this *Impressu libellum*, but Printing? We humbly hope this is as clear a Case as can be. They admit, if we had added an *Anglice*, it would have been proper; I don't know any *Anglice* that would have help'd it, taking it to be an improper Word: though, as we apprehend, they are not in proper time to make this Objection; it should have been before Plea pleaded.

Mr. Boyle. Admitting they are in proper Season to make this Objection (which we apprehend they are not), there is nothing in the Objection. This is the new Light that hath sprung up in this Cause. The first Objection was equally of consequence with this; they don't pretend that any other proper Word was used by the *Romans*; altho' they have used this ever since the use of Printing was found out, as the proper Word to signify Printing.

I believe there is not one Instance to be shewn, wherever any other Word was used to signify the printing of a Libel. They say, it is of an equivocal Sense, and may mean Stamping as well as Printing. In this Case, as the Word *impressu* is coupled with other Words, it can't mean Stamping—*impressu libellum*—Is it possible for any Prefs or Stamp to signify in his *Anglican verbis*? Therefore, to shew how groundless this Objection is, that it is impossible it should have any such Meaning, can a Stamp set forth all these *English* Words in the Indictment? That he *impressu*, therefore, must signify that he printed. My Lord, with great Submission, we think it is an Objection taken merely for the sake of Objecting, because driven to the last Extremity. As for the Instance of *uno tenemento*, and *uno pullo*, it is not to the purpose; *pullo* signifies any young, and *tenementum* is well known in the Law for a very universal Term; therefore it becomes necessary to be explained. This Word can't want any Explanation. Therefore we hope no Regard will be given to this Objection; and pray your Lordship's Judgment against the Prisoner at the Bar.

Mr. Hungerford. My Lord, they object to us, in the first Place, that we are improper in point of time as to this Objection; that it ought to have been made before the Prisoner pleaded or Evidence given.—And it is further said, that tho' we were proper in point of time, yet there is nothing in the Objection itself. As to the time of making this Objection, surely, considering the Nature of it, it may be made at any time. The Offence made Treason by the Act of Parliament, is Printing: we say, there is no Word in the Indictment which imports (at least necessarily imports) Printing; and, if so, then consequently there is no Charge of Treason before the Court: and surely, it may be at any time urged, that the Proceeding is null and void, if there be any fatal Error in it whereby to make it so. But the King's Counsel seem to have waived this Objection as to the Impropriety of the Time, by going into the Nature of the Objection itself; and I shall therefore apply myself to what they have said upon that Head.

Mr. Attorney observed, that the Word used in Licensing of Books is *Imprimatur*, and that *Impressu* (which is the same Verb in the Active Mood) is the Word used in the Indictment. I will admit it, that *Imprimatur* is used for licensing the Printing of Books, particularly when Books are licensed by the Universities (and for my Part I wish all Books were licensed by them, I am sure there would then be no Heresy or Treason in them); but generally Licences for Printing are in *English*: But that which I offer to your Lordship's Consideration in this Matter is, that tho' in an University *Imprimatur*, a loose or allegorical Word, which may have several Meanings, may be made use of, yet we are now in a Court of Justice, in a criminal Case, in a Case of Life and Death, where if the chief Word which describes the Offence hath various Significations, it shall not be taken in the worst Sense or Meaning, unless restrained to that Sense by an *Anglice*.

Mr. Serj. Chebire, by way of Illustration of what he hath said in this Matter, was pleased to be very critical upon the Word *Liber*: It signifies, says he, a Book, it signifies *Bacchus*, it signifies *free*, and it signifies the Bark of a Tree.

Give me leave, my Lord, to follow him a little in this Criticism. I believe the Word *Liber* doth not denote so many different things as the very learned Serjeant would seem to intimate. In the very early Ages of the World, before Writing was a common Accomplishment, before Vellum, Parchment, or Paper were found out, People writ upon the inward Rinds or Barks of Trees, which Bark was called *Liber*; and, from thence, when Parchment or Paper was, in After-ages, writ upon, that was called *Liber* too: The same Practice hath likewise given Occasion that *Codex* signifies both the Bark of a Tree, and a Book: As for *liber*, *free*, it is always used in an adjective Sense, and a Noun Substantive is always express or understood. And as for *Liber* signifying *Bacchus*, the Serjeant hath been at Dinner, he hath eat and drank plentifully, I dined with him, and I find he hath forgot part of the Name of *Bacchus*, for he is called *Liber Pater*, and not *Liber* only, that I remember.

But what I insist upon in this Matter, my Lord, is, if a Man were to be charged with Stamping of a Book or Paper; it would be said that he *Impressu* the Book or Paper; and the Charge against Mr. Dyett for forging the Law-duty-Stamp was in those Words; and since, by the Charge of *Impressu Libellum*, Stamping (which is not High-Treason) may be as well meant as Printing, unless explained by an *Anglice*; I humbly hope Judgment shall be reversed in this Case.

Mr. Ketelbey. My Lord, I shall be very short in what I am going to say. It hath been insisted on, that the common Form of licensing Books to be printed, by the Judges, Archbishops and Universities, is by using the Words *Imprimatur Liber cui titulus*, &c. If any one Instance could have been produced where my Lords the Judges had used that Word in allowing the Printing of any Books, such a Precedent would have stopp'd our Mouths as to this Objection; but I have here in my Hand a large Volume of Trials and other Tracts, that have been licensed, some of them by the Judges, and others by the Secretaries of State, and Lord Mayors; yet the said *Imprimatur* is not used in any one of them.—All these Licences are in *English*, and I don't remember any one Law-book that was ever licensed by the Judges in *Latin*.

I pay all the Respect imaginable to the Archbishops and Bishops, and

to what they do; but, as I take it, their Licences are generally signed by their Secretaries or Chaplains: Whether they have any legal Authority for the licensing of Books, or if it amounts to any thing more than a Bare Recommendation of the Goodness of a Book, under the Protection of a great Name, I cannot tell; and therefore with the utmost Deference submit it to your Lordship's Judgment, whether any Weight can be laid on those Instances.

The Universities have certainly, at this time, a Right to license Books printed within their respective Jurisdictions, and I believe they generally use the Word *Imprimatur*, and it is signed by the Chancellor; but this Privilege is of a very late date, it being not many Years since Books were first printed there. I pray God bless the Universities, continue to them their present Authority, and increase it: But we must not admit that the modern Use of a Word, tho' by those learned Bodies, can give such a Sanction to the Sense of it, as to make it a conclusive Answer to our Objection.

Mr. Boyle says, it hath been a Word used ever since Printing was found out, to signify Printing; and that no Information hath been brought for printing a Libel, where that Word hath not been made use of; but he is not pleased to mention any ancient Precedent, nor any Case where this Point hath been judicially determined; Indictments for printing Libels were very rare in former times, and are scarcely to be met with in the old Law-books; lately indeed they have been more frequent, but I believe have not always been drawn by the most skilful Hands; and if some Mistakes in them have been past over in Silence and without an Exception taken to them, we hope a faulty modern Precedent, upon the Rolls in the Crown-Office, shall not have more Weight with it than the Universities.

They are pleased to insist, that we have not the liberty now of making this Objection, as being out of time; because, in the point of *falsæ* and improper *Latin*, it ought to have been offered before Plea pleaded; But, my Lord, we must beg leave to put this on a right foot; we don't object it as *falsæ* and improper *Latin*; we say there is no Offence charged in the Indictment; the Act of Parliament says it must be by Printing; if they have used a Word that doth not signify Printing, the Indictment cannot be good, this cannot be High Treason; my Lord, we submit it to your Lordship.

The Judges were all of Opinion, that the Objection did not come out of time, because they did not take it for *falsæ* and improper *Latin*. But all agreed, the Word *Impressu* was very proper to signify Printing, as used in the Indictment, and that there was nothing in the Objection.

Mr. Hungerford. My Lord, there is another Objection, which I humbly take the liberty to make: It is this; the Offence made Treason by this Act of Parliament is, that if any Person shall maliciously, advisedly and directly, by Writing or Printing, maintain and affirm that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of Wales, who now styles himself King of Great Britain, &c. hath any Right or Title thereto; the Language of the Act of Parliament is, "and now" (that is, at the time of the making of the Act) "styles himself" so and so: But the Indictment doth not pursue the Words of the Act of Parliament, in describing the Person of the Pretender; for the Words in the Indictment are these; *Persona in vita Jacobi secundi nuper Regis Angliæ, &c. pretend. esse princip. Walliæ, et post dicti nuper Regis decessum pretend. esse, & suscipien. sup. se stilum & titulum Regis Angliæ per nomen Jacobi tertii*; so that who now styles himself, &c. is not mentioned in any Part of the Indictment, and consequently the Person described or intended by the Act of Parliament, and the Person described in the Indictment, may be two different Persons; for if a Person doth now, or five or six Months ago, stile himself King of Great Britain, it answers the Description in the Indictment of Stiling himself King of Great Britain *post dicti nuper Regis decessum*, for it is not laid—*immediately after his Death*, and yet that Person may not be the Person who at the Time of the Act took upon himself the Title of King, &c. and since, by the wording of the Indictment, it doth not appear that the Person there described is the same Person with him in the Act of Parliament, the Indictment ought to be assisted with an Averment, that the Person described in the Indictment is *una & eadem Persona* with him described by the Act of Parliament, whereby the Identity of the Person would appear; and, for want of this Averment or following of the exact Words of the Act of Parliament, we hope this Offence is not sufficiently laid, whereby to affect the Prisoner at the Bar.

Mr. Ketelbey. If they had said *immediate post decessum*, they had taken in a greater Length of Time, than now they have done; and having only laid *post decessum*, generally, it may, or it may not, be immediately after the Death of the late King James; and then that intermediate Space of Time is not accounted for or ascertained in the Indictment, without such Averment as we contend for. The Indictment ought to have been certain, in all respects, and to all Intents and Purposes whatever; but here, since the late King James died before the passing this Act, it doth not necessarily appear, 'tis no natural Consequence, that the Person who in the Life-time of King James the Second pretended to be the Prince of Wales, is the same Person that after his Decease pretended to be and took upon himself the Stile and Title of King of Great Britain.

Attorney General. My Lord, we are not bound, with Submission, to pursue the very Terms of the Act of Parliament. If, upon the Face of the Indictment, it appears the same Person is described in the Indictment as in the Act of Parliament, it is sufficient. There are two Descriptions of this Person in the Act of Parliament; the one is, that the pretended Prince of Wales, who now styles himself King of Great Britain; the one is the pretended Prince of Wales, and the other King of Great Britain. If Mr. Hungerford may be allowed to mean there may be many Pretenders, tho' I believe he won't suppose that there were any before the Pretender himself, that called himself the Prince of Wales; so that that is plain who is meant by the Pretender. The second part of the Description, "who now styles himself King of Great Britain," *post decessum Jacobi secundi nuper Regis Angliæ*, is not that *semper post decessum*; was not the decessum of King James the Second before the making of the Act of Parliament; and is it not the pretended Prince of Wales who, immediately *post* and *semper post decessum*, styles himself King of Great Britain, that brings it down to the Time of the Act of Parliament, and continues it to the Time of the Indictment.

Indictment laid. The *post decessum*, as it stands here, over-reaches the Act of Parliament in point of Time, goes along with it, and continues with it till the Indictment preferred.

Serjeant *Cheshire*. My Lord, the Expression in this Indictment says, who in the Life-time of King *James* the Second pretended to be the Prince of *Wales*, and after his Death pretended to be, and took upon himself the Stile and Title of King of *England*. The Expression in this Indictment says it more plain than as they would have it; the late King *James* was dead before any of the Acts of Parliament, and that which they would have us have said, is a much less Assertion, and not so proper and pertinent; for when he died before the Act of Parliament, he assumed now, (he that in the Life-time of King *James* the Second pretended to be Prince of *Wales*, he assumed now) and ever hath, the Stile and Title of King of *England*; so that we have taken in both the Times of these Acts of Parliament, in the Life-time of King *James* the Second, and after his Decease.

Mr. *Hungerford*. My Lord, I will crave Leave to offer a few Words by way of Reply. The Description in the Act of Parliament, as Mr. Attorney truly observes, consists of two Parts, (*viz.*) such a Person as in the Life of the late King *James* pretended to be Prince of *Wales*, and who, (*viz.*) at the Time of the Act, took upon himself the Title of King, &c. The Words are in the Conjunctive, and therefore, if the Description in the Indictment takes but one Part of the Description in the Act, it is an imperfect Description, and consequently the High-Treason not perfectly laid. If it had been, as Mr. Attorney seems to hint, that the Person described did *semper post decessum* of King *James*, or immediately *post* his *decessum*, take upon himself the Title of King, &c. it would have been well enough, because it would have amounted to an Averment, that the Person in the Act, and the Person in the Indictment, was the same individual Person; and for want of such a Certainty, we humbly insist, they have failed in a material Part of this Accusation.

Lord Chief Justice. This Act of Parliament makes it High-Treason only with respect to this individual Person, who is here called the pretended Prince of *Wales*: Now, if the Person hath no where any Christian Name, or Surname, must we not take Notice of the Description of him, and how he is called in almost all the Acts of Parliament? In one Act of Parliament he is called the pretended Prince of *Wales*: In the Act on which this Indictment is founded, he is called the pretended Prince of

Wales, and that now takes upon himself the Stile and Title of King of *England*: In the Abjuration Act, he is called by the Name in the Indictment; if it be the same Person, must not we take notice, this is one and the same Person? and if so, no matter which of the Names he is described by.

Mr. *Ketelby*. My Lord, I beg Leave to mention one Word more. The Act of Parliament says (any Right to the Crown of these Realms), and so it goes through in the Plural Number (hath any Right or Title to the Crown of these Realms); it relates to the Union of the two Realms of *England* and *Scotland*, and from one End to the other mentions them plurally; they have expressed it in the Indictment only in the singular Number (*hujus Regni*), and afterwards, *Innuendo, Coronam hujus Regni*.

Attorney General. The Words are *Magna Britannia*.

Mr. *Ketelby*. With Submission, the Words are, *Innuendo, jus hereditarium ad Coronam hujus Regni*, without *Magna Britannia*.

Attorney General. The Words in the Beginning of the Indictment are, *de & concernen. Coron. Magna Britannia*; you have got upon Innuendoes again.

Mr. *Ketelby*. Why if you do not like the Innuendoes; you may leave them out of the Case, and see how it will stand then; if the last Innuendo—(*jus hereditarium ad Coronam hujus Regni*) be laid aside, the Words of the Indictment will be barely, "he hath that to plead in his favour," without any thing more, and then it doth not appear, if you go thro' without the Innuendoes, that it is any Offence against the Statute.

Mr. *Hungerford*. My Lord, the Objection is this, the Act of Parliament makes it High-Treason to affirm, &c. that any Person hath a Right to the Crown of these Realms; which Expression comprehends *Great Britain* and *Ireland*; in the Indictment they have not mentioned *Ireland*, it is only *ad Coronam hujus Regni*; it is indeed *Magna Britannia* in the Beginning; though *England* and *Scotland* make one united Kingdom, *Ireland* is not included.

Attorney General. My Lord, we have done, and pray your Lordship's Judgment.

Then the Recorder passed Sentence, as usual in Cases of High-Treason; and he was executed at *Tyburn*, November 6th, 1720, aged Nineteen. I don't find he made any Speech, or left any Paper behind him.

XLV. The whole Proceedings on the Special Commissions of Oyer and Terminer and Gaol Delivery, for the County of *Sussex*, held at *Chichester*, the 16th, 17th, and 18th Days of *January*, 1748-9, before the Honourable Mr. Justice *Foster*, Mr. Baron *Clive*, and Mr. Justice *Birch*; containing the TRIALS of *William Jackson*, *William Carter*, *Benjamin Tapner*, *John Cobby*, *John Hammond*, *Richard Mills*, Sen. and *Richard Mills*, Jun. his Son, for the Murder of *William Gally* and *Daniel Chater*.

ON Monday the 16th of *January*, 1748-9, the Commission was opened, and the Commissioners Names called over, of whom were present,

His Grace the Duke of *Richmond*,
The Honourable { Mr. Justice *Foster*,
Mr. Baron *Clive*,
Mr. Justice *Birch*,
Sir *Richard Mill*,
Sir *Cecil Bishop*,
Sir *Hutchins Williams*,
John *Butler*,
Robert *Bull*, } Barts.
Esqrs.

The Grand Jury.

Sir *John Miller*, Bart. Foreman.
Sir *Mathew Fetherstonhaugh*, Bart.
Sir *Thomas Ridge*, Knt.
John *Page*,
George *Bramstone*,
William *Battine*,
John *Wicker*,
Edward *Tredcroft*,
William *Wicker*,
Samuel *Blunt*,
William *Pool*,
Peckham *Williams*,
Thomas *Bettesworth Bilson*,
Thomas *Phipps*,
William *Misford*,
James *Goble*,
John *Cheal*,
William *Leaves*,
Richard *Nash*,
Thomas *Fowler*,
William *Perkham*,
Waller *Bartlett*,
John *Hollist*, } Esqrs.

Francis *Peachey*,
John *Laker*,
William *Peachey*,
John *Pay*,
Being sworn of the Grand Jury,

Mr. Justice *Foster*, spoke to them as follows:

Gentlemen of the Grand Inquest,

It must certainly give great Satisfaction to every Man, who has a due Concern for the Peace of the Kingdom, and the Honour of his Majesty's Government, to see so numerous an Appearance of Persons of great Rank and Fortune attending the present Service. For without a vigorous, steady, and impartial Administration of Justice, the Ends of Government will be totally defeated.

And what are the Ends of Government? They undoubtedly are, the Welfare of the whole Community, and the Happiness of every single Man in it; as far as the Happiness of Individuals is consistent with the Welfare of the whole.

These are the great Ends of Government. And it is very certain they cannot be obtained without a due Execution of the Law upon Offenders of all Kinds.

And it is no inconsiderable Instance of the Wisdom of our Law, that the Opportunities of bringing Offenders to Justice are as frequent, as the Nature of the Case, in the ordinary Course of Things, seems to require. Justice is, as it were, brought home to every Man's Door twice in the Year, at the stated Returns of the Circuits.

By this Measure, two very wise and salutary Purposes are at once served. The Prosecution is ordinarily commenced and finished while Things are recent, while Facts and Circumstances are fresh in Memory, and while Witnesses may be presumed to remain under a proper Impression. And, on the other hand, the Person who is the Object of the Prosecution, hath an early Opportunity given to him of clearing up his Innocence, if it shall happen to be his Case.

It were to be wished, that these stated Seasons had been at all Times found sufficient to satisfy the Demands of publick Justice. But the History of former Times informs us, that they have not; and our own Experience convinces us, that they are not at present sufficient for that Purpose.

For what has been the Case of this, and of some of the neighbouring Counties

Countries for many, too many, Years past! Dangerous Confederacies have been form'd, for very unwarrantable, very wicked Purposes; for robbing the Publick of that Revenue which is absolutely necessary to its Support; and for defeating the fair Trader in his just Expectations of Profit. These, to mention no more, are the necessary unavoidable Consequences of the Practice, which now goes under the general Name of Smuggling.

And however Persons may palliate the Matter to themselves or others, I wish every Man who hath been directly or indirectly concern'd in this Practice, would lay his Hand on his Heart, and put this Question to himself, Wherein lies the real Difference, (I speak now of a Difference in *Foro Conscientie*) wherein lies the real Difference, between this sort of Robbery, and the Crime which usually goes under that Denomination?

But this is not all; this wicked Practice hath been supported by an armed Force: By Numbers of dissolute People assembled together, and acting in open Day-light; in Defiance of all the Law, and all the Justice of their Country; and to the Terror of his Majesty's peaceable Subjects.

And the Mischief has not ended here. In some late Instances, deliberate Murders, attended with Circumstances of great Aggravation, have been committed in consequence, as 'tis to be fear'd, of these Combinations.

These Things loudly call for the Animadversion of the Publick. They have been humbly represented to his Majesty. And his Majesty, out of his Royal Concern for the Welfare of his People, the ruling Principle which guides and animates his whole Conduct, hath been pleas'd to intrust us, with his special Commissions of Oyer and Terminer and Gaol Delivery for this County.

Our Commissions do not extend to all the Crimes which are cognizable under the general Commissions which are executed in the Circuit. They are confined to the Offences of Murder, Manslaughter, and other Felonies; and to the Accessories to those Offences: But as far as they do extend, they are just of the same Nature as the Circuit Commissions. The same Law, the same Method of Trial, and the same Rules of Evidence, are to take place in these as do in those.

Gentlemen, I shall have no occasion to enter into the several Distinctions between the Offences of Murder, and what we commonly call Manslaughter; because those Distinctions are grounded on Circumstances, which possibly may have no Place in your present Inquiry.

It is sufficient to say, that wherever it appears that the Fact was committed with any Degree of Deliberation, and especially where it is attended with Circumstances of Cruelty, the usual Distinctions between Murder and Manslaughter can never take place. The Fact is, in the Eye of the Law, wilful Murder of Malice prepense. And it involves every Person concern'd, as well those who are barely present, aiding and abetting, as those who actually commit the Fact, in the same Degree of Guilt.

For where Numbers of People engage in any felonious Design, either for Murder, Robbery, or any other Felony, every Person so engaged, and present, aiding and abetting the Fact, is consider'd as a Principal in the Felony. And the Reason the Law goes upon is this, that the Presence of every one of the Accomplices gives Countenance, Encouragement, and Security to all the rest. And consequently the Fact is considered in the Eye of the Law, and of sound Reason too, as the Act of the whole Party, tho' it be perpetrated perhaps by the Hands of one. He is consider'd as the Instrument by which the others act.

And when we say, that the Presence of a Person at the Commission of a Felony, will involve him in the Guilt of the rest, we must not confine ourselves to a strict, actual Presence, such a Presence as would make him an Eye or an Ear Witness of what passes.

For an Accomplice may be involv'd in the Guilt of the rest, tho' he may happen to be so far distant from the Scene of Action, as to be utterly out of sight or hearing of what passes.

For Instance, If several Persons agree to commit a Murder or other Felony, and each Man takes his Part: Some are appointed to commit the Fact, others to watch at a Distance, to prevent a Surprise, or to favour the Escape of those who are more immediately engaged; the Law says, that if the Felony be committed, it is the Act of all of them. For each Man operated in his Station towards the Commission of it, at one and the same Instant.

And so much doth the Law abhor Combinations of this Kind, especially where innocent Blood is shed, that a Man may, in Judgment of Law, be involv'd in the Guilt of Murder, when possibly his Heart abhorred the Thoughts of it.

For if Numbers of People assemble in Prosecution of any unlawful Design, with a Resolution to stand by each other against all Opposers, and a Murder is committed by one of the Party in Prosecution of that Design, every Man so engaged at the Time of the Murder, is, in the Eye of the Law, equally guilty with him that gave the Stroke.

Many Cases might be put which come under this Rule. I will confine myself to a few which the present Solemnity naturally suggests.

For Instance, Numbers of People assemble for the Purpose of running uncustomed Goods, or for any of the Purposes which now go under the general Term of Smuggling, with a Resolution to resist all Opposers (and the riding with Fire-Arms and other offensive Weapons is certainly an Evidence of that Resolution), Numbers of People, I say, assemble in this Manner, and for this Purpose. They are met by the Officers of the Revenue: One of the Party, in Prosecution of this unlawful Design, fires on the King's Officer, and kills him or any of his Assistants: The whole Party is, in the Eye of the Law, guilty of Murder, though their original Intention went no farther than Smuggling. For that Intention being unlawful, the killing, in Prosecution of that Intent, is Murder. And every Man engaged in it, partakes of the Guilt. The Act of one, in Prosecution of their common Engagement, is considered as the Act of all.

I will go one Step further, the Party assembled in the Manner and for the Purposes I have mentioned, is met by the King's Officers, and an Affray happens between them. During the Affray one of the Party fires at the King's Officers, but misses his Aim and kills one of his own Party, perhaps his nearest Relation or Bosom-friend (if People of that Character are capable of true Friendship), this is Murder in him, and in the whole Party too. For if a Man upon Malice against another strikes at him, and by Accident kills a third Person, the Law, as it were, transfers the Circumstance of Malice from him that was aimed at, to him that received the Blow and died by it. And consequently, in the Case I have

just put, the Person who discharged the Gun being guilty of Murder; all his Accomplices are involved in his Guilt; because the Gun was discharged in Prosecution of their common Engagement, and it is therefore considered as the Act of the whole Party.

What I have hitherto said regards those who are present in the Scene, I have mentioned, and abetting the Fact at the Time of the Commission of it. But there are others who may be involved in the same Guilt; I mean the Accessories before the Fact.

These are all People who, by Advice, Persuasion, or any other Means, procure the Fact to be done, but cannot be said, in any Sense, to be present at the actual Perpetration of it. See Vol. X. *Mat Daniel's Case*.

These Persons are involved in the Guilt, and liable in the Case of wilful Murder, to the same Punishment as the principal Offenders are.

I am very sensible, Gentlemen, that I have been something longer than I needed to have been, if I had spoken barely for your Information: But in this Place, and upon this Occasion, I thought it not improper to enlarge on some Points, that People may see, and consider in time, the infinite Hazard they run, by engaging in the wicked Combinations I have mentioned; and how suddenly and fatally they may, being so engaged, be involved in the Guilt of Murder itself, while perhaps their principal View might fall very far short of that Crime.

[After which the Bills being delivered to the Grand Jury, the Court adjourned.]

Tuesday, 17 January, 1748-9.

The Grand Jury returned the Bills found into Court, upon which Benjamin Tapner, John Cobby, John Hammond, William Jackson, Richard Mills the elder, Richard Mills the younger, and William Carter, were set to the Bar, and arraigned upon an Indictment for the Murder of Daniel Chater; the three first named as Principals in the Murder, and the four last as Accessories before the Fact.

The Indictment sets forth in Substance, That Benjamin Tapner, John Cobby, and John Hammond, together with Thomas Stringer and Daniel Perryer, not yet taken, not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, upon the 19th Day of February, in the twenty-first Year of his present Majesty's Reign, with Force and Arms at the Parish of Harting, in the County of Sussex, in and upon one Daniel Chater, being then and there in the Peace of God and his said Majesty, feloniously, wilfully, and out of their Malice aforethought, did make an Assault; and that he the said Benjamin Tapner, a certain Cord or Rope made of Hemp, of the Value of Sixpence, which he the said Benjamin Tapner had then and there in his Hands, about the Neck of him the said Daniel Chater, then and there with Force and Arms, feloniously, wilfully, and out of his Malice aforethought, did put, bind, and fasten; and that he the said Benjamin Tapner, with the Rope aforesaid by him, about the Neck of the said Chater, so put, bound, and fastened as aforesaid, him the said Chater, then and there with Force and Arms, feloniously, wilfully, and out of his Malice aforethought, did choak and strangle, of which said choaking and strangling of him the said Chater, in Manner aforesaid, he the said Chater did then and there instantly die. And that they the said John Cobby, John Hammond, &c. at the Time of the Felony and Murder aforesaid, by him the said Benjamin Tapner, so feloniously, wilfully, and out of his Malice aforethought, done, perpetrated, and committed, as aforesaid, then and there feloniously, wilfully, and out of their Malice aforethought, were present, aiding, abetting, comforting, assisting, and maintaining the said Benjamin Tapner, the said Daniel Chater in Manner and Form aforesaid, feloniously, wilfully, and out of his Malice aforethought, to kill and murder. And so that the said Benjamin Tapner, John Cobby, John Hammond, Stringer and Perryer, the said Daniel Chater in Manner and Form aforesaid, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, did kill and murder, against his Majesty's Peace, his Crown and Dignity. Further sets forth, That Richard Mills the elder, Richard Mills the younger, William Jackson, and William Carter, together with John Mills, Thomas Willis, and Edmund Richards, not yet taken, before the Felony and Murder aforesaid, by them the said Benjamin Tapner, John Cobby, John Hammond, Stringer and Perryer, in Manner and Form aforesaid, feloniously, wilfully, and out of their Malice aforethought, done, perpetrated, and committed, (to wit) upon the said 19th Day of February, in the twenty-first Year aforesaid, at the Parish of Harting aforesaid, in the County of Sussex aforesaid, them the said Benjamin Tapner, John Cobby, John Hammond, Stringer and Perryer, the Felony and Murder aforesaid, in Manner and Form aforesaid, feloniously, wilfully, maliciously, and out of their Malice aforethought to do, perpetrate, and commit, feloniously, wilfully, and out of their Malice aforethought, did incite, move, instigate, stir up, counsel, persuade, and procure, against his Majesty's Peace, his Crown and Dignity.

[To which Indictment they severally pleaded Not Guilty.]

William Jackson and William Carter were also arraigned upon another Indictment, as Principals in the Murder of William Gally, otherwise called William Galley.

The Indictment sets forth in Substance, That William Jackson and William Carter, (together with Samuel Downer, alias Heward, alias Little Sam, Edmund Richards and Henry Sheerman, alias Little Harry, not yet taken), not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, upon the 15th of February, in the twenty-first Year of his present Majesty's Reign, with Force and Arms, at Rowland's Castle in the County of Southampton, in and upon one William Gally, otherwise called William Galley, being then and there in the Peace of God and his said Majesty, feloniously, wilfully, and out of their Malice aforethought, did make an Assault, and him the said William Gally, upon the Back of a certain Horse, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, did put and fet, and the Legs of him the said William Gally, being so put and set upon the Back of the said Horse as aforesaid, with a certain Rope or Cord made of Hemp, under the Belly of the said Horse, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, did bind, tie, and fasten; and him the said William Gally, being so put and set upon Horseback as aforesaid, with his Legs so bound, tied, and fastened under the Horse's Belly as aforesaid, with certain large Whips, which they had then and there in their right Hands, in and upon the Head, Face, Neck, Shoulders, Arms, Back, Belly, Sides,

Sides, and several other Parts of the Body of him the said William Gally, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, for the Space of one Mile, did whip, lash, beat, and strike; by reason whereof, the said William Gally was then and there very much wounded, bruised, and hurt; and not being able to endure or bear the Misery, Pain, and Anguish, occasioned by his having been so whipped, lashed, beat, and struck as aforesaid; and by his being so wounded, bruised, and hurt as aforesaid, then and there dropped down the left Side of the said Horse, on which he then and there rode, with his Head under the Horse's Belly, and his Legs and Feet across the Saddle upon the Back of the said Horse, upon which they the said Jackson, Carter, Downer, Richards, and Sheerman, then and there untied the Legs of the said William Gally, and him the said Gally, in and upon the same Horse, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, did again put and set, and the Legs of him the said Gally being again so put and set upon the said Horse as last aforesaid, with the same Rope or Cord under the Belly of the said Horse; they then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, under the Horse's Belly, did again bind, tie, and fasten; and him the said Gally, being again so put and set upon the said Horse as last aforesaid, with his Legs so bound, tied, and fastened under the Horse's Belly, as last aforesaid, with the said Whips which they had then and there in their Right Hands as aforesaid, in and upon the Head, Face, Neck, Arms, Shoulders, Back, Belly, Sides, and several other Parts of the Body of him the said William Gally, they then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, for the Space of half a Mile further, did again whip, lash, beat, and strike; by reason whereof he the said William Gally was then and there much more wounded, bruised, and hurt; and not being able to endure or bear the Misery, Pain, and Anguish, occasioned by his having been so whipped, lashed, beat, and struck, in Manner as aforesaid; and by his being so wounded, bruised, and hurt, in Manner as aforesaid, did then and there drop a second Time from off the said Horse, with his Head under the Horse's Belly, and his Legs and Feet across the Saddle. Upon which they, the said Jackson, Carter, Downer, Richards, and Sheerman, then and there again untied the Legs of him the said William Gally, and him, in and upon another Horse, behind a certain other Person, did then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, put and set; and the said William Gally, being so put and set upon Horseback, as last aforesaid, with the same Whips which they had then and there in their Right Hands as aforesaid, in and upon the Head, Face, Neck, Arms, Shoulders, Back, Belly, Sides, and several other Parts of the Body of the said William Gally, did then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, for the Space of two Miles further, until they came into the Parish of Harting, in the County of Sussex aforesaid, again whip, lash, beat, and strike, by reason whereof the said William Gally was then and there much more wounded, bruised, and hurt; and not being able to endure or bear the Misery, Pain, and Anguish, occasioned by his having been so wounded, bruised, and hurt, in manner as aforesaid, then and there in the Parish of Harting aforesaid, got off the said Horse; upon which they the said Jackson, Carter, Downer, Richards, and Sheerman, him the said William Gally, in and upon another Horse, whereon the said Edmund Richards then and there rode with the Belly of him the said William Gally across the Pommel of the Saddle, on which the said Richards then and there rode, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, did put and lay; but before they had gone the Space of eighty Yards further, the said William Gally not being able to bear the Motion of the said Horse, on which he was so put and laid as last aforesaid, by reason of his having been so whipped, lashed, beat, and struck as aforesaid; and by reason of his being so wounded, bruised, and hurt, in manner as aforesaid, then and there tumbled off the said Horse, and fell upon the Ground in the common Highway there, by which Fall he the said William Gally was then and there much more wounded, bruised, and hurt; whereupon they the said Jackson, Carter, Downer, Richards and Sheerman, him the said William Gally, in and upon another Horse by himself, then and there with Force and Arms, feloniously, wilfully, and out of their Malice aforethought, did put and set; but the said Gally not being able to sit upright upon the said last-mentioned Horse, he the said Sheerman, otherwise Little Harry, did then and there get up upon the same Horse, behind him the said Gally, in order to hold him on; but after they the said Jackson, Carter, Downer, Richards and Sheerman, and the said Gally had rode on a Quarter of a Mile further together, in manner aforesaid, he the said William Gally, not being able to sit upon the said Horse, or ride any further upon the same, through the great Misery, Pain, and Anguish, occasioned by his having been so whipped, lashed, beat, and struck, as aforesaid, and by his being so wounded, bruised and hurt, in manner as aforesaid, then and there tumbled off the said Horse, on which he was so put and set as last aforesaid, and again fell to the Ground; and as he so tumbled and fell, the said Henry Sheerman, otherwise Little Harry, who rode behind the said Gally, and upon the same Horse with him, in manner aforesaid, then and there with Force and Arms, feloniously, wilfully, and out of his Malice aforethought, gave to him the said Gally a most violent Thrust and Push; by Reason whereof, the said Gally then and there fell, with much more Weight and Force to the Ground, than otherwise he would have done; and was thereby then and there much more wounded, bruised, and hurt. And that by reason of the said binding, tying, and fastening, of him the said William Gally, by them the said Jackson, Carter, Downer, Richards and Sheerman, in Manner and Form aforesaid; and of the whipping, lashing, beating, and striking, of him the said Gally, by them, in Manner and Form aforesaid; and of the several Wounds, Bruises, and Hurts, which he the said William Gally received, from such whipping, lashing, beating, and striking, in Manner aforesaid, and other Wounds, Bruises, and Hurts, which he the said William Gally so received from the several Falls, which he so had from off the said several Horses, on which he was so by them put, set, and laid, in Manner and Form aforesaid; and of the said Thrust and Push, which he the said Henry Sheerman, otherwise Little Harry, so as aforesaid, gave him the said Gally, as he the said Gally so tumbled and fell

from off the said Horse, as last aforesaid, he the said William Gally, at the Parish of Harting aforesaid, in the County of Sussex aforesaid, did instantly die. And further, That they the said William Jackson, William Carter, Samuel Downer, alias Howard, alias Little Sam, Edmund Richards, and Henry Sheerman, alias Little Harry, him the said William Gally, with Force and Arms, in Manner and Form aforesaid, feloniously, wilfully, and out of their Malice aforethought, did Kill and Murder, against his Majesty's Peace, his Crown and Dignity.

Petty Jury.

John Burnard, Foreman, Henry Halsted, John Shutter,
William Faulkner, John Woods, Thomas Sturt,
Richard North, John Hipkin, William Poole,
William Halsted, William Hobbs, Christopher Wilson.

The Counsel for the Crown, were Mr. Banks, Mr. Smith, Mr. Purcell, Mr. Burrell, and Mr. Steele.

Mr. Justice Foster, before the Jury were sworn, acquainted the Prisoners they might each of them challenge twenty of the Pannel, without shewing Cause; but if they challenged more, they must shew a reasonable Cause for so doing; and that if they agreed to join in their Challenges they might be tried together, but if they did not, they would be tried separately; and left them to act in that behalf, as they should see proper.

The Prisoners consulted among themselves, and agreed to join and be tried together. And then the Jury being sworn, and charged by the Clerk of the Arraignments,

Mr. Steele opened the Indictment against the seven Prisoners, for the Murder of Daniel Chater. After which,

Mr. Banks, the King's Counsel, spoke as follows, viz. This is an Indictment against the seven Prisoners at the Bar, for the Murder of Daniel Chater. It is against the three first, viz. Benjamin Tapner, John Cobby, and John Hammond, as Principals in that Murder, by being present, aiding, abetting and assisting therein; and against Thomas Stringer, and Daniel Perryer, as Principals also, and who are not yet apprehended. And it is against the four last Prisoners, viz. William Jackson, William Carter, Richard Mills the elder, and Richard Mills the younger, as Accessories before the Murder; and also against three others as Accessories before the Fact, viz. John Mills, another Son of Richard Mills the elder, Thomas Willis, and Edmund Richards, not yet taken and brought to Justice.

Although this Indictment hath made a Distinction between the several Prisoners, and divided them into two Classes, of Principals and Accessories; yet the Law makes no Distinction in the Crime. And in case all the Prisoners are guilty of the Charge in this Indictment, they will be all equally liable to the same Judgment and Punishment.

In the outset of this Trial I shall not enlarge upon the Heinousness of Murder in general; nor shall I dwell upon those many Circumstances of Aggravation, attending this Murder in particular. When I come to mention those aggravating Circumstances of Cruelty and Barbarity, in the course of this Trial, I doubt not but they will have all that Effect upon the Gentlemen of the Jury, which they ought to have; to awaken and fix your Attention to every Part of this bloody Transaction; and to balance that Compassion which you feel for the Prisoners, though they felt none for others. The Effect I mean these Circumstances should and ought to have, is, to clear the way for that Justice, which the Nation expects and calls for from your Determination and Verdict.

To comply with this general Demand of Justice upon the Prisoners, his Majesty (ever attentive to the Good and Welfare of the Kingdom, the Preservation of his Subjects, the Protection of the Innocent, and the Punishment of the Guilty,) in order to give the Prisoners the earliest Opportunity of proving their Innocence, and of wiping off this foul Suspicion of Murder they now lie under; or if guilty of a Breach of the Laws of God and Man, that they may suffer the Punishment due to their Guilt; his Majesty has been pleased by a Special Commission, to appoint this Trial to be before their Lordships, not less knowing in the Laws, than tender and compassionate in the Execution thereof.

I cannot here omit taking notice of the unhappy Cause of this fatal Effect, now under your Consideration. Every one here present, will in his own Thoughts anticipate my Words; and knows, I mean Smuggling. Smuggling is not only highly injurious to Trade, a Violation of the Laws, and the Disturber of the Peace and Quiet of all the Maritime Counties in the Kingdom; But it is a Nursery of all Sorts of Vice and Wickedness; a Temptation to commit Offences at first unthought-of; an Encouragement to perpetrate the blackest of Crimes without Provocation or Remorse; and is in general productive of Cruelty, Robbery, and Murder.

It is greatly to be wished, both for the Sake of the Smugglers themselves, and for the Peace of this County, that the dangerous and armed manner now used of running uncustomed Goods, was less known, and less practised here.

It is a melancholy Consideration to observe, that the best and wisest Measures of Government, calculated to put a Stop to this growing Mischief, have been perverted and abused to the worst of Purposes. And what was intended to be a Cure to this Disorder, has been made the Means to increase and heighten the Disease.

Every Expedient of Lenity and Mercy was at first made use of, to reclaim this abandoned Set of Men. His Majesty, by repeated Proclamations of Pardon, invited them to their Duty and to their own Safety. But instead of laying hold of so gracious an Offer, they have set the Laws at Defiance, have made the Execution of Justice dangerous in the Hands of Magistracy, and have become almost a Terror to Government itself.

The Number of the Prisoners at the Bar, and of others involved in the Suspicion of the same Guilt, the Variety of Circumstances attending this whole Transaction, the Length of Time in the Completion thereof, and the general Expectation of Mankind to be informed of every minute Circumstance leading and tending to finish this Scene of Horror, will necessarily lay me under an Obligation of taking up more Time, than will be either agreeable to the Court, or to myself.

To avoid Confusion in stating such a Variety of Facts, with the Evidence and Proofs thereof; and to fix and guide the Attention of the Gentlemen

Gentlemen of the Jury to the several particular Parts of this bloody Tragedy, at last completed in the Murder of *Chater*; I shall divide the Facts into four distinct Periods of Time.

1st. What happened precedent to *Chater's* coming to a publick House, the Sign of the *White Hart*, at *Rowland's Castle*, in *Hampshire*, kept by *Elizabeth Paine*, Widow, upon Sunday the 14th of February, 1747-8.

And this Period of Time will take in the Occasion and Grounds of the Prisoners wicked Malice to the Deceased, and the Cause and Motive to his Murder.

2^d. What happened after *Chater's* Arrival at the Widow *Paine's*, to the Time of his being carried away from thence by some of the Prisoners, to the House of *Richard Mills* the elder, at *Trotten* in *Suffex*.

This will disclose a Scene of Cruelty and Barbarity, previous to *Chater's* Murder; and shew how active and instrumental the Prisoners *Jackson* and *Carter* were therein.

3^d. What happened after *Chater* was brought to the House of *Richard Mills* the elder, to the Time of his Murder, upon Wednesday Night the 17th of that February.

This will take in that barbarous Usage of *Chater* at *Mills's* House; a Consultation of sixteen Smugglers in what Manner to dispose of *Chater*, and their unanimous Resolution to murder him; and will shew *Tapner*, *Cobby*, and *Hammond*, to be Principals therein; and the other four Prisoners to be Accessaries.

4th. And last Period takes in the Discovery of *Chater's* Body in a Well, where he was hung, with the Proofs that it was the Body of *Chater*.

In the opening of this Case, it will be impossible for me to avoid the frequent Mention of one *William Gally*, also suspected to have been murdered; and for whose Murder, two of the Prisoners, viz. *Jackson* and *Carter*, are indicted, and are to be tried upon another Indictment.

But the Murder of *Gally* is not the Object of your present Consideration, nor do I mention his Name, either to aggravate this Crime, by taking Notice of his Murder also; nor to inflame the Jury against the Prisoners at the Bar. But I do it for the Sake of Method, and for the Purpose only of laying the whole Case before the Jury; for the Story of *Chater's* Murder cannot be told, without disclosing also what happened to *Gally*, his Companion and Fellow-sufferer.

To begin with the first Period of Time. Some-time in September 1747, a large Quantity of uncustomed Tea had been duly seized by one Captain *Jackson*, out of a Smuggling Cutter, and by him lodged in the Custom-house of *Poole*, in the County of *Dorset*.

In the Night of the sixth of October following, the Custom-house of *Poole* was broke open by a numerous and armed Gang of Smugglers; and the Tea which had been seized and there lodged, was by them taken and carried away.

This Body of Smugglers, in their Return from *Poole*, passed through *Fordingbridge*, in *Hants*; where *Dimer*, one of that Company, was seen and known by *Chater*. *Dimer* was afterwards taken up, upon Suspicion of being one of those who had broke open the Custom-house of *Poole*, and was in Custody at *Chichester* for further Examination, and for further Proof that he was one of that Gang.

And in order to prove the Identity of *Dimer*, and that he was one of that Gang, *Daniel Chater*, a Shoemaker at *Fordingbridge*, (the Person murdered) was sent in Company with, and under the Care of *William Gally*, a Tidewaiter of *Southampton*, by Mr. *Sheerer*, Collector of the Customs there, with a Letter to Major *Battine*, a Justice of Peace for *Suffex*, and Surveyor-General of the Customs for that County. Sunday Morning, the 14th of February, 1747-8, *Gally* and *Chater* set out from *Southampton*, with Mr. *Sheerer's* Letter, on their Journey to Major *Battine's* House, at *East-Marden*, in the Neighbourhood of *Chichester*.

At the New Inn at *Leigh*, in *Havant* Parish in *Hants*, *Chater* and *Gally* met with *Robert Jenkes*, *George Austen*, and *Thomas Austen*, and having shewed them the Direction of the Letter to Major *Battine*, they told them they were going towards *Stanstead*, where *Chater* and *Gally* were informed Major *Battine* then was; and said they would go with them, and shew them the Road. Their direct Way to *Stanstead* lay near to *Rowland's Castle*; but *Jenkes* and the two *Austens* carried them to *Rowland's Castle*, that Sunday about Noon; where this cruel Plot was first contrived, and in part carried into Execution.

The Malice conceived by the Prisoners against *Chater*, from what I have already mentioned, appears not to have arisen from any Injury or Suspicion of Injury done by the deceased to the Prisoners; but because *Chater* dared to give Information against a Smuggler, and to do his Duty in assisting to bring a notorious and desperate Offender to Justice, he was to be treated with the utmost Cruelty, his Person was to be tortured, and his Life at last destroyed. What avail the Laws of Society, where no Man dares to carry them into Execution? Where is the Protection of Liberty and Life, if Criminals assume to themselves a Power of restraining the one, and destroying the other?

Having mentioned the Motive of the Prisoners to this Murder, I shall now open to you (what I proposed in the second Period of Time) a Scene of Cruelty and Barbarity, tending to the Murder of *Chater*, begun at *Rowland's Castle*, by the two Prisoners *Jackson* and *Carter*, in Company with others; and from thence continued, until *Chater* was brought to the House of *Richard Mills* the elder, at *Trotten*, upon Monday Morning the 15th of February, before it was light.

And here you will observe, how cruelly and wickedly in general the Gang assembled at *Rowland's Castle* behaved; and in particular how active *Jackson* and *Carter* appeared in every Step of this fatal Conspiracy.

Soon after *Chater* and *Gally*, and the three others, had arrived at *Rowland's Castle*, the Widow *Paine* suspected *Chater* and *Gally* intended some Mischief against the Smugglers; and for that Purpose enquired of *George Austen* who the two Strangers were, and what their Business was? He privately informed her, they were going to Major *Battine* with a Letter. She desired he would either direct the two Strangers to go a different Way from Major *Battine's*, or would detain them a short Time at her House, until she could send for *Jackson*, *Carter*, and others. And she immediately sent her Son *William* for the Prisoner *Jackson*; and soon afterwards ordered her other Son *Edmund* to summon the other Prisoners, *Carter*, *Edmund Richards*, *Samuel Herward*, *Henry Sheerman*, *William Steel*, and *John Raifs*,

who all lived near *Rowland's Castle*; and accordingly they all came; as also did *Jackson's* and *Carter's* Wives. They were immediately informed by the Widow *Paine* of what she suspected, and had been informed concerning the two Strangers. *Jackson* and *Carter* being very desirous of seeing the Letter to Major *Battine*, got *Chater* out of the House, and endeavoured to persuade him to let them see the Letter, and to inform them of the Errand to Major *Battine*. But upon *Gally's* coming out to them, and interposing to prevent *Chater's* making any Discovery, they quarrelled with *Gally*, and beat him to the Ground; *Gally* complained of this ill Usage, and said he was the King's Officer, and to convince them, shewed his Deputation.

Chater and *Gally* were very uneasy at this Treatment, and wanted to be gone; but the Gang insisted upon their staying; and in order to secure and get them entirely into their own Power, they plied them with strong Liquors, and made them drunk, and then carried them into another Room to sleep.

During the two Hours *Chater* and *Gally* slept, the Letter was taken out of *Chater's* Pocket; whereby it appeared that *Chater* was going to give Information against *Dimer*. The Secret being thus disclosed to the Gang, the next thing to be considered of by the Smugglers, was how to save their Accomplice *Dimer*, and to punish *Chater* and *Gally*, for daring to give Information against him. For that Purpose, whilst *Chater* and *Gally* were asleep, several Consultations were held.

It was first proposed secretly to convey *Chater* and *Gally* into *France*; at that Time at War with *England*.

The second Scheme was, for all present to contribute Three-Pence a Week for the Maintenance of *Chater* and *Gally*, who were to be confined in some private Place, and there subsisted until *Dimer* should be tried. And as *Dimer* was done unto, so *Chater* and *Gally* were to be dealt with.

The third and last Proposal was, to murder both.

With a View and Intention to execute this last, and the most cruel Proposal, *Jackson* went into the Room about Seven of that Evening, where *Chater* and *Gally* lay asleep, and awaked them. They both came out very bloody, and cut in their Faces; but by what Means, or what *Jackson* had there done to them, does not appear. They were immediately afterwards forced out of the House by *Jackson* and *Carter*; the others present and consenting and assisting: *Richards*, one of the Company, with a cocked Pistol in his Hand, swore he would shoot any Person through the Head, who should make the least Discovery of what had passed there.

Chater and *Gally* were put upon one Horse; and, to prevent their Escape, their Legs were tied under the Horse's Belly; and both their Legs tied together; and the Horse was led by *William Steel*. After they had been thus carried about an hundred Yards from *Rowland's Castle*, *Jackson* cried out to *Carter* and the Company, Lick them, damn them, cut them, slash them, whip them. Upon which they whipped and beat them over their Heads, Faces, Shoulders, and other Parts of their Bodies, for the Space of a Mile. With this cruel Treatment, they both fell down under the Horse's Belly, with their Heads dragging upon the Ground. They were again put upon the Horse, and tied as before, and whipped and beat with the like Severity along the Road for about another Mile. And when they cried out through the Agony of their Pain, Pistols were held to their Heads, and they were threatened to be shot, if they made the least Noise or Cry. Being unable to endure this continued and exquisite Pain, and to sit on Horse-back any longer, they fell a second Time to the Ground. By this inhuman Usage, they were rendered incapable of supporting themselves any longer on Horseback. *Gally* was afterwards carried behind *Steel*, and *Chater* behind *Heward*. The Prisoners, *Jackson* and *Carter*, with the rest of the Company, still continued their merciless Treatment of *Chater* and *Gally*; but instead of whipping, they now began to beat them on their Heads and Faces, with the Butt End of their Whips, loaded with Lead. When they came to *Lady Holt Park* in *Suffex*, *Gally* almost expiring with the Torture he had underwent, got down from behind *Steel*; and it was proposed to throw him alive into a Well adjoining to that Park; in which Well *Chater* was three Days after hanged by the same Gang. *Gally* was then thrown across the Pommel of the Saddle, and carried before *Richards*. He was afterwards laid along alone upon a Horse, and supported by *Jackson*, who walked by him; and was at last carried before *Sheerman*, who supported him by a Cord tied round his Breast. When they came to a Lane called *Conduit Lane*, in *Rogate* Parish in this County, *Gally*, in the Extremity of Anguish, cried out, *I shall fall, I shall fall*. Upon which *Sheerman* swore, *Damn you, if you will fall, do then*; and as *Gally* was falling he gave him a Thrust to the Ground; after which *Gally* was never seen to move, or heard to speak more.

Jackson, *Carter*, and the others, in order to prevent a Discovery of the Murder of *Gally*, went about one of the Clock on the Monday Morning to the *Red Lion* at *Rake*, in *Suffex*, a Publick-house kept by *William Scardefield*, whither they carried *Chater* all over Blood, and with his Eyes almost beat out; and also brought the Body of *Gally*. They obliged *Scardefield* to shew them a proper Place for the Burial of *Gally*; and accordingly he went with *Carter*, *Heward*, and *Steel*, to an old Fox Earth, on the Side of a Hill near *Rake*, at a Place called *Harting Combe*, where they dug a Hole, and buried *Gally*.

The same Morning, and long before it was light, whilst some were employed in the Burial of *Gally*, *Jackson* and *Sheerman* carried *Chater* to the House of *Richard Mills* the elder, at *Trotten*.

I am now come to the third Period of Time; from *Chater's* Arrival at the House of *Richard Mills* the elder, to his Murder upon Wednesday Night the 17th of February.

And here it is, that *Richard Mills* the elder, first appears to be privy, and consenting to the intended Murder of *Chater*. A private House was thought much more proper and safe for the Confinement of *Chater*, than a Publick-house, at all Times open to every Man; and therefore *Chater* was to be removed from *Scardefield's*. The Prisoners and their Companions being no Strangers to old *Mills*, but his intimate Acquaintance, and Confederates in Smuggling, where could *Chater* be so secretly imprisoned, as at the Private-house of the elder *Mills*? And where could he be more securely guarded, than under the Roof of one of their own Gang? With these Hopes and Reliance, and in full Confidence of the Secrecy and Assistance of old *Mills*, *Chater* was brought to his House by *Jackson* and *Sheerman*;

Sheerman; when they came there, they told old *Mills* they had got a Prisoner; he must get up, and let them in. Old *Mills* got up, and received *Chater* his Prisoner; whose Face was then a Gore of Blood, many of his Teeth beat out, his Eyes swollen, and his almost destroyed. I shall here omit one or two particular Circumstances, which the Witnesses will give an Account of; which shew that old *Mills* also was void of all Tenderness and Compassion.

Chater was received by him as a Prisoner, and a Criminal; and therefore was to be treated as such. Old *Mills*'s House itself, was thought too good a Prison for him; and therefore he was soon dragged into a Skeeling or Out-house, adjoining to the House; wherein Lumber and Fuel were kept. And though *Chater* was in so weak and deplorable a Condition, as to be scarce able to stand; yet to prevent all Chance and Possibility of his Escape, he was chained by the Leg with an Iron Chain, fastened to a Beam of the Out-house. He was guarded Night and Day; sometimes by *Sheerman*, and sometimes by *Heward*, who came there that Monday Evening. Thus he continued in Chains, until he was loosened for his Execution. But lest he should die for want of Sustenance, and disappoint their wicked Designs; he was to be fed, and just kept alive, until the Time and Manner of his Death was determined. During the whole Time of this Imprisonment, old *Mills* was at home, and in his Business as usual. He betrayed not the Trust reposed in him; he acquainted nobody with what had happened, nor with whom he was intrusted; but like a Gaoler, took care to produce his Prisoner for Execution.

On Wednesday the 17th of February, there was a general Summons of all the Smugglers then in the Neighbourhood of *Scardefield*'s House, who had been concerned in breaking open the Custom-House at *Peole*, to meet that Day at *Scardefield*'s. Upon which Notice, all the Prisoners (except old *Mills*) came that Day to *Scardefield*'s. And there were also present, *John Mills*, another Son of old *Mills*, *Edmund Richards*, *Thomas Willis*, *Thomas Stringer*, *Daniel Parryer*, *William Steel* and *John Ruffs*; *Heward* and *Sheerman* still continuing at old *Mills*'s, and there guarding *Chater*. It was at this Consultation at *Scardefield*'s, unanimously agreed by all present, that *Chater* should be murdered.

This was a deliberate, serious, and determinate Act, of Minors wickedly and cruelly disposed, and executed with all the imaginable Circumstances of Barbarity.

At this Meeting *Tapner*, *Cobby*, and *Hammond* were first concerned in, and became privy and consenting to this Murder. And there also *Richard Mills* the younger, first became an Accessary to this Murder: But he was so eager in the Pursuit of it, that he particularly advised and recommended it; and said, he would go with them to the Execution, but he had no Horse. And when he was told, that the old Man (meaning *Chater*) was carried by a steep Place in the Road to *Rake*, he said—"If I had been there, I should have called a Council of War, and he should have come no farther."

About Eight of the Clock of that Wednesday Evening, all who were present at the Consultation at *Scardefield*'s (except *Richard Mills* the younger, *John Mills*, and *Thomas Willis*) went from *Scardefield*'s to the House of old *Mills*, where they found *Chater* chained, and guarded by *Heward* and *Sheerman*.

They told him he must die, and ordered him to say his Prayers. And whilst he was upon his Knees, at Prayers, *Cobby* kicked him; and *Tapner*, impatient of *Chater*'s Blood, pulled out a large Clasp-knife, and swore he would be his Butcher, and cut him twice or thrice down the Face, and across his Eyes and Nose. But old *Mills*, in hopes of avoiding the Punishment due to his Guilt, by shifting *Chater*'s Execution to another Place, said,—"Don't murder him here, but carry him somewhere else first."

He was then loosened from his Chains, and was by all the Prisoners (except *Mills* the Father and the Son), and by all the Gang that came from *Scardefield*'s, carried back to that Well, wherein *Gally* had before been threatened to be thrown alive. *Jackson* and *Carter* left the Company some small Distance before the others came to the Well; but described the Well to be fenced round with Pales, and directed them where to find it; and said, We have done our Parts, meaning, we have murdered *Gally*. And you shall do your Parts, meaning, you shall murder *Chater*.

Tapner, in order to make good what he had before said (and happy had it been for him, had he shewn more Regard to his Actions and less to his Words), after *Chater* had been forced over the Pales which fenced the Well, pulled a Rope out of his Pocket, put it about *Chater*'s Neck, fastened the other End to the Pales, and there he hung *Chater* in the Well until he was dead.

But soon after the Body was let loose, and had fallen to the Bottom of this Well, which was dry, one of the Accomplices imagined he heard *Chater* breathe, and that there were still some Remains of Life in him.

To put an End to a Life so miserable and wretched, they threw Pales and Stones upon him. This was the only Act, that had any Appearance of Mercy and Compassion; and it brings to my Remembrance the Saying of the wisest of Men, fully verified in this fatal Instance of *Chater*'s Murder—*The Mercies of the Wicked are Cruelty*.

I am now come to the fourth and last Period of Time.

And here it is observable, that although Providence had for many Months permitted this Murder to remain undiscovered, yet it was then disclosed and brought to light, when the appointed Time was come, and an Opportunity given, to apprehend and bring to Justice many of the principal Offenders.

Upon the 17th of September last, Search was made in pursuance of Information given, for the Body of *Chater*. And the Body was found with a Rope about its Neck, covered with Pales, Stones, and Earth, in that Well I before mentioned, close by Lady *Holt* Park, in a Wood called *Harrafs-Wood*, belonging to Mr. *Carryll*.

By the Length of Time, from February to September, the Body was too much emaciated to be known with any Certainty. But by his Boots, Cloaths, and Belt, there also found, it evidently appeared to be the Body of the unfortunate *Chater*.

I have now opened to you the Substance of all the most material Facts; and should the Proofs support the Truth of those Facts, no Man can doubt the Consequence thereof, that *Chater* was murdered, and that the Prisoners were his Murderers.

Mr. *Smyth*, another of the King's Counsel, also spoke as follows, viz. May it please your Lordships and Gentlemen of the Jury, I am likewise of

Counsel against the Prisoners at the Bar, three of whom are indicted as Principals for the Murder of *Daniel Chater*, the other four as Accessaries before the Fact to that Murder.

The Crime they are charged with is one of the greatest that can be committed against the Laws of God and Man; and in this particular Case attended with the most aggravating Circumstances.

It was not done in the Heat of Passion, and on Provocation, but in cold Blood, deliberately, on the fullest Consideration, in the most cruel Manner, and without any Provocation. The Occasion being as you have heard, only because he dared to speak the Truth, he had seen *Dimer* passing through *Fordingbridge*, and had made Oath of it before a Magistrate; being required so to do.

This Prosecution therefore is of the utmost Importance to the public Justice of the Nation, and to the Safety and Security of every Person; not only in this County, but in the Kingdom; for if such Offenders should escape with Impunity, the Consequence would be, that no Crime could be punished. It would teach Highwaymen, Housebreakers, and all other Criminals, to imitate in the Manner those Men have done, and whoever received Injuries from them, would not dare complain, or take any Steps towards bringing them to Justice, for fear of exposing themselves to the Resentment and Revenge of their Companions.

Our Constitution, therefore, which must be supported by a regular Administration of Justice, and a due Execution of our Laws, depends in some Measure, on bringing such Offenders to condign Punishment; and 'tis to be hoped a few Examples of this Kind will restore the Peace and Tranquillity of this Country.

In shortly stating the Facts, I shall endeavour to point out to you the Share, which every one of the Persons at the Bar had in this Murder.

In October 1747, the Custom-House at *Peole* was broke open; the Smugglers who did it, in their Return passed through *Fordingbridge*, a Town in *Hampshire*, where *Chater* saw *Dimer* among them; and having declared so, was obliged to make Oath of it before a Magistrate; on which Information *Dimer* was taken up and committed to *Chichester* Goal for further Examination; and on the 14th of February, *Chater* was sent by the Collector of *Southampton*, in Company with *Gally*, with a Letter to Mr. *Battine*, Surveyor-General of the Customs, in order that *Chater* might see if the Man in *Chichester* Goal was the same Person he saw at *Fordingbridge*.

These two Men having enquired their Way at the New Inn at *Leigh*, one *Jenkes* undertook to direct them, and carried them to the Widow *Paine*'s at *Rouland*'s Castle, who saying she feared they were going to do the Smugglers some Mischief, sent for *Carter* and *Jackson*, *Steel*, *Ruffs*, *Richards*, *Sheerman*, and *Heward*, who having made *Chater* and *Gally* drunk, and seen the Letter to Mr. *Battine*, consulted what to do with them. Some proposed to murder them, others to send them Prisoners to *France*, and others to confine them, till they saw what became of *Dimer*; and to treat them as he was dealt with.

Carter and *Jackson* having sent *Jenkes* away, this poor Man and *Gally* were left absolutely in the Power of them and the other Smugglers; and indeed into worse Hands he could not have fallen: had he been taken Prisoner in Battle by our Enemies, he would have had Quarter, and been treated with Humanity: had he fallen into the Hands of Enemies of those Nations who give no Quarter, his Lot would have been immediate Death: but as it was his hard Fate to fall into the Hands of Smugglers, he was to have neither Quarter or immediate Death, but was referred to suffer the most cruel Usage for several Days, and afterwards murdered.

These poor Wretches, after having been beat and abused at *Paine*'s by *Carter* and *Jackson*, and the rest of the Gang, were carried away by Force, both set on one Horse, with their Legs tied under the Horse's Belly, and whipp'd and beat by Direction of *Carter* and *Jackson*, till they fell; then were let up again in the same Manner, and whipp'd and beat again till they fell a second time; and were then set on separate Horses, and used in the same Manner, till *Gally* had the good Fortune to be delivered by Death from their Cruelty; after which they carried *Chater*, who was bloody and mangled with the blows and Falls he had received, to *Scardefield*'s, at the Red Lion at *Raikes*, who observed *Jackson*'s Coat and Hands to be bloody; and while *Carter* and the rest buried *Gally*, *Jackson* and *Sheerman* carried *Chater* to old *Mills*'s in the Night, between the 14th and 15th of February, where he was chained by the Leg in the Skeeling, or Out-house, till the Wednesday Night following, and *Sheerman* and *Heward* guarded him.

Imagine to yourselves the Condition of this unhappy Man, certain to die by their Hands, uncertain only as to the Time, and the cruel Manner of it; suffering for three Days and three Nights, Pain, Cold, and Hunger; and what was infinitely worse, that Terror and Anxiety of Mind, which one in his Situation must continually labour under; he must doubtless envy the Condition of his Companion *Gally*, who by an early Death was delivered from the Misery he then endured.

On Wednesday following, being the 17th of February, all the Prisoners at the Bar (except old *Mills*) met at *Scardefield*'s, and there were present also seven more; at which Meeting they consulted what to do with *Chater*; and it was unanimously agreed by all the Thirteen then present, to murder *Chater*; and young *Mills*, the Prisoner at the Bar, particularly advised it; and said, if he had a Horse, he would go with them to do it; and either then, or at another Meeting at *Scardefield*'s, when *Carter* and *Jackson* said, that as they came along, they brought *Chater* by a steep Place thirty Feet deep, young *Mills* said, If I had been there, I would have called a Council of War, and he should have come no further.

This being determined, the Prisoners *Tapner*, *Cobby*, *Hammond*, *Carter*, and *Jackson*, together with five more of that Company, went to old *Mills*'s, where they found *Chater* chained, and guarded by *Sheerman* and *Heward*, and told him he must die; he said he expected no other; *Tapner* then said he would be his Butcher, and taking out a Knife, cut him twice across the Face; on which old *Mills* said, Don't murder him here, but take him somewhere else first.

Tapner, *Cobby*, *Hammond*, *Carter*, *Jackson*, and the rest, who came there together with *Sheerman* and *Heward*, then carried him away to murder him; *Sheerman*, *Heward*, and *Richards*, having been concerned in *Gally*'s Murder, said, the rest should kill *Chater*, and therefore went away at *Haring*; *Carter* and *Jackson* having been likewise concerned in *Gally*'s Murder, when they came to Lady *Holt* Park-gate, turned in there, and left

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the others; having first told them, the Well is a little Way off, you can't miss it, 'tis fenced round with Pales, to keep the Cattle from falling in.

Tapner, Cobby, and Hammond, and the rest, went then to the Well, where Tapner put a Rope about Chater's Neck to hang him; and some of the Pales being broken down, Chater would have crept through. Tapner would not let him, but made him climb over the Pales, weak as he was, and then hanged him in the Well about a Quarter of an Hour, till they thought him dead; then having drawn him up till they could take hold of his Legs, they threw him headlong into the Well; and fancying they heard him breathe or groan, threw Posts and Stones in upon him, and went their Way.

The Terror this Act of Cruelty had spread through the Country, stopt every Person's Mouth, who had it in their Power to give any Information; so that the Body was not found till September last, when it was so putrified and consumed, as not to be known, but by the Belt which was about it, and which Chater's Wife will prove to be her Husband's. If there was any Doubt as to the Identity of the Man, we could shew likewise, that being examined by the Smugglers just before he was murdered, he said his Name was Daniel Chater.

It appears therefore from this State of the Case, that all the Prisoners are guilty of the Indictment. Tapner was present at the Consultation at Scardefield's, and was the Person who hanged him. Cobby and Hammond were present at the Consultation, helped to carry him to the Well, and were present at the Murder, and therefore equally guilty with Tapner, as Principals. Carter and Jackson took him away by Force from Paine's, and by the Treatment of him there and on the Road, shewed an Intention from the first to murder him, though perhaps the particular Death he was to suffer, was not then agreed on; they were afterwards present at the Consultation at Scardefield's, where it was resolved to murder him, and went almost to the Well with him; and when they parted, gave those who murdered him particular Directions to the Well. Young Mills was also at the Consultation, and particularly advised and directed the Murder, in which he declared he would have joined, if he had a Horse. Old Mills, though he kept no Publick-house, and therefore was not obliged to receive Guests, receives this Man brought in the Night, in a bloody and deplorable Condition; Chater is chained in his Outhouse from Sunday Night till Wednesday; yet Mills never discovers it to any Person, or uses any Means to deliver him, which is a strong Evidence of his Knowledge and Approbation of their Design; and when Tapner declared he would be his Butcher and cut him, old Mills expresses no Disapprobation of the Murder, does not dissuade him from it, but desires him not to do it there, but carry him somewhere else first, which shews his Approbation of the Fact; though to secure himself, as he thought, from Punishment, he would have had it committed at some other Place.

This, Gentlemen, is the Fact, which shews, that securing themselves and their Companions, was not their principal Aim; were it so, they would have murdered this Man as soon as they had him in their Power; but their Motive seems to have been Revenge, and a Disposition to torture one, who should dare to give any Information, which might bring them or their Friends into Danger.

After hearing the whole Evidence, if these Men appear innocent, God forbid they should be found guilty; and I would not have the cruel Circumstances of the Fact incline you to believe any thing we suggest, that is not supported by the strongest Proof: But if the Fact is proved beyond a Possibility of Doubt, to be in the Manner we have stated, I am sure you will do your Duty, and by a just and honest Verdict, deliver your Country from Men so void of Humanity.

The following Witnesses were then called for the Crown.

Mr. Milner, Collector of the Customs at the Port of Poole, deposed, That about the 7th of October 1747, he had Advice that the Custom-house at Poole was broke open; upon which he hasten'd thither, and found the outer Door burst open, and the other Door broke in Pieces; that the Room wherein some Run Tea was lodged, was broke open, and all the Tea carried away, excepting a little Bag, containing about four or five Pounds.

Mr. Shover, Collector of the Customs at Southampton, deposed, That in February last he received a Letter from the Commissioners of the Customs, acquainting him, that one John Dimer was committed to Chichester Jail, for breaking open the Custom-house at Poole, with Directions to send the deceased Daniel Chater, who could give some Information against Dimer, to Mr. Battine the Surveyor-General, and to acquaint Mr. Battine with the Occasion of his sending Chater; that he accordingly sent Chater with a Letter addressed to Mr. Battine, under the Care of one William Galley, a Tidesman in the Port of Southampton; that they set out on Sunday Morning the 14th of February last; he could not take upon him to say how Chater was dress'd, but he remembered he rode upon a dark brown Horse, and had a Great-coat on, with another Coat under it, and upon the under Coat a Belt; he could not recollect how Galley was dress'd, but remembered that he was mounted on a grey Horse.

William Galley, the Son of William Galley, deposed, That he remembered his Father's setting out upon this Journey to Mr. Battine, in February last; that he saw the Letter to Mr. Battine the Night before his Father set out, and saw the Directions; he remembered the Dress his Father had on; it was a blue Great-coat, with Brass Buttons covered with blue, a close-bodied Coat, of a light brown Colour, lined with blue, with a Waistcoat and Breeches of the same, and that he rode on a grey Horse; he remembered that Daniel Chater set out at the same Time with his Father, and had on a light Surtout Coat, with red Breeches and a Belt round him, and rode upon a brown Horse: that this was the last Time he ever saw his Father alive, and that he never saw Chater since.

Edward Holten deposed, That on the 14th of February last he saw Daniel Chater and another Person, whom he took to be Mr. Galley, at his own House, at Havant, in the County of Hants; he knew Chater very well,

* The Short-Hand Writer having omitted to take the several Questions put to the now be supplied.

But we having perused the following Trials do certify, that the Substance of the Evidence given by the several Witnesses is faithfully taken. And that upon the whole, this Account of the Proceedings under the Commissions is in Substance true.

and had some Conversation with him; that Chater told him he was going to Chichester upon a little Business, and then went out to Galley, and brought in a Letter, which was directed to William Battine, Esq. at East-Marden; upon which he (the Witness) told him, he was going out of his Way; that Galley wished he would direct them the Way; that he directed them to go through Stanstead, near Rowland's Castle; and that they said they should be back again the next Day.

George Austen deposed, That on Sunday the 14th of February last he saw two Men, one mounted upon a brown Horse, and the other upon a grey, at the New Inn at Leigh, in the Parish of Havant; that they came to the New Inn when he was there, and inquired the Way to East-Mean; to which Place he was going to direct them, when one of the Men, who had a blue Coat on, pulled a Letter out of his Pocket, which he (the Witness) looked at, and seeing it was directed to East-Marden, he told them they were going Ten Miles out of the Way; and that he and his Brother Thomas Austen, and his Brother-in-law Robert Jenkes, were going Part of their Road, and would conduct them the best they could; that they went no farther together than to a Place called Rowland's Castle, to a Public-house which was kept by the Widow Paine; the two Strangers call'd for Rum at Widow Paine's. This was about the Middle of the Day, or something after. That the Widow Paine asked him if he knew these Men, or whether they belonged to his Company; he told her they were going to Mr. Battine's, and that he was going to shew them the Way; she then said she thought they were going to do Harm to the Smugglers, and desired him to let them out of the Way, which he refused to do; she then seemed uneasy, and she and her Son consulted together; that her Son went out, and the Prisoner Jackson came in in a little Time; that the Prisoner Carter, and several more, came thither soon afterwards. He knew none but Jackson and Carter. That Jackson inquired where the two Men were bound for; and the Man in the light Coat answered, they were going to Mr. Battine's, and from thence to Chichester; but Carter was not by at that Time; that the two Strangers had some Rum, and Jackson called for a Mug of Hot, which was Gin and Beer mixed, or something of that Kind, and to the best of his Knowledge they all drank together; he did not see any ill Treatment, nor either of the Men bloody, whilst he was there; that he went away between one and two, and left the two Men there; the Widow Paine called him out of Doors, and told him his Brother Jenkes wanted to speak to him; when he came out, his Horse was at the Hedge by the back Door, and his Brother said he wondered why the two Men did not go away; upon which he went back again into the House, and his Brother was uneasy because he did so; that the Widow Paine advised him to go home, and said the two Men would be directed the Way; he was uneasy at going without them, because he saw so many Men come in, and imagined they had a Design to do some Harm to them; that when he went away, Jackson and Carter were left with the two Men, to the best of his Knowledge; and Jackson, as well as the Widow Paine, persuaded him to go home. He was positive that Jackson and Carter were there, for he knew them very well.

The Court asked Jackson and Carter, if they would ask this Witness any Questions?

To which they both answered in the Negative.

Thomas Austen was then called: deposed, That he was at the New Inn at Leigh on Valentine's Day last, with his Brother George; he saw two Men there who inquired the Way to Mr. Battine's; he went from thence with them to Rowland's Castle; they went to the Widow Paine's at that Place, and called for a Dram of Rum; the Prisoners were not there at first, but in a little Time Jackson came; and soon afterwards the Prisoner Carter. That the Widow Paine spoke to him at the outer Door before either of the Prisoners came, and asked him if he knew the two Men, and said she was afraid they were come to do the Smugglers some Mischief, and that she would send for William Jackson; her Son went for him, and he soon came, and another little Man and his Servant; he saw one Joseph Southern there and the Prisoner Carter, but Carter did not come so soon as Jackson; he (the Witness) stayed there till seven o'Clock in the Evening, and about that Time William Jackson struck one of the Men in the Face, who to the best of his Remembrance had a blue Coat on; they all drank pretty freely from one o'Clock, and he was drunk and went to Sleep, and the two Men were fuddled and went to Sleep in the little Room; that about seven o'Clock Jackson went into the Room and waked the two Men, and when they came out of the Room, it was that Jackson struck one of them; after they came out, the two Men went away with Jackson and Carter, and one William Steele, and Edmund Richards; he did not remember that they were forced away, and did not see them upon the Horses, nor did he ever see them any more; this was between seven and eight o'Clock.

Being asked, whether he saw either of the Men produce his Deputation, or heard any high Words?

Said he did not; that he was asleep the best Part of the Afternoon; and did not see any ill Treatment, but that one Blow which he had mentioned, and did not observe any Blood about them when they went away.

Being cross-examined at the Request of the Prisoners,

Said, he did not know who the two Strangers were, but they were the same Persons that his Brother George spoke of, and had a Letter for Mr. Battine; that one of them had a blue Coat on, and rode upon a grey Horse, and the other Man rode upon a brownish Horse; he did not see the Direction of the Letter, but he heard it read by Robert Jenkes.

Robert Jenkes deposed, That he saw two Men upon the 14th of February last, at the New Inn at Leigh, one of them upon a blackish Horse, the other upon a grey, and dressed in riding Coats; they were the same Men that the Witnesses George and Thomas Austen had spoke of; they went together to Rowland's Castle, and got there about twelve o'Clock or something after, and went into a House there which was kept by the Widow Paine; he did not hear her give any Directions to send for any body; but the Prisoners Jackson and Carter soon came thither; he said

Witnesses, with their Answers in the Words they were delivered, that Defect cannot

And that upon the whole,
M. FOSTER.
E. CLIVE.
THO. BIRCH.

there about an Hour and a half, and whilst he was there he did not see any Abuse, or observe that either of the Men was bloody; he had no Conversation with Jackson, further than that Jackson said he would see the Letter which was going to Major Battine, and Carter he believes might say so too; when he wanted to go away, Jackson would not suffer him to go thro' the Room where the two Men were; that Jackson told him if he had a mind to go, he might go through the Garden to the back Part of the House; he did so, and found his Horse there, and went away; he could not say why Jackson refused to let him go through the Room, but believed it was for fear the two Men should go away with him; that he did not order his Horse to be led round to the Garden himself; that George Austen and he went away together upon his Horse, and that Jackson would see the Letter one of the Men had in his Pocket, and the Witness saw the Direction of it, which was to William Battine, Esq. at East Marden.

Being cross-examined by the Prisoner Carter, whether Carter said he would see the Letter? answered, both Carter and Jackson said so; and that Carter did say he would see the Letter that was going to Mr. Battine; that he (the Witness) did not order his Horse to be carried to the back Part of the House; and that Carter was by when he was told by Jackson, that if he had a mind to go, his Horse should be led to the back Part of the House.

Joseph Southern swore, That on Sunday the 14th of February last, he saw Jenkes, the two Austens, and two other Men on the Road coming from Havant towards Rowland's Castle, one of them had a blue Coat on and rode a grey Horse; that he went to Rowland's Castle himself that Day, and saw Jenkes, Austen, and the same two Men sitting on Horseback drinking at the Widow Paine's Door; he staid there best Part of an Hour, and saw them and several other Persons in the House; that he saw the Prisoners Carter and Jackson in the House whilst he staid there; he sat down and drank a Pint of Beer by the Kitchen Fire, but the other Persons were in another Room; that he saw the two Men come out to the Door and go in again, and one of them had an Handkerchief over his Eye, and there was Blood upon it; that he met this Man as he was going in, and heard him say to Jackson, "I am the King's Officer, and I will take Notice of you that struck me." That Carter was not present when this was said, but was in the House; the Man who spoke thus to Jackson had a Parchment in his Hand when he met him at the Door, he likewise saw a Letter in his Hand, and heard him say he was going to Mr. Battine with it; that he (the Witness) went away between two and three o'Clock, and did not know what became of the Letter, nor had he heard either Jackson or Carter say what became of it.

The Prisoners Jackson and Carter said they would not ask him any Questions.

William Garret swore, he was at the Widow Paine's on the 14th of February last, about four o'Clock in the Afternoon, and saw the Prisoners Jackson and Carter and two Strangers there; that one of them who had a blue Coat on had received a Stroke upon his Cheek, and the Blood ran down it; that just as he came in, this Man was standing up by the Back of a Chair, and Jackson stood by him, and he heard Jackson say, "That for a Quarter of Gin he would serve him so again," by which the Witness understood that Jackson had struck him before; he did not hear the Man say he was the King's Officer, but he heard Jackson say, "You a King's Officer! I'll make you a King's Officer, and that you shall know." That when he went away, he left them all there.

The Prisoners would not ask him any Questions.

William Lamb depofed, That he went to the Widow Paine's, at Rowland's Castle, on the 14th of February last, about four in the Afternoon, and found Jackson and Carter there; that before he went, he saw one of the Widow Paine's Sons call Carter aside, at his House at West-Bourne; that there were several other People there in another Room, amongst whom were Thomas Austen, and two Men that were Strangers to him, one of whom had on a blue Gaberdine; the two Men, he understood, were going with a Letter to Mr. Battine; he saw no ill Treatment during the little Time he staid there; that Edmund Richards, one of the Company, pull'd out a Pistol, and said, "That whoever should discover any thing that passed at that House, he would blow his Brains out." Jackson and Carter were not in the Room when these Words were spoken, as he believes. He saw the Man in the blue Gaberdine pull a Parchment out of his Pocket, and heard him tell the People he was the King's Officer; his Wig was then off, and there was Blood upon his Cheek; that he saw a Letter, which he understood to be going to Mr. Battine; one Kelly, and the Prisoner Carter, had it in their Hands, but he did not know how they came by it; he did not see the Directions of the Letter; he observ'd it was broke open, when he saw it in the Hands of Carter and Kelly; and he understood, by the Discourse of the Company, that it was a Letter which the two Strangers were to carry to Mr. Battine, but he never heard it read.

The Prisoners, Carter and Jackson, would not ask him any Questions.

Richard Kent depofed, That he was at the Widow Paine's on the 14th of February last; and that Edmund Richards told him, that if he spoke a Word of what he had heard or seen there, he would shoot him thro' the Body; but Jackson and Carter were not in the Room when Richards said this.

George Peate depofed, That he was at Rowland's Castle, on Sunday the 14th of February last, about seven o'Clock in the Evening, or after, and saw nine Men there, and that the Prisoners, Jackson and Carter, were two of them; he staid there about half an Hour, and as soon as he came in, he saw four or five Men with great Coats and Boots on, most of them upon their Legs, as if they were just going; he went and warmed himself by the Kitchen Fire, and sat down by Thomas Austen, who was then asleep; he called for a Pint of Beer, and soon after he heard the Stroke of a Whip repeated three or four Times, in a little Room that was at the Corner of the Kitchen, but did not see who gave the Blows, nor who received them; that he afterwards heard a strange Rustling of People, more than before, and saw seven or eight Men come into the Kitchen; that he knew the Prisoners Jackson and Carter, and William Steele, Edmund Richards, and two that went by the Names of Sam and Harry; there were two other Persons there, whom, to his Knowledge, he had never seen before nor since; and could give no Account of them, nor did he observe how they were dress'd; that soon after he thought he heard a Blow, and he saw

Jackson in a moving Posture, as if he had just given a Blow, and was drawing up his Arm in a proper Form, as if he was going to give another; but William Paine stepp'd up, and called him Fool and Blockhead for so doing; upon which he sunk his Arm, and did not behave in the like Manner any more, in his Sight; that just as they were going out of Doors, Jackson turned round, with a Pistol in his Hand, and asked for a Belt, Strap, or String, but Nobody give him either, and he put his Pistol into his Great-coat Pocket, and went away with the rest; that by the trampling of Horses, he supposed they all went on Horseback, but which Way he knew not; it was between seven and eight o'Clock, as high as he could guess, when they went off; he did not hear any Conversation about one of the Strangers being the King's Officer, nor did see the Blow given, nor the Person to whom the other Blow was going to be given.

The Prisoners would not ask him any Questions.

John Raifs depofed, That on Sunday, the 14th of February, he was at Rowland's Castle, between twelve and one o'Clock at Noon; that when he came there he found Edmund Richards, William Steele, the Prisoners Carter and Jackson, and Little Sam, Richard Kelly, Jackson's Wife, and Galley and Chater; he saw Jackson take Chater to the Door, and heard him ask him if he knew any Thing of Dimer; and Chater answer'd he did; and was obliged to go and speak against him; that Galley then went out to keep Chater from talking to Jackson; whereupon Jackson knocked Galley down with his Fist; that Galley came in again, and soon after Jackson and Carter. When they were all come in, he (the Witness) with the Prisoners Jackson and Carter, and Edmund Richards, went into the back Room; that there they enquir'd of Jackson what he had got out of the Shodmaker (meaning Daniel Chater); that Jackson informed them, that Chater said he knew Dimer, and was obliged to come in as a Witness against him; that then they consulted what to do with them (Chater and Galley); this was about three o'Clock in the Afternoon. They first proposed to carry them to some secure Place, where they might be taken care of till they had an Opportunity of carrying them over to France; that when this Proposition was made, the Prisoners, Jackson and Carter, and Richards, and himself were present; and this Resolution was taken to send them out of the way, that Chater should not appear against Dimer; and afterwards it was agreed to fetch a Horse, and carry them away: That Galley and Chater appeared very uneasy, and wanted to be gone; and thereupon Jackson's Wife, to pacify them, told them that she lived at Major Battine's, and her Horse was gone for, and as soon as it came she would shew them the Way to Mr. Battine's; that he (the Witness) then went to Chichester, and saw no more of them that Night.

Being cross-examined, at the Request of the Defendants Counsel, said, At this Consultation there was nothing mentioned but the securing them, in order to carry them to France.

This Witness having gone thus far in his Evidence, was set by for the present; the Counsel for the Crown declaring that they would call him again, to give an Account of what pass'd on the 17th, after they had examined the next Witness.

William Steele depofed, That he was at the Widow Paine's on Sunday the 14th of February; that the Prisoner Jackson, Little Sam, one Kelly, and two Men more, and Jackson's Wife, were there when he came, which was about two o'Clock in the Afternoon, and soon afterwards Little Harry, the Prisoner Carter, Edmund Richards, John Raifs, and Carter's Wife, came thither; he did not know how Carter or Jackson came to be there, but the Widow Paine's Son came and called him (the Witness) out, and said he must go to the Castle, for there were two Men come to swear against the Shepherd, meaning John Dimer; that when he came in they were in general sober, as far as he saw, but they sat drinking together about two Hours; that Jackson took Chater out of the House, to examine him about Dimer, and after they had been out some Time, Galley went out to them, but soon return'd, and said Jackson had knocked him down; the Witness saw he was bloody all down the left Cheek; that Jackson was not in the Room when Galley came in, but came in with Carter a little Time afterwards; that then Galley, addressing himself to Jackson, said he did not know any Occasion Jackson had to use him in that Manner, and that he should remember it, and took down his Name in Jackson's Prefence. Galley likewise said he was an Officer, and shewed his Deputation to the People that were in the Room; the Company continued drinking till Galley and Chater were quite fuddled, and went into a little inner Room to sleep; this was about four or five o'Clock, and they continued in the little Room two or three Hours; the rest of the Company sat drinking all the while, consulting what to do with Galley and Chater. The Prisoners, Jackson and Carter, and Little Sam, Little Harry, Richards, and the Witness, were at this Consultation. It was proposed to put them (Galley and Chater) out of the way, because they should not appear against the Shepherd, meaning Dimer, and it was proposed to throw them into the Well, in the Horse-pasture, about half a Mile from Rowland's Castle, but it was thought not convenient to put them into a Well so near, for fear of a Discovery; it was then proposed to join, and each Man to allow them Three-Pence a Week, and to keep them in some secret Place till they saw what became of Dimer, and as Dimer was served, so these two People (Chater and Galley) were to be served; this was talked of while Chater and Galley were asleep, and there was no other Proposal made, as he heard. But while they were talking these Things, the Wives of Carter and Jackson said it was no Matter what became of them (Galley and Chater), or what was done to them; they ought to be hang'd, for they were come to ruin them, meaning the Smugglers: That about Seven o'Clock Carter and Jackson went into the inner Room, and waked Galley and Chater, and brought them out of the Room, very bloody and very drunk; he did not see what passed in the Room, but was sure they did not go in so bloody; and he believed Jackson and Carter had kicked and spurred them; they set Galley the Officer upon a brown or black Horse, and Chater up behind him; Jackson, Carter, and Richards, put them on Horse-back and tied their Legs under the Horse's Belly, and also tied their Legs together; they then tied a Line to the Bridle, and he (the Witness) got upon a grey Horse and led them along; that just after they turned round the Corner about twenty or thirty Yards from the House, Jackson cried out, Whip them,

them, lick them Dogs, cut them; it was then dark, and the Company whipped and lashed them with their Horse-whips, some on one Side and some on the other, with great Violence on the Face and Head and other Parts of the Body, and continued doing so while they rode about half a Mile to a Place called *Wood's Alhes*; that there they alighted, and *Little Sam* gave all the Company a Dram or two, but none to *Galley* and *Chater*; that as soon as they were mounted again *Jackson* and *Carter* cried out, Damn them, lick them, whip them; and they were whipped as before for about a Mile further, and then they fell down under the Horse's Belly with their Heads upon the Ground, and their Legs over the Saddle; they were immediately set up again, and their Legs tied together in the same Posture; and the Company went on whipping them as before, till they came to a Place called *Goodbrough Dean*, which was about half a Mile further; they were beat very much, and in the Judgment of the Witnesses, it was almost impossible they should sit their Horses; when they came to *Dean*, somebody of the Company pulled out a Pistol, and said, He would shoot them (*Galley* and *Chater*) through the Head if they made any Noise whilst they went through the Village; he could not tell who it was that threatened to shoot them, but apprehends it was done for fear the People in the Village should hear them; they went on but a Foot Pace, and after they got through *Dean*, they were whipped again as before; and when they came near a Place called *Idsworth*, they fell down again under the Horse's Belly, and then some of the Company loosed them, and set up the Officer (*Galley*) behind him (the Witnesses), and *Chater* behind *Little Sam*; and in this Manner they proceeded towards *Lady Holt Park*, which is near three Miles from *Idsworth*, whipping *Galley* and *Chater* as before; but the Lashes of their Whips falling upon the Witnesses, as he sat before *Galley*, he (the Witnesses) could not bear the Strokes, and therefore they left off whipping *Galley* in that Manner; *Galley* sat upon the Horse till they got to *Lady Holt Park*, and then being faint and tired with riding, he got down, and *Carter* and *Jackson* took him one by the Arms and the other by the Legs, and carried him towards a Well by the Side of *Lady Holt Park*; that *Jackson* said to *Carter*, "We'll throw him into the Well;" to which *Carter* replied, with all his Heart, and *Galley* seemed indifferent what they did with him; but some of the Company saying it was Pity to throw him into the Well, *Jackson* and *Carter* set him up behind the Witnesses again, and *Chater* was still behind *Little Sam*; they went on in this Manner till they came to go down a Hill, when *Galley* was faint and tired, and could not ride any further, and got down there; upon which *Carter* and *Jackson* laid him on a Horse before *Edmund Richards*, with his Belly upon the Pommel of the Saddle, they laid him across the Horse, because he was so bad that they could not contrive to carry him in any other Manner, and they carried him so for about a Mile and a Half from the Well; that then *Richards* being tired of holding him, let him down by the Side of the Horse; and *Carter* and *Jackson* put him upon the grey Horse that he (the Witnesses) was upon, and the Witnesses got off; they set him up, his Legs across the Saddle, and his Body lay over the Horse's Mane; that in this Posture, *Jackson* held him on; he did not remember that any body else held him at that Time; that they went on for about half a Mile in this Manner, *Galley* crying out vehemently all the Time, "Barbarous Usage, for God's sake shoot me through the Head or through the Body;" he (the Witnesses) thought *Jackson* was at this Time pinching him by the privy Parts, for there were no Blows given when he cried so; that *Chater* was still with the Company behind *Little Sam*, and they went on for about two Miles and a half further, the Company holding *Galley* by Turns on the Horse, till they came to a dirty Lane; at this Place, *Carter* and *Jackson* rode forwards, and bid the rest of the Company stop at the Swing-gate beyond the Water, till they should return; *Jackson* and *Carter* came to them again at the Swing-gate, and told them, that the Man of the House, whither they went, was ill, and that they could not go thither; by which he understood that they had been in the Neighbourhood to get Entertainment. It was then proposed to go forward to the House of one *Scarsfield*; and *Little Harry* tied *Galley* with a Cord, and got up on Horseback behind him, in order to hold him up on the Horse, and they went on till they came to a gravelly Knap in the Road; at this Place *Galley* cried out, "I shall fall, I shall fall;" whereupon *Little Harry* said, "D—n you, then fall," and gave him a Push, and *Galley* fell down and gave a Spirt, and never spoke a Word more; he (the Witnesses) believed his Neck was broke by the Fall; that then they put him upon the Horse again, and went away for *Raike*, to the Sign of the *Red-Lion*, which was kept by *William Scarsfield*; that *Chater* was behind *Little Sam*, and was carried to *Scarsfield's* House, and was very bloody when they came to *Scarsfield's*; that *Jackson* and *Little Harry* went from *Scarsfield's* with *Chater* about three o'Clock in the Morning; and *Jackson* afterwards returned to *Scarsfield's*, and said he had left *Chater* at old *Mills's* House, and that *Little Harry* was left to look after him that he might not escape; this was Monday the 15th of February, and they remained all that Day at *Scarsfield's* House; that the Prisoner, *Richard Mills* the younger, was there on that Day; and upon hearing from *Carter* and *Jackson* that they had passed by a Precipice of about thirty Feet deep, when they had *Chater* with them, he said, "If I had been there, I would have called a Council of War on the Spot, and he (*Chater*) should have gone no further;" or to that Effect. That two or three Days afterwards the Company met at *Scarsfield's* again, to consult what to do with *Chater*; that the Prisoners *John Raifs*, *Carter*, and *Jackson*, the Prisoner *Richard Mills* the younger, a Son of the Prisoner *Richard Mills* the elder, *Thomas Willis*, *John Mills*, another Son of old *Mills*, the Prisoners *Tapner*, *Cobby*, and *Hammond*, and *Thomas Stringer*, *Edmund Richards*, and *Daniel Perrier*, and he (the Witnesses) were there consulting what to do with *Chater*; and *John Mills* proposed to take him out, and load a Gun, and tie a String to the Trigger, and place him (*Chater*) against the Gun, and that they should all of them pull the String, to involve every one of them in the same Degree of Guilt; but this Proposal was not agreed to. Then *Jackson* and *Carter* proposed to carry him back to the Well, and to murder him there, which was agreed to by all the Company; but *Richard Mills* the younger and *John Mills* said, they could not go with them to the Well because they had no Horses; and as it was in their (the other Persons) way home, they might do it as well without them; and so it was concluded to murder

Chater, and then to throw him into the Well; that in the Evening they went away from *Raike* to the House of the Prisoner *Richard Mills* the elder, and found *Chater* in a back Skeeling, or Out-house, run up at the Back of *Mills's* House, a Place they usually put Turf in; he was chained with an Iron Chain, about three Yards long, to a Beam that went across the Skeeling, about as high as his Head; that *Chater* was bloody about the Head, and had a Cut upon one of his Eyes, but he could see with it; that the Prisoner, *Richard Mills* the elder, was at home himself, and fetched out Bread and Cheese for them to eat, and gave them Drink, and received them, and made them welcome; that the House is a private House, no Inn or Ale-house; that they all of them went to and again between the House and the Skeeling, and that the Prisoner, *Richard Mills* the elder, was at home all the while; that the Prisoner *Tapner* pulled out a clasp Knife and opened it, and swore to *Chater* "that Knife should be his Butcher," and cut him over both his Eyes, and down his Forehead, so that he bled to a great Degree. He was ordered by some of the Company to say his Prayers, for they were come to kill him, and kill him they would; that *Tapner* said this, and some of the Company were then in the Skeeling, and the rest of them were in the House, but no one interposed to save his Life; that he (the Witnesses) was in the Skeeling, when *Chater* was advised to say his Prayers, and was cut, and that *Chater* was chained by the Leg at that Time. When they had kept him there as long as they thought fit, somebody of the Company unlocked the Chain, and set him on Horseback, and *John Raifs*, *Edmund Richards*, *Little Harry*, *Little Sam*, the Prisoner *Tapner*, *Thomas Stringer*, the Prisoners *Cobby* and *Hammond*, *Little Daniel*, the Prisoners *Jackson*, *Carter*, and the Witnesses, set out with him for *Lady Holt Park*, to carry him down to the Well; that when they came to a Place called *Harting*, *Richards*, *Little Harry*, and *Little Sam*, went back; and when the rest came to the white Gate by *Lady Holt Park*, *Carter* and *Jackson* left them, but first told them they must keep along a little further, and they could not miss the Well; that it was about two Hundred Yards further, and that there were some Pales on the right Hand of it; that there were Pales round the Well. They went on, found the Well by the Direction *Carter* and *Jackson* had given them, and carried *Chater* with them; that then *Tapner*, *Stringer*, and *Cobby* got off their Horses, and *Tapner* pulled a Cord out of his Pocket, and put it about *Chater's* Neck, and led him towards the Well. *Chater* seeing two or three Pales down, said he could get through, but *Tapner* said, "No, you shall get over," and he did so, with the Rope about his Neck; they then put him into the Well, and hanged him, winding the Rope round the Rails, and his Body hung down in the Mouth of the Well for about a Quarter of an Hour; and then *Stringer* took hold of his Legs to pull him aside, and let his Head fall first into the Well, and *Tapner* let the Rope go, and down fell the Body into the Well head-foremost; that they staid there some Time, and one of the Company said he thought he heard him breathe in the Well; upon which they got a Post or two, and threw them into the Well upon him, and there they left him.

The Prisoner, *Richard Mills* the elder, said, he never heard any Talk about the Man's being to be killed, and that he desired the People would take him away, and said he would not have him murdered.

Steele, the Witnesses, being cross-examined as to this, said, He never heard the Prisoner say he would not have them murder the Man; and added, to be sure he must hear them talk of murdering him, while they were at his House.

John Raifs, being called again, said, That after he had left the Company at the Widow *Paine's*, on the 14th of February, as mentioned in the former Part of his Evidence, he met some of the same Company, and others, on the Wednesday Evening following, being the 17th of February, at *Scarsfield's*, at *Raike*; that the Prisoners, *Richard Mills* the younger, *Carter*, *Jackson*, *Tapner*, *Cobby*, and *Hammond*, with *Steele*, *Richards*, *Little Sam*, *Daniel Perrier*, *John Mills*, and *Thomas Willis*, were there; and it was proposed at that Meeting to murder *Chater*. He could not say who first made the Proposal, but, to the best of his Knowledge, it was either *Carter* or *Jackson*, and it was agreed to by all the Company; it was not then resolved how it was to be done, but only in general, that he was to be murdered, and thrown into a Well; that they went to the House of the Prisoner, *Richard Mills* the elder, to join *Little Harry*, who was left there to take Care of *Chater*, and found *Chater* chained by the Leg upon some Turf in a Skeeling, at the Backside of the House; that the Prisoner, *Richard Mills* the elder, was at Home, and ordered his Housekeeper to fetch Bread and Cheese, and some Household Beer, for any of them to eat and drink that would, and believes *Mills* knew that they came for *Chater*; that *Tapner* and *Cobby* were very earnest to go and see *Chater*; and *Tapner* having his Knife in his Hand said, "This Knife shall be his Butcher;" that thereupon the Prisoner, *Richard Mills* the elder, said, "Pray do not murder him here, but carry him somewhere else before you do it;" that old *Mills* said this, upon seeing that *Tapner* had his Knife in his Hand, and hearing him declare it should be his (*Chater's*) Butcher; that they then went out into the Skeeling, and found *Chater* sitting upon some Heath or Turf, and *Tapner* ordered him to say his Prayers: While he was repeating the Lord's Prayer, *Tapner* cut him over the Face with his Knife, and *Cobby* stood by, kicking him and damning him. This too was whilst the poor Man was saying the Lord's Prayer. That *Chater* asked them what was become of *Galley*; and they told him he was murdered, and that they were come to murder him. Upon which *Chater* earnestly begg'd to live another Day. That *Cobby* asked him his Name, and whether he had not formerly done Harvest-work at *Selsea*? To which he answered, That his Name was *Daniel Chater*, and that he had harvested at *Selsea*, and there he became acquainted with *Dimer*. *Cobby* and *Tapner* asked him what they had fed him with at old *Mills's*, and he said Pease Pottage; that *Little Harry* unlocked the Horse-lock, that was on his (*Chater's*) Legs, and *Tapner*, *Cobby*, and *Stringer*, brought him out of the Skeeling, and set him upon *Tapner's* Mare, in order to carry him to the Well, to be there murdered, and thrown in; and that all the Company knew, at that Time, what was to be done with him; that they rid about three Miles towards the Well, and sometimes whipp'd *Chater* with their Horsewhips; and *Tapner* observing that he bled, swore, if he blooded his (*Tapner's*) Saddle, he would whip him again. When they came to *Harting*, *Carter*, *Jackson*, *Richards*, *Little Sam*, *Little Harry*, and *Steele*, said, "We have done our Parts,

"Parts, and you (meaning the rest of the Company) shall do yours." By which they meant, as he took it, that they had murdered *Galley*, and that the rest should murder *Chater*; and *Richards*, *Little Sam*, and *Little Harry*, stopp'd there, and did not accompany them any further; the rest went on towards the Well; but *Carter* and *Jackson* stopp'd before they came to it, and told them the Well was a little further off, describing it to them, and told them they could not miss finding it, and there left them; that he (the Witness) and *Tapner*, *Cobby*, *Stringer*, *Hammond*, *Perryer*, and *Steele*, came to the Well, got off their Horses, and took *Chater* off his Horse, the Witness was not certain which, and either *Tapner* or *Cobby* put a Cord round his Neck; that there was a Shord in the Pales about the Well; and he heard *Chater* say he could get through there; but *Cobby* said, "Damn you, no, you shall not, you shall get over;" that *Tapner* wound the Cord round the Pales, and *Chater* being put into the Mouth of the Well, hung by the Neck for about a Quarter of an Hour, and then they loosened the Rope, and turned the Body, that it fell into the Well head-foremost. They staid there till some of the Company thought they heard him breathe, and then went to get a Rope at *Lady Holt Park*, to go down into the Well to murder him quite, but met *Jackson* and *Carter* at *Lady Holt Park*, who told them there was a long Ladder; but they could not rear the Ladder, and so got some Posts, and threw them down into the Well.

The Prisoner *Hammond* desired the Witness might be asked, Whether, when they were at old *Mills's*, he did not offer to ride away, and make a Discovery; but was prevented by the Company?

Raifs said he never heard him say any Thing about it; but some of the Company did threaten any of the rest who should refuse to go to the Murder of *Chater*.

Ann Peford deposed, That two Men came to her Father's on the 15th of February, about one or two o'Clock in the Morning, and called for *Thomas Peford* her Father; that she asked one of them his Name, and he said it was *William Jackson*: Her Father, who was then very ill, said they might come in if they would; that *Jackson* did come in, and asked if they could not abide in the House some Time; to which she answered No, because her Father was ill; and thereupon *Jackson* turned to the other Man, and said, We cannot think of abiding here, as the Man is so ill, and so they went away. She saw that *Jackson's* Hand was bloody.

William Scarsfield deposed, That he kept the *Red Lion* at *Raife*, in the Parish of *Regate*, and that in the Night, between the 14th and 15th of February last, the Prisoners *Jackson* and *Carter*, with *Steele* and *Richards*, came to his House, and called out to him, "For God's Sake get up, and let us in!" That he let them in, and lighted a Candle, and saw they were bloody; he asked them how they came to be so, and they said they had had an Engagement with some Officers, and had lost their Goods, and some of their Men they feared were dead, and some were wounded; that they said they would go and call them that were at the other Publick House; and while he was gone down into the Cellar, he heard Horses come to the Door, and some of the Men went into the Kitchen, some into the Brewhouse, and some into the Parlour; that he saw two or three Men in the Brewhouse, and there lay something like a Man before them by the Brewhouse Door, and he heard them say he was dead; that some of them calling for Liquor, he carried a Glass of Gin into the Parlour, and saw a Man standing upright in the Parlour, with his Face bloody, and one Eye swelled very much; that *Richards* was in the Parlour with the Man, and objected to his coming in; and the Prisoners *Carter* and *Jackson*, and three others were then in the Brewhouse, and *Steele* was with them; after they had drank three Mugs of Hot, they got their Horses out, and sent him down for some Brandy and Rum; but when he came up with it, all the Company were gone twenty Yards below the House, tho' several of them came back to drink, one or two at a time; that he did not know what became of the Man that he saw standing in the Parlour, but he observed they separated into two Companies; that one of the Company, a little Man, asked him if he did not know the Place where they laid up some Goods a Year and an half ago; and the Prisoner *Carter* came back, and said they must have a Lanthorn; that *Richards* fell in a Passion because he refused to go along with them; and upon seeing him coming towards them with a Light, the Company parted; that he saw a Horse stand at a little Distance, and there seemed to him to be a Man lying across the Horse, and two Men holding him on, and he believed that the Person he saw lying across the Horse was dead, but he was not nigh enough to see whether he was or not.

That on the Wednesday or Thursday following, about twelve or one at Noon, the Prisoners *Jackson* and *Carter*, and all the rest of the Company came again to his House: that the Prisoner *Richard Mills* the younger, and his Brother *John* were sent for, and came to them.

Edward Sonus proved, that on the 16th or 17th of September last, he found the Body of a dead Man in a Well in *Harras Wood*, within 200 Yards of *Lady Holt House*, and that there were two Pieces of Timber over the Body: that he went immediately to get the Coroner's Inquest; and when he came back, he saw the Man had Boots on, and there was a Rope about his Neck; and that the Well is by *Lady Holt Park*, in the County of *Suffex*.

Mr. Brackstone produced the Boots and a Belt that were taken off the Body, and given to him by the Coroner.

Mrs. Chater, the Widow of *Daniel Chater*, deposed, That she remembered her late Husband set out from *Southampton* on the 14th of February last, and that she had never seen him since that time; she looked upon the Belt produced by *Mr. Brackstone*, and said she knew it was the same Belt her Husband had on when he set out from home, by a particular Mark in it; and she believed that the Boots produced were likewise her Husband's.

Mr. Sonus proved also, that the Horse, which *Chater* set out upon, was found about a Month afterwards, and delivered to the Owner.

The King's Counsel submitted it here.

Mr. Justice Foster acquainted the Prisoners, that the King's Counsel having gone through their Evidence, it was now their Time to offer what they could in their own Defence.

He repeated to each of the Prisoners the particular Facts the Evidence

* Note. The Particulars of the Judge's Charge to the Jury in summing up the Evidence, are omitted, thro' the Mistake of the Short-hand Writer, which is mentioned in the Advertisement in the Note; and the State of the Evidence is now reduced to so narrow a Compass, that the inserting the Judge's Charge, would have been little more than a Repetition of the Evidence, in the same Order as it stands in the Trial.

had charged him with, and asked them severally what they had to say to clear themselves of that Charge.

To which the Prisoner *Tapner* said, he did not know that they were going to murder the Man; but *Jackson* and *Richards* threatened to kill him if he would not go with them, and he received three or four Cuts from *Hammond* or *Daniel Perryer*, but he did not know which; that *Richards* and another Man tied the Rope; and he denied that he drew a Knife, or cut *Chater* across the Face.

Mr. Justice Foster told him, that supposing he was threatened in the Manner he insisted on, yet that would be no legal Defence in the present Case; and that in every possible View of the Case, it was infinitely more eligible for a Man to die by the Hands of wicked Men, than to go to his Grave with the Guilt of innocent Blood on his own Head.

Cobby said, he did not know what they were going to do with the Man, that he never touched him, and knew nothing of the Murder.

Hammond said, when he understood what they were going to do, he wanted to go off and make a Discovery: But the Company prevented him; and that by the Company he meant all the Prisoners.

Richard Mills the elder said, he did not know what they were at, and did not think they would have hurt the Man, and did not know he was chained till after they were gone away.

Richard Mills the younger said, he knew nothing of the Matter, and never saw either of the Men (*Galley* and *Chater*) in his Life; he acknowledged he was at *Scarsfield's* House, but said he knew nothing of the Murder, and denied the Charge; that *Scarsfield* was the only Witness he had, for he (*Scarsfield*) knew when he came, and how long he staid there.

Jackson said, the Man who said he would be *Chater's* Butcher, was his Butcher, and nobody else; that he (*Jackson*) was not by when he was murdered, and was not guilty of it.

Mr. Justice Foster cautioned him not to deceive himself, and told him, that with regard to the present Charge, it was not necessary that he should have been present at the Murder; he was not charged with being present, but as an Accessary before the Fact, in advising and procuring the Murder to be done; and that was the Fact he was called upon to answer.

Carter said, when he went to the Widow *Paine's*, he only thought they were going to carry the Men out of the way till they saw what should become of *Dimr*, and that he never laid Hands upon them; and went along with the Company to prevent Mischief.

Scarsfield the Witness was then called again, and *Richard Mills* the younger being asked whether he would ask him any Questions, only desired he might be asked what time he came to his House, and how long he staid there; to which *Scarsfield* answered, That *Mills* came to his House about half an Hour after One, staid there about an Hour and an half, and went away on Foot.

The rest of the Prisoners said they had not any Witnesses.

Upon which, *Mr. Justice Foster* opened to the Jury the Substance of the Indictment, as before set forth; and told them, that whether the Prisoners, or any of them, were guilty in Manner as therein they are severally charged, must be left to their Consideration, upon the Evidence that had been laid before them.

That in order to enable them to apply the Evidence to the several Parts of the Charge, it would be proper for him first to acquaint them how the Law determines in Cases of this Nature; that with regard to the Persons charged as Principals, wherever several Persons agree together to commit a Murder or any other Felony, and the Murder or Felony is actually committed, every Person present, aiding and abetting, is, in the Eye of the Law, guilty in the same Degree, and liable to the same Punishment as he who actually committed the Fact. And the Reason the Law goes upon is this, that the Presence of the Accomplices gives Encouragement, Support, and Protection to the Person who actually commits the Fact; and at the same time contributes to his Security.

That it is not necessary that the Proof of the Fact, in Cases of this Nature, should come up to the precise Form of the Indictment. For if the Indictment charges that *A* did the Fact, and that *B* and *C* were present, aiding and abetting, if it be proved that *B* did the Fact, and that *A* and *C* were present, aiding and abetting, they will be all guilty within the Indictment.

That Accessaries before the Fact, are those who not being present in any Sense of the Law at the time the Fact is committed, have advised or otherwise procured the Fact to be done. These Persons, in the Case of wilful Murder, will be liable to the same Punishment as those who committed the Murder, by their Instigation, Advice or Procurement.

* He then summed up the Evidence very largely, and applied it to the Case of the several Prisoners; and concluded, that if upon the whole, the Jury should be of Opinion that either of the Principals (*Tapner*, *Cobby*, *Hammond*, or the others charged as Principals in the Indictment) did strangle the Deceased, and that the Prisoners, *Tapner*, *Cobby*, and *Hammond*, were present, aiding and abetting, they will be within this Indictment.

And if they should be of Opinion, that the Prisoners, charged as Accessaries before the Fact, did advise, consent to, or procure the Murder, they likewise will be guilty within this Indictment, tho' they were not present when the Fact was committed.

The Jury, after some little Consideration, gave their Verdict, that *Tapner*, *Cobby*, and *Hammond*, were guilty of the Murder, as laid in the Indictment:

And *Richard Mills* the elder, *Richard Mills* the younger, *William Jackson*, and *William Carter*, were guilty, as Accessaries before the Fact.

Wednesday, 18 Jan. 1748-9.

William Jackson and *William Carter* were tried upon the other Indictment, on the which they had been arraigned the Day before, as Principals in the Murder of *William Galley*, and to which they had pleaded, Not Guilty.

Mr. Steele opened the Indictment to the Jury, and *Mr. Bantles*, the King's Counsel, spoke to much the same Purport as the Day before.

Mr. Smyth, another of the King's Counsel, spoke as follows, viz. I shall only add a Word or two, to explain to you why these two Men, who were convicted Yesterday as Accessaries before the Fact to the Murder

of *Chater*, and thereby liable to suffer Death, should be tried a second time, as Principals, for the Murder of *Galley*.

The Reasons for it are; in the first place, it will be necessary to convict them as Principals for the Murder of *Galley*, otherwise the Accessories to that Murder, either before or after the Fact, cannot be convicted.

Another Reason is, as the Intention of all Prosecutions, as well as Punishments, is not so much to revenge and punish what is past, as to deter others from committing the like Crimes; it may be of Service to the Publick to have every Circumstance of this cruel Transaction disclosed, to shew how dangerous to their Neighbours, and to the Country in general, those Persons are who are concerned in Smuggling, and how much it concerns every Man to use his utmost Endeavours to suppress, and bring them to Justice; and it may have another good Effect, in preventing Persons from engaging in that lawless Practice, when they see it consequentially engages them in Crimes, which at first they might never intend; for I believe, if these unhappy Men had been told, when they first began Smuggling, that the Time would come when they would coolly bathe their Hands in the Blood of two innocent Men, (bad as they now are) they would then have been shocked, and startled at the very Imagination of it; yet Men are so naturally led from one Vice to another, that having once transgressed the Laws of their Country, they have insensibly arrived at such an Height of Wickedness, as to commit this heinous Crime without the least Hesitation or Remorse. [After which the following Witnesses were called for the Crown, viz.

Mr. Milner, Mr. Sheerer, William Galley, and Edward Holton, whose Evidence upon this Trial was to the same Effect as it was upon the former.

Robert Jenkes also proved the same upon this Trial, as he did upon the former, with this Addition:

That when they were at the Widow Paine's, Jackson and Carter both said they would see the Letter for Mr. Battine, because they thought the Men were going to swear against the Smugglers; that both Jackson and Carter hindered him from going thro' the Room where the two Men were; and that one of the Men had on a blue Great-coat.

Being cross-examined, at the Request of Carter, whether he hindered him from going through the Room?

Answered, That both did.

Joseph Southern, William Lamb, William Garnet, and George Poat, proved the same, as upon the former Trial.

John Raife, to the first Part of his Evidence relating to the Transactions at the Widow Paine's, added, that the Blood ran down from Galley's Head and Face, on Jackson's knocking him down; and that Galley and Chater were not fuddled when he went away.

William Steele, to his former Evidence, added, That whilst they were at the Widow Paine's, Jackson said, "That if any of the Gang went away from them, he would shoot them through the Head, or through the Body, or serve them as bad as the two Men should be served." That he supposed Jackson meant by this, that he would murder any of their own Company, or use any of them as ill as they did the Officer and Chater, if they left them; that when the Company left off whipping Galley with their Thongs, and Lashes of their Whips, as mention'd in the former Trial, because the Lashes of the Whip reached this Witness, they beat him with the Butt-end of their Whips, which were very heavy, 'till one of their Whips was beat all to Pieces; that the Gravelly Knap, where Galley was pushed off the Horse, when he died, was in Conduit-Lane, in Rogate Parish; and that Little Harry pushed him in the Back, and shoved him down; and that the Prisoners, Jackson and Carter, Little Sam, and Richards, were in Company when he died; that they laid his Body upon a Horse, and one Man held him on one Side, and another on the other Side, and so they led the Horse along; that Carter and another went before to call Scardefield up; and when they came there, they laid Galley's Body down in the Kitchen at Scardefield's, and carried Chater into another Room; they drank every one a Dram, and Jackson and Carter asked Scardefield if he knew any Place to bury that Man in, and he said No; but they said he must go with them; and they got a Spade, and a Candle and Lanthorn, and they laid Galley on Horseback again, and he (the Witness) Carter, Little Sam, and Scardefield, went back for about a Mile, and he held the Horse whilst Scardefield, Carter, and Little Sam, went to find the Place to bury him in; and when they had found it, Carter and Sam came back to him, and left Scardefield to dig the Grave; they went and buried him there, and returned back to Scardefield's again; that Jackson told them, that whilst they were burying Galley, he and Little Harry went to carry Chater to old Mills's; that they buried Galley two or three Feet deep, in the Heart of a Sand-Pit, about three or four, or five o'Clock in the Morning.

Being cross-examined, and asked by Carter, whether he (Carter) struck Galley? answered, That they all struck him.

Being asked, at the Request of the Prisoners Counsel, what was the Consequence of that Thrust that Little Harry gave Galley, when he fell the last Time? answered, That he thought by the Fall Galley's Neck was broke, because as soon as he was down, he gave himself a Turn, and stretched out his Hands and Legs, and never stirred or spoke afterwards; that Galley was not falling, 'till Little Harry gave him the Push: Said he did not know the Parish of Rogate, or that the Place where Galley died was within that Parish, any otherwise than that he had been there since, and several People said it was the Parish of Rogate.

He was then asked, whether the Gravelly Knap was in the County of Southampton or County of Sussex? answered, That he could not tell; that he had never heard, as he remembered, what County that Place was in, but he was carried thither last Friday, to see the Place, and he shewed to some People, then present, the Spot of Ground where Galley fell off the Horse, and he believed he should know one of the Men that were with him.

John Afllett being called up, Steele said, he was one of the Men that was there.

Afllett was then sworn, and proved that he was with Steele and some Dragoons on Friday last; that Steele pointed down to the Ground with a Stick, and said, "There the Man died!" That he (the Witness) took particular notice of that Place, and is sure it was in Sussex; that he now lives at Harting, and was born and bred just by, and had lived there ever since he was a Lad, and borne the Offices of Surveyor and Constable,

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Steele, on Cross-examination, said, he knew the Place very well again, by the little gravelly rising of the Ground.

William Scardefield proved the same as in the former Trial, with the following Facts relating to the Burial of Galley; that one of the Gang asked him if he knew the Place where they laid up some Goods about a Year and a half ago, and he told him he did; upon which the Man said, "You must go along with us;" but the Witness told him his Wife was ill, and he could not leave the House; and then Carter came in and asked for a Lanthorn, and Edmund Richards told him he must go with them; to which he replied, If he must go, he must; that when he came down the Hill a little way from his own House, he saw two Companies, one on the right and the other on the left; that Carter, Steele, and a short Man he did not know, went on to the Place, which was about three Quarters of a Mile back again; he found the Place, and one of them came up after him, and he told him where it was; upon which they brought the Horse up to a rough kind of a Dell, and the short Man fell a-digging, and it being a very cold Night, he (the Witness) took the Spitter and dug to keep himself warm; there seemed to him to be a Man upon the Horse, and it fell like a Man into the Pit, and they covered it up; he believed it to be the Body of a Man, but he did not help to put it in, and was about three or four Yards from it; he never went nigh the Ground afterwards, and did not see the Body of a Man upon the Horse afterwards, or any where else; that the Earth was thrown over the Pit, and the short Man did most of the Work; and he did not enquire, or choose to ask any Questions about it.

Edward Sanes proved the finding the Body of a dead Man, about the 15th of September, in a Fox Earth, within three Quarters of a Mile of Raife; that there were Boots upon the Legs, and a Glove upon one Hand; that the Body was very much perished, and had a Waistcoat and Breeches on.

John Greentree produced a Coat, which he took up beyond Harting Pond in the publick Road, on the 15th of February last; and swore that there were some Writings and a Letter-Case in the Pocket, which he said he should know if he was to see them again.

Upon this, a Parchment was delivered into Court by Mr. Battine, a Justice of the Peace, in whose Custody it had been left, and shewn to the Witness, who said it was the same that he found in the Coat Pocket.

It was then read in Court, and appeared to be a Deputation under the Hands of the Commissioners of the Customs, dated the 1st of April 1731, appointing William Galley to be a Tidesman in the Port of Southampton.

William Galley, the Son of the Deceased, looked at the Coat which the other Witness produced, and proved it to be his Father's Coat.

John Greentree said, the Coat was bloody when he found it.

The King's Counsel submitted it here, upon which the Prisoners being called upon to make their Defence,

The Prisoner Carter said, he never intended to hurt the Man, and never struck him, and only intended to carry him away to take Care of him, 'till they knew what became of Dimer; and that he had not any Witnesses.

The Prisoner Jackson had nothing to say.

Mr. Justice Foster opened to the Jury the Substance of the Indictment, as before set forth, and told them, that where several People join to do an Act, in itself unlawful, and Death ensues from any thing done in Prosecution of that unlawful Design, they will be all considered as Principals in Murder, if they were all present, aiding or abetting therein; that it was not necessary that each of the Prisoners at the Bar should be guilty of every single Abuse that was offered to the Deceased, in the long Series of Barbarities the Witnesses for the Crown had laid before them; if all or any of those Abuses contributed to his Death, and the Prisoners at the Bar were engaged in the several Designs against him, and present, aiding and abetting the others, they will be guilty within this Indictment.

He then summed up the Evidence, and applied it to the Case of the Prisoners.

The Jury, after some little Consultation together, gave their Verdict, That William Jackson and William Carter were both Guilty.

The Counsel for the Crown then moved for Judgment; and the Prisoners being set to the Bar, and severally asked what they had to say why Judgment of Death should not pass on them, and none of them offering any thing in Arrest of Judgment, Mr. Justice Foster spoke to them as follows:

Benjamin Tapner, John Cobby, John Hammond, William Jackson, William Carter, Richard Mills the elder, and Richard Mills the younger; you have been convicted upon very full and satisfactory Evidence of the Murder of Daniel Chater; three of you as Principals, and the rest as Accessories before the Fact.

And you William Jackson and William Carter stand farther convicted, as Principals in the Murder of William Galley.

Deliberate Murder is most justly ranked among the highest Crimes human Nature is capable of; but those you have respectively been convicted of, have been attended with Circumstances of very high and uncommon Aggravation.

The Persons who have been the Objects of your Fury, were travelling on a very laudable Design, the Advancement of publick Justice. For this they were beset in their Inn, tempted to drink to Excess, and then laid asleep in an inner Room, while a Consultation was held in what Manner to dispose of them; and in the end a Resolution was taken to carry them to some distant Place, and to dispatch them by some Means or other.

In consequence of this Resolution they were set on Horseback, and exercised with various Kinds of Cruelty for five Hours together, 'till one of them sunk under the Hardships he suffered, and died upon the Road.

The other was carried to a Place of safe Custody, there kept chained on a Heap of Turf, expecting his Doom, for three Days. During this dreadful Interval, a second Consultation was held, and a Resolution taken to dispatch him too: Not a single Man, of thirteen who were present, offering one Word in his Behalf.

He was accordingly hurried to his Death; and though he begged earnestly to live but one Day longer, that small Respite was denied him. I will not repeat every Circumstance; but I cannot forbear putting you in mind

mind of one. When the poor Man was told he must die that very Night, some of you advised him to say his Prayers, and accordingly he did address himself to Prayer.

One would have hoped that this Circumstance should have softened your Hearts, and turned you from the evil Purpose you were bent upon. Happy had it been for you, if you had then reflected, that God Almighty was Witness to every thing that passed among you, and to all the Intention of your Hearts!

But while the Man, under great Distraction of Thought, was recommending his Soul to Mercy, he was interrupted in his Devotion by two of you, in a Manner I scarce know how to repeat.

I hope your Hearts have been long since softened to a proper Degree of Contrition for these Things; and that you have already made a due Preparation for the Sentence I am now to pass upon you.

If you have not, pray lose not one Moment more. Let not Company, or the Habit of Drinking, or the Hopes of Life, divert you from it; for Christian Charity obliges me to tell you, that your Time in this World will be very short.

Nothing now remains but that I pass the Sentence upon you which the Law of your Country, in Conformity to the Law of God, and to the Practice of all Ages and Nations, has already pronounced upon the Crime you have been guilty of. This Court doth therefore award that you Benjamin Tapner, William Carter, John Hammond, John Cobby, Richard Mills the elder, Richard Mills the younger, and William Jackson, and each of you, shall be conveyed from hence to the Prison from whence you came, and from thence you shall be led to the Place of Execution, where you shall be severally hanged by the Neck, until you shall be dead; and the Lord have Mercy upon your Souls!

After Sentence the Prisoners were carried back to Chichester Jail. The Court were pleased to order them all for Execution the very next Day, and that the Bodies of Jackson, Carter, Tapner, Cobby, and Hammond, the five Principals, should be hung in Chains. Accordingly they were carried from the Jail, to a Place called the Broyle, near Chichester; where, in the Presence of great Numbers of Spectators on Thursday the 19th Day of January 1748-9, about Two o'Clock in the Afternoon, all of them were executed except Jackson, who died in Jail some few Hours after Sentence of Death was pronounced upon him.

The Heinousness of the Crimes of so notorious Offenders may possibly excite in the Reader a Desire to be informed of their respective Behaviour, whilst under Sentence of Death, and at the Place of Execution; to satisfy which is subjoined the following authentick Account, under the Hands of the several Clergymen who attended them alternately in Jail, and together at the Place of Execution.

"The first Time I went to the Malefactors under Condemnation, being the Evening after Sentence was passed upon them, I prayed with them all; viz. Carter, Tapner, Cobby, Hammond, and the two Mills's (Jackson being dead just before I went to the Jail); but many Persons being present, I had no Opportunity of saying any thing material, and therefore told them I would visit them early the next Morning, which I did accordingly.

"After Prayers, I talked with them about their unhappy Condition, and the heinous Crimes that brought them into it. I asked them, if they desired to receive the Sacrament; they all and each of them begged that I would administer it to them; accordingly I attended them again about Ten o'Clock for that Purpose, and during the whole Time of my performing that Office, they all behaved with great Decency and Devotion, especially Carter and Tapner.

"Afterwards I put the following Questions to them, and desired they would be sincere in their Answers as dying Men; First, Whether they did not acknowledge the Sentence that was passed upon them to be just, and what they highly deserved? Carter, the most sensible and penitent amongst them, first answered, Yes; as did afterwards Tapner, Cobby, and Hammond; but the two Mills's did not.

"2dly, I asked them whether they forgave every Body? They all and each answered, They forgave all the World. Tapner then owned, that Edmund Richards and another were the Cause of his Ruin, but yet he forgave them.

"Carter laid his Ruin to Jackson. "JOHN SMYTH, Curate of St. Pancrass, in Chichester."

"Both Carter and Tapner, a few Hours before their Execution, confest'd to me, that they, with several others, assembled together, with a Design to rescue Dimer out of Chichester Jail; that the only Person amongst them, who had Arms, was Edmund Richards; but that being disappointed by a Number of Persons who had promised to join them from the East, their Scheme was frustrated, and their Purpose carried no farther into Execution; that one Stringer was at the Head of this Confederacy, but not present with them at the Time of their assembling together.

"SIMON HUGHS, Vicar of Donnington in Sussex."

"Benjamin Tapner, of West Stoke in Sussex, Labourer, aged Twenty-seven, before he was turned off, owned the Justice of his Sentence, and desired all young Persons to take Warning by his untimely End, and avoid bad Company, which was his Ruin. When in Jail, before he was brought out for Execution, he said, he did not remember he put the Rope about Cbater's Neck.

"William Carter, of Rowland's Castle, in Hampshire, Thatcher, aged Thirty-nine, both at the Place of Execution, and in the Jail, confest the Justice of the Sentence passed upon him, and in both Places acted more suitably to a Person in such unhappy Circumstances than any of them. He likewise at the Gallows, in the same Manner as Tapner did, cautioned every one against those Courses, that had brought him to so shameful an End. Tapner and Carter, when all the Ropes were

"fixed, shook Hands, but what, or whether any Words then passed between them, was not heard.

"Richard Mills the elder, of Trotton in Sussex, Colt-Breaker, aged 63, was unwilling to own himself guilty of the Fact for which he died, and said, he never saw Chater; but being asked whether he never heard him, as he was confined so long, and in so terrible a Condition, in the next Room to that in which he generally sat? made no Answer.

"Richard Mills the younger, of Stebham in Sussex, Colt-Breaker, Son of the aforesaid Richard Mills, aged 37, would willingly have been thought innocent; and it being put to him, whether he made that Speech about the Council of War, &c. and whether he was not at the Consultation? denied both; but in the latter, Tapner confronted him, and said, "Yes, Major, you was there." To which Mills replied, "Ay, for a Quarter of an Hour, or so," or to that Purpose. It so happened that his Rope was first fixed to the Gallows, and a considerable Space of Time was taken up in fixing the rest; which Interim he might have much better employed, than he did, gazing one while at the Spectators, and then at the Hangman (who was on the Gallows, tying the Ropes of the other Malefactors), till the Cart was almost ready to drive away.

"John Cobby, of Sidlesham in Sussex, Labourer, aged 30, appeared to be very much dejected, and said little in Jail, and nothing at the Gallows.

"John Hammond, of Bersfled in Sussex, Labourer, aged 40, seemed likewise very much dejected, and had little to say for himself, excepting his pretending that the Threats of Jackson, Carter, and the rest, were the Occasion of his being concerned in the Murder.

"Cobby's Excuse was much the same.

"They all, except the two Mills's, seemed sensible of the heinous Nature of the Crime for which they died, and behaved as became Men in their unhappy Condition, more particularly Carter; but Mills, the Father and Son, appeared hardened and unaffected, both in the Jail and at the Gallows; especially the Son, who was most insensible, and seemed by his Behaviour, which has been mentioned before, even when his Rope was fixed to the Gallows, to be as little moved at what he was about to suffer, as the most unconcerned Spectator. However, just before the Cart drove away, he and his Father seemed to offer up some Prayers to God.

"R. Sandham, Vicar of Subdeanry in Chichester. "John Smyth, Curate of St. Pancrass."

As Jackson died so soon after Condemnation, no other Account can be given of him, than that he was of Welsworth, near Rowland's Castle, in Hampshire, Labourer, aged about fifty Years; and that being very ill, all the Time of his Trial, as he had been for a considerable Time before, was shocked at the Sentence of Death, and the Apprehension of being hung in Chains, to such a Degree, as hastened and brought on his Death; before he could pay the Forfeit of his Life, in that Ignominy to which he was most deservedly doomed, and more peculiarly due to him as a Ring-leader in these most cruel and horrid Barbarities and Murders.

He professed the Romish Religion some Years before his Death, and that he died a Roman Catholick may very reasonably be presumed from a printed Paper which was found carefully sewed up in a Linnen Purse in his Waistcoat Pocket, immediately after his Death, supposed to be a Popish Relique, and containing the following Words, viz.

Sancti tres Reges
Gaspar, Melchior, Balthasar,
Orate pro Nobis nunc & in Hora
Mortis Nostrae.

Ces Billets ont touché aux Trois Testes de S. S. Rois à Cologne. Ils sont pour Les Voyageurs, contre Les Mal-Heurs de Chemins, Maux de Tête, Mal-caducque, Fievres, Sorcellerie, toute sorte de Malefice, Mort subite.

In English thus:

Ye Three Holy Kings,
Gaspar, Melchior, Balthasar,

Pray for us now, and in the Hour of Death.

These Papers have touch'd the Three Heads of the Holy Kings at Cologne. They are to preserve Travellers from Accidents on the Road, Head-Achs, Falling-Sickness, Fevers, Witch-craft, all Kinds of Mischief, and sudden Death.

The Body of William Carter was hung in Chains, in the Portsmouth Road, near Raikes in Sussex; the Body of Benjamin Tapner, on Rook's Hill, near Chichester; and the Bodies of John Cobby and John Hammond upon the Sea-Coast, near a Place called Selsey Bill, in Sussex, where they are seen at a great Distance, both East and West.

The Bodies of Mills, the Father and Son, having neither Friend or Relation to take them away, were thrown into a Hole, dug for that Purpose, very near the Gallows, into which was likewise thrown the Body of Jackson. Just by is now erected a Stone, having the following Inscription, viz.

"Near this Place was buried the Body of William Jackson, a proscribed Smuggler, who, upon a special Commission of Oyer and Terminer, held at Chichester, on the 16th Day of January 1748-9, was, with William Carter, attainted for the Murder of William Galley, a Custom-house Officer; and who likewise was, together with Benjamin Tapner, John Cobby, John Hammond, Richard Mills the elder, and Richard Mills the younger, his Son, attainted for the Murder of Daniel Chater; but dying in a few Hours after Sentence of Death was pronounced upon him, he thereby escap'd the Punishment which the Heinousness of his complicated Crimes deserved, and which was the next Day most justly inflicted upon his Accomplices.

"As a Memorial to Posterity, and a Warning
to this and succeeding Generations,
This Stone is erected,
A. D. 1749."

END of the NINTH VOLUME.

